NORTH CAROLINA REGISTER

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December 1, 2020

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.

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road — 984-236-1850
Raleigh, North Carolina 27609 — 984-236-1947 FAX

contact:	Molly Masich, Codifier of Rules	molly.masich@oah.nc.gov	984-236-1934
	Dana McGhee, Publications Coordinator	dana.mcghee@oah.nc.gov	984-236-1937
	Lindsay Silvester, Editorial Assistant	lindsay.silvester@oah.nc.gov	984-236-1938
	Cathy Matthews-Thayer, Editorial Assistant	cathy.thayer@oah.nc.gov	984-236-1901

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road — 984-236-1850
Raleigh, North Carolina 27609 — 984-236-1947 FAX

contact:	Amber Cronk May, Commission Counsel	amber.may@oah.nc.gov	984-236-1936
	Amanda Reeder, Commission Counsel	amanda.reeder@oah.nc.gov	984-236-1939
	Ashley Snyder, Commission Counsel	ashley.snyder@oah.nc.gov	984-236-1941
	Alexander Burgos, Paralegal	alexander.burgos@oah.nc.gov	984-236-1940
	Julie Brincefield, Administrative Assistant	julie.brincefield@oah.nc.gov	984-236-1935

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
Contact: Carrie Hollis, Economic Analyst — osbmruleanalysis@osbm.nc.gov — 984-236-0689

NC Association of County Commissioners
215 North Dawson Street — 919-715-2893
Raleigh, North Carolina 27603
contact: Amy Bason — amy.bason@ncacc.org

NC League of Municipalities — 919-715-2925
424 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601
contact: Monica Jackson — mjackson@nclm.org

Legislative Process Concerning Rulemaking

545 Legislative Office Building
300 North Salisbury Street — 919-733-2578
Raleigh, North Carolina 27611 — 919-715-5460 FAX

Jason Moran-Bates, Staff Attorney
Jeremy Ray, Staff Attorney

NORTH CAROLINA REGISTER

Publication Schedule for January 2020 – December 2020

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	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270th day from publication in the Register
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
34:20	04/15/20	03/24/20	04/30/20	06/15/20	06/22/20	07/16/20	08/01/20	01/10/21
34:21	05/01/20	04/09/20	05/16/20	06/30/20	07/20/20	08/20/20	09/01/20	01/26/21
34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
34:23	06/01/20	05/08/20	06/16/20	07/31/20	08/20/20	09/17/20	10/01/20	02/26/21
34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
35:01	07/01/20	06/10/20	07/16/20	08/31/20	09/21/20	10/15/20	11/01/20	03/28/21
35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
35:03	08/03/20	07/13/20	08/18/20	10/02/20	10/20/20	11/19/20	12/01/20	04/30/21
35:04	08/17/20	07/27/20	09/01/20	10/16/20	10/20/20	11/19/20	12/01/20	05/14/21
35:05	09/01/20	08/11/20	09/16/20	11/02/20	11/20/20	12/17/20	01/01/21	05/29/21
35:06	09/15/20	08/24/20	09/30/20	11/16/20	11/20/20	12/17/20	01/01/21	06/12/21
35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

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.

State of North Carolina

ROY COOPER
GOVERNOR

October 28, 2020

EXECUTIVE ORDER NO. 171

ASSISTING NORTH CAROLINIANS AT RISK OF EVICTION

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165 and 169-170; and

WHEREAS, more than two hundred sixty-six thousand (266,000) people in North Carolina have had COVID-19, and four thousand two hundred forty-five (4,245) people in North Carolina have died from the disease; and

WHEREAS, as of the date of this Executive Order, and relative to recent weeks, there has been a considerable increase in the COVID-19 daily case counts, an increase in the associated hospitalizations and emergency-department visits for COVID-19-like illnesses, and an increase in the percent of daily case counts that are positive, prompting, most recently, the undersigned to pause the state in Phase 3 of its reopening process; and

WHEREAS, these trends require the undersigned to implement certain measures in order to slow the spread of the virus across the state and protect the neediest North Carolinians from housing loss and housing insecurity; and

Residential Evictions in North Carolina

WHEREAS, in addition to its public health consequences, the economic effects of the COVID-19 pandemic have broadly impacted residential tenants across the state, many of whom have been unable to timely or fully make their rent payments, thereby facing the risk of eviction; and

WHEREAS, residential evictions remove people from their homes, where they are safest during the COVID-19 pandemic, which therefore increases the risk that such people will contract and spread COVID-19; and

WHEREAS, many residential evictions leave people homeless, where they are at heightened risk of contracting and spreading COVID-19 either through unsheltered living situations or through relocation to homeless shelters or other congregate living situations, where they face enhanced risk of contracting COVID-19; and

WHEREAS, because many people are now performing their jobs and receiving schooling from their homes, residential evictions during the COVID-19 pandemic also threaten people's ability to maintain their livelihood and receive education; and

WHEREAS, according to a September 25, 2020 report from the National Council of State Housing Agencies, there are currently an estimated 300,000 – 410,000 renter households in North Carolina unable to pay rent and at risk of eviction, and a projected estimated 240,000 eviction filings in North Carolina by January 2021; and

WHEREAS, the undersigned's administration recognizes that eviction moratoria are not only effective public health measures to control the spread of COVID-19, but that they can also have significant impacts on the economic and socioeconomic realities of many North Carolinians and;

WHEREAS, accordingly, the undersigned's administration has implemented various measures to-date to protect vulnerable populations from residential evictions during the COVID-19 pandemic, including through the issuance of Executive Order Nos. 124 and 142, which placed a temporary moratorium, through June 20, 2020, on residential evictions for reasons of late payment or nonpayment, and through the creation of the Housing Opportunities and Prevention of Evictions Program ("HOPE"), designed to provide financial relief to the neediest of North Carolina families; and

Centers for Disease Control and Prevention Order Temporarily Halting Residential Evictions

WHEREAS, the Centers for Disease Control and Prevention issued an order, pursuant to 42 U.S.C. § 264 of the Public Health Act and 42 C.F.R. § 70.2, and titled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," temporarily halting certain residential evictions nationwide, from September 4, 2020 through December 31, 2020 (the "CDC Order"); and

WHEREAS, the CDC Order recognizes that COVID-19 poses a historically unprecedented threat to public health, and that a temporary halt to certain residential evictions "constitutes a reasonably necessary measure to prevent the further spread of COVID-19 throughout the United States"; and

WHEREAS, the CDC Order protects certain residential tenants from eviction for nonpayment of rent under certain conditions; and

WHEREAS, the CDC Order applies to North Carolina and, according to the Order's terms, shall be enforced by federal authorities and cooperating state and local authorities; and

WHEREAS, despite the application of the CDC Order to North Carolina, recent reports have made clear that the CDC Order has been enforced inaccurately and inconsistently in some

parts of North Carolina, thereby exposing some tenants to unwarranted eviction and unnecessary hardship; and

WHEREAS, many residential tenants who have been evicted from their homes lack adequate resources and legal representation to assist with any challenges to potentially inaccurate and inconsistent applications of the CDC Order to their particular circumstances; and

WHEREAS, in order to qualify for protection from eviction under the CDC Order, a residential tenant must complete a declaration form, under penalty of perjury, and provide it to his or her landlord, declaring, among other required criteria for eligibility, that the tenant has used best efforts to obtain all government assistance for rent or housing, that the tenant has used best efforts to make timely partial payments that are as close to the full payment as the tenant's circumstances may permit, and that the tenant or tenant's household is below a certain income threshold (the "Declaration"); and

WHEREAS, many residential tenants in North Carolina who would otherwise qualify for eviction protection under the terms of the CDC Order are unaware of the obligation to deliver a completed and signed Declaration to their landlord, and accordingly do not then receive the corresponding protection from eviction under that Order, resulting in unwarranted evictions and unnecessary hardship for many North Carolinians; and

WHEREAS, under the CDC Order, landlords are not required to inform their residential tenants at risk of eviction or in the process of eviction of the CDC Order of the tenants' obligation to provide the landlord with a completed and signed Declaration in order to receive the full scope of protection under the Order; and

WHEREAS, an affirmative obligation on the landlord to provide a residential tenant with a copy of the Declaration form in any action for eviction against that tenant under Article 3 of Chapter 42 of the North Carolina General Statutes will inform and educate residential tenants about their rights under the CDC Order, and may lessen the number of North Carolinians removed from their homes during the COVID-19 pandemic; and

WHEREAS, for the same reasons, a landlord must be required to inform the court if a tenant has provided the landlord with a copy of the Declaration, and any Declaration must be filed with the court; and

WHEREAS, to ensure the effective execution of the CDC Order, this Executive Order provides for the modification of residential leases to effectuate certain procedures in the event a tenant's Declaration is filed with the court, and in the event the landlord decides to contest that Declaration; and

WHEREAS, like the CDC Order, this Executive Order does not block evictions for reasons other than nonpayment of rent, interest, late fees, or penalties; and

WHEREAS, the restrictions on evictions under this Executive Order shall extend only during the term of this Executive Order; and

WHEREAS, the CDC Order does not relieve any residential tenant from the obligation to pay rent, make housing payments, or comply with any other obligation that the tenant may have under tenancy, lease or contract, and it does not protect tenants from eviction for reasons of criminal activity, threatening the health or safety of other tenants, or violating building codes or other ordinances; and

WHEREAS, in order to ensure accuracy and consistency in the application of the CDC Order to residential tenants in North Carolina, and to best protect the most vulnerable of North Carolina households during the COVID-19 pandemic, the undersigned desires to (i) clarify that the protections for qualifying residential tenants under the CDC Order shall apply to those qualifying residential tenants in North Carolina and (ii) implement other reasonable and necessary measures to clarify and extend the protections extended by the CDC Order; and

Residential Assistance Program in North Carolina

WHEREAS, the undersigned has established the HOPE program for rent and utility assistance, overseen and administered by the North Carolina Office of Recovery and Resiliency, and seeded with Coronavirus Aid, Relief and Economic Security Act ("CARES") funding in excess of $117 million dollars; and

WHEREAS, the HOPE program, which launched October 15, 2020, is aimed at those residential tenants who have a household median income at or below eighty percent of their area's median income, occupy a rental property as their primary residence, and are behind on rent or utility bills when they apply for monetary assistance; and

WHEREAS, the HOPE program provides monetary assistance to those residential tenants who meet the program's criteria, by way of rent payments made directly to the residential tenant's landlord, for up to six months of rental assistance, and provides protection from eviction for qualifying tenants, provided their landlord executes an agreement not to evict the qualifying tenant for a specified duration of time, in exchange for receipt of funds through the HOPE program (the "HOPE Landlord-Tenant Agreement"); and

WHEREAS, since the HOPE program became effective, over 22,800 North Carolinians have applied for assistance through the program, underscoring the significant need for rental assistance and eviction protection across the state during the pandemic; and

WHEREAS, as of the date of this Executive Order, the vast majority of HOPE program applicants who have met the eligibility criteria for assistance under that program have not yet received protection from eviction, because their application has not yet advanced to the stage whereby the landlord must execute the required HOPE Landlord-Tenant Agreement; and

WHEREAS, the undersigned wishes to extend the protections of this Executive Order to those HOPE program applicants who have met the eligibility criteria for assistance under that program but who have not yet received protection from eviction under the HOPE Landlord-Tenant Agreement; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4), the undersigned is authorized to "cooperate and coordinate" with the President of the United States and the heads of department and other agencies of the federal government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and

local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over all resources, materials, and services, including shelter and rents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) further authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

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

Section 1. Evictions Moratorium.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Protections Apply to all Residential Tenants Who Qualify under the CDC Order.

1. The protections of the CDC Order shall apply to all residential tenants in North Carolina who qualify for protection from eviction under the terms of that Order.

2. Nothing in this Executive Order precludes evictions of tenants for reasons other than nonpayment or late payment of rent (including nonpayment or late payment of fees, penalties or interest).

3. For avoidance of doubt, such protections apply to those qualifying residential tenants regardless of whether or not the rental property is federally subsidized.

Section 2. Landlords' Obligations in any Residential Eviction Action; Application of the CDC Order's Protections.

For the reasons and pursuant to the authority set forth above, the undersigned orders that all residential leases are modified to effectuate the following procedures. These procedures are required only during the effective period of this Executive Order.

A. Obligation to Provide CDC Declaration Form to Residential Tenants in any Action for Eviction. In any action for eviction to recover possession of residential property under Article 3 of Chapter 42 of the North Carolina General Statutes that is commenced on or after the effective date of this Executive Order and before the termination of this Executive Order, the landlord must execute an affidavit and present it to the court certifying that the landlord has provided the residential tenant with a blank copy of the Declaration form.

B. One Declaration per Household. A single Declaration or a single equivalent declaration from a tenant responsible for paying rent under the lease is sufficient to activate the protections of this Executive Order. Notwithstanding any guidance from the CDC to the contrary, separate Declarations are not required from each person living in the home.

C. Result of Filing a Declaration. In actions pending on or commenced after the date of this Executive Order, a landlord who has been provided with a tenant's Declaration pursuant to the CDC Order shall immediately notify the court that such Declaration has been received and shall submit a copy of the Declaration to the court within five (5) days of receipt.

D. Purposes for which Eviction Actions May Proceed. In the event the landlord believes the action should still proceed despite the filing of the Declaration, the landlord shall submit to the court a response to the Declaration identifying in writing why the landlord believes the action should still proceed despite the protections of the CDC Order. For example, the landlord may respond by indicating that the eviction is for a reason other than nonpayment or late payment of rent. A hearing to determine whether the action should proceed shall be held according to the timeline for hearings for eviction proceedings, or as otherwise established by the court.

E. Writs of Possession.

1. Upon receiving a Declaration, the landlord shall take no actions to request a writ of possession, and the landlord is not entitled to the writ, but the landlord may submit a response to the Declaration as stated above in Subsection D.

2. If a court determines that the eviction should proceed under Subsection D, and ultimately enters a judgment against the tenant, nothing in this Executive Order prohibits a landlord from requesting a writ of possession, and the landlord shall be legally entitled to a writ of possession in those circumstances.

Section 3. Impact of Receipt of Monetary Assistance through the HOPE Program.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

The protections from eviction of this Executive Order shall extend to those residential tenants who have applied for the HOPE program and have been notified that they have met the eligibility criteria for participation in the HOPE program, even if those residential tenants would not qualify for protection from eviction under the CDC Order. Once the landlord has executed the HOPE Landlord-Tenant Agreement, the tenant shall be protected from eviction under the terms of that Agreement, and not under this Executive Order.

Section 4. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 5. Savings Clause and Interpretation.

A. If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

B. The protections stated in this Executive Order are independent from the requirements of the CDC Order and shall be in force regardless of any repeal, recission, amendment, or administrative interpretation of the CDC Order. If any court without jurisdiction over the State of North Carolina enjoins or otherwise blocks or modifies the CDC Order, in whole or in part,

this Executive Order shall continue to apply, and this Executive Order shall continue to provide the protections listed in the CDC Order.

Section 6. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 7. Enforcement.

A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 8. Effective Date.

This Executive Order is effective October 30, 2020, at 5:00 pm. This Executive Order shall remain in effect until December 31, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 28th day of October in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

ROY COOPER
GOVERNOR

October 30, 2020

EXECUTIVE ORDER NO. 172

FURTHER EXTENDING DEADLINES FOR CERTAIN HEALTH ASSESSMENTS AND IMMUNIZATION REQUIREMENTS DUE TO IMPACTS OF THE PANDEMIC

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March l, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, and 146-153, 155-157, 161-165, and 169-171; and

WHEREAS, more than 271,000 people in North Carolina have had laboratory-confirmed cases of COVID-19, and over 4,300 people in North Carolina have died from COVID-19; and

WHEREAS, immunizations are an integral part of the state's public health strategy and N.C. Gen. Stat. §§ 130A-152 to 130A-157 require immunizations of children and students in accordance with rules adopted by the Commission for Public Health (the "Commission"), and the Commission's rules, at 10A N.C. Admin. Code 41A .0401(c), specify that the State Health Director may suspend temporarily these immunization requirements due to emergency conditions; and

WHEREAS, the emergency conditions of the COVID-19 pandemic have made it difficult for many families to get all required immunizations on a timely basis, and action is necessary to support these families, while also supporting the public health goal of ensuring that children are appropriately immunized from harmful and contagious diseases; and

WHEREAS, therefore, in a written memorandum dated August 11, 2020, (the "Immunization Extension"), the State Health Director utilized the authority granted to her by the Commission under 10A N.C. Admin. Code 41A .0401(c) to temporarily suspend, through September 30, 2020, the immunization requirements of 10A N.C. Admin. Code 41A .0401(a) and (b), allowing the requirements to be deferred until October 1, 2020 with a grace period until October 30, 2020 or thirty (30) calendar days from the child's first day of attendance, whichever is later; and

WHEREAS, since the time to obtain these immunizations was extended, the undersigned issued Executive Order No. 156 to extend the deadlines for reporting on immunizations and for completing health assessments, which include immunization records, to align with the Immunization Extension; and

WHEREAS, although the Immunization Extension and Executive Order No. 156 provided families with several additional weeks to obtain the immunizations and health assessments that are required for students, barriers to immunization and health assessment have been reported and additional time is needed as the COVID-19 pandemic has continued to make it difficult for families to meet these requirements on a timely basis; and

WHEREAS, therefore, in a written memorandum dated October 30, 2020, (the "Further Immunization Extension"), the State Health Director utilized the authority granted to her by the Commission under 10A N.C. Admin. Code 41A .0401(c) to further extend the temporary suspension of the immunization requirements of 10A N.C. Admin. Code 41A .0401(a) and (b) through November 30, 2020, allowing the requirements to be deferred until December 1, 2020 with a grace period until December 30, 2020 or thirty (30) calendar days from the child's first day of attendance, whichever is later; and

WHEREAS, since the time to obtain these immunizations has been further extended, the deadlines should also be further extended for reporting on immunizations and for completing health assessments, which include immunization records; and

WHEREAS, notwithstanding these extensions, families are strongly encouraged, should their unique circumstances permit, to obtain the required immunizations for their children on a timely basis; and

WHEREAS, pursuant to N.C. Gen. Stat. § 147-12, the undersigned may supervise the official conduct of all executive and ministerial officers; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(3)(f), the Division of Emergency Management has the power and duty to revise, in coordination with the State Health Director, the immunization procedures in the North Carolina Emergency Operations Plan; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency,

including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article."

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

Section 1. Required Immunizations and Immunization Certificates.

For the reasons and pursuant to the statutes listed above:

A. The North Carolina Department of Health and Human Services ("NCDHHS") shall provide additional time for families, students, and children to complete required immunizations by implementing the Further Immunization Extension from the State Health Director. [Notwithstanding the Further Immunization Extension, families are strongly encouraged to obtain all required immunizations for their children on a timely basis, should their unique circumstances permit.] The Division of Emergency Management shall make any necessary temporary revisions to the Emergency Operations Plan to reflect this temporary change in immunization procedures.

B. To cope with the emergency, and to create immunization reports that will be most beneficial to maintaining public health, NCDHHS is directed to align deadlines with the Further Immunization Extension. This will include, without limitation, the following:

    1. The time period from the original Immunization Extension's date on August 11, 2020 through November 30, 2020, inclusive, will not count towards the thirty (30) calendar day grace period for submission of a certificate of immunization under N.C. Gen. Stat. §§ 130A-155(a) or 130A-155.1(a). The requirement is deferred until December 1, 2020 with a grace period until December 30, 2020 or thirty (30) calendar days from the child's first day of attendance, whichever is later. Schools, colleges, and universities will have until February 1, 2021 to submit immunization reports to NCDHHS under N.C. Gen. Stat. §§ 130A-155(c) or 130A-155.1(a).

    2. The time period from the original Immunization Extension's date on August 11, 2020 through November 30, 2020, inclusive, will not count towards the thirty (30) calendar day period for submission of a health assessment transmittal form under N.C. Gen. Stat. § 130A-440(a). The requirement is deferred until December 1, 2020 with a grace period until December 30, 2020 or thirty (30) calendar days from the child's first day of attendance, whichever is later.

    3. Principals will have until February 1, 2021 to submit health assessment status reports to NCDHHS under N.C. Gen. Stat. § 130A-441(c).

    There will be no penalties for submissions that are made in accordance with the extensions of time listed above.

Section 2. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the

circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 3. Effective Date.

This Executive Order is intended to replace Executive Order No. 156 and is effective immediately. This Executive Order shall remain in effect through January 31, 2021 unless repealed, replaced, or rescinded by another applicable Executive Order; provided, however, that unless specifically stated in another Executive Order, any deadline extensions issued pursuant to Section 1 of this Executive Order shall remain in effect until those extensions expire. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 30th day of October in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State

State of North Carolina

ROY COOPER
GOVERNOR

October 30, 2020

EXECUTIVE ORDER NO. 173

EXTENDING PRIOR EXECUTIVE ORDERS ON REMOTE SHAREHOLDER AND NONPROFIT MEETINGS DURING THE COVID-19 STATE OF EMERGENCY

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March l, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in Executive Order No. 169, issued on September 30, 2020, the undersigned eased restrictions on entertainment venues, night spots, amusement parks and large outdoor venues as the state entered Phase 3 of the reopening process; and

WHEREAS, such limitations on Mass Gatherings, businesses, travel, and person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, the North Carolina Business Corporation Act provides that annual and special meetings of a corporation's shareholders be held at a "place" stated in or fixed in accordance with a corporation's bylaws, N.C. Gen. Stat. § 55-7-01, and "shareholders of any class or series" may, upon the board of directors' authorization, "participate in any meeting of shareholders by means of remote communication" so long as the corporation has implemented certain "reasonable measures," N.C. Gen. Stat. § 55-7-09(b); and

WHEREAS, electronic devices or processes exist that allow shareholders to be in the same place that a separately located meeting is being conducted and to participate in the separately located meeting by sight and sound; and

WHEREAS, corporations may have shareholder meetings where 25 or more shareholders seek to participate; and

WHEREAS, many other states, including the State of Delaware, permit annual shareholders' meetings to be held by remote participation; and

WHEREAS, corporations have sought guidance as to interactions between the Mass Gathering restrictions and the North Carolina Business Corporation Act; and

WHEREAS, for the protection of the public health, the undersigned encourages North Carolina corporations to hold shareholders' meetings by remote participation, to the maximum extent practicable, to prevent shareholders from having to gather in a place, and thereby to promote social distancing and the mitigation of the spread of COVID-19; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that annual and special meetings of a nonprofit corporation's members be held at a "place" stated in or fixed in accordance with the corporation's by-laws, pursuant to N.C. Gen. Stat. §§ 55A-7-01 and -02; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that "any action that may be taken at any annual, regular, or special meetings of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter," and that "[a]ny requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy," pursuant to N.C. Gen. Stat. § 55A-7-08; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that a nonprofit corporation "may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting," pursuant to N.C. Gen. Stat. § 55A-8-20; and

WHEREAS, electronic devices or processes exist that allow members and directors to be in the same place that a separately located meeting is being conducted and to participate in the separately located meeting by sight and sound; and

WHEREAS, nonprofit corporations have sought guidance as to the interaction between the Mass Gathering restrictions and the North Carolina Nonprofit Corporation Act; and

WHEREAS, for the protection of public health, the undersigned encourages North Carolina nonprofit corporations to hold members' and board of directors' meetings by remote participation and balloting, to the maximum extent practicable, to prevent members and directors from having to gather in a place, and thereby to promote social distancing and the mitigation of the spread of COVID-19; and

WHEREAS, Executive Order No. 161, issued on August 31, 2020, extended Executive Order No. 149, issued on July 02, 2020, which reissued Executive Order Nos. 125 and 136 on remote shareholder and nonprofit meetings during the COVID-19 State of Emergency; and

WHEREAS, the provisions in these Executive Orders are set to expire unless the undersigned takes further action; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the direction of functions of state agencies for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(2), the undersigned may give to all participating State officers such directions as may be necessary to assure coordination among them; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 166A-19.30(c)(2) and 166A-19.31(b)(2), the undersigned may enact prohibitions and restrictions on the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

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

Section 1. Prior Executive Orders

For the reasons and pursuant to the authority set forth above and set forth in the relevant Executive Orders referenced below, the undersigned orders as follows:

Executive Order No. 161 is extended and shall remain in effect for sixty (60) days from the date of this Executive Order.

Future Executive Orders may extend the term of these Executive Orders. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

Section 2. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 3. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 30th day of October in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State

State of North Carolina

ROY COOPER
GOVERNOR

October 30, 2020

EXECUTIVE ORDER NO. 174

DISASTER DECLARATION FOR THE CITY OF MARION AND THE TOWN OF OLD FORT IN MCDOWELL COUNTY AND THE TOWN OF TRYON IN POLK COUNTY

WHEREAS, on May 18-22, 2020, the City of Marion and Town of Old Fort in McDowell County, North Carolina and the Town of Tryon in Polk County, North Carolina experienced sustained and devastating rains which resulted in flooding in those municipalities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.22, local states of emergency declarations were issued on May 20, 2020 in the City of Marion and Town of Old Fort in McDowell County and on May 18, 2020 in the Town of Tryon in Polk County; and

WHEREAS, due to the impacts of the flooding events, local and state emergency management officials conducted a joint preliminary damage assessment on May 26, 2020 for the City of Marion in McDowell County, North Carolina, for the Town of Old Fort in McDowell County, North Carolina and the Town of Tryon in Polk County, North Carolina; and

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) that has been impacted by a Type I, Type II or Type III disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.21(a)-(b), the criteria for a Type I disaster are met if: (a) the Secretary of the North Carolina Department of Public Safety has provided a preliminary damage assessment to the undersigned and the General Assembly; (b) local state of emergency declarations have been issued pursuant to N.C. Gen. Stat. § 166A-19.22 in the areas impacted by the Type I disaster; (c) the preliminary damage assessment meets or exceeds the state infrastructure criteria set out in N.C. Gen. Stat. § 166A-19.41(b)(2)a and (d) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared for Public Assistance; and

WHEREAS, the undersigned has determined that a Type I disaster, as defined in N.C. Gen. Stat. § 166A-19.21(b)(1), exists in the State of North Carolina in the City of Marion and Town of Old Fort in McDowell County and the Town of Tryon in Polk County; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.41, if a disaster is declared, the undersigned may make state funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of residents in the emergency area.

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

Section 1.

For purposes of this Executive Order only, the emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7), is the City of Marion and Town of Old Fort in McDowell County, North Carolina and the Town of Tryon in Polk County, North Carolina ("the Emergency Area").

Section 2.

Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Emergency Area.

Section 3.

I authorize state disaster assistance in the form of public assistance grants to the eligible local governments located within the emergency area that meet the terms and conditions under N.C. Gen. Stat. § 166A-19.41(b)(2). The public assistance grants are for the following:

a. Debris clearance.
b. Emergency protective measures.
c. Roads and Bridges.

Section 4.

I hereby order that this declaration be (a) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) promptly filed with the Secretary of the North Carolina Department of Public Safety, the North Carolina Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) distributed to others as necessary to ensure proper implementation of this declaration.

Section 5.

Pursuant to N.C. Gen. Stat. § 166A-19.21(c)(1), this Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 30th day of October in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State

State of North Carolina

ROY COOPER
GOVERNOR

October 30, 2020

EXECUTIVE ORDER NO. 175

DECLARATION OF A STATE OF EMERGENCY AND TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES

WHEREAS, on October 29, 2020, the State of North Carolina experienced severe weather from the remnants of Hurricane Zeta, including high winds and flooding; and

WHEREAS, the impacts from the storm have resulted in extensive damage including widespread power outages throughout the state, requiring the transportation of vehicles bearing equipment and supplies for utility restoration and debris removal to be moved through North Carolina on the interstate and intrastate highways; and

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

WHEREAS, the prompt restoration of utility services is essential to the safety and well-being of the state's residents; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to "[p]rovide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations"; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, the necessity in movement of vehicles transporting equipment and supplies to respond to the widespread power outages as a result of the severe weather and damages to the infrastructure constitutes a state of emergency for the State of North Carolina as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, the emergency area, as defined in N.C. Gen. Stat §§ 166A-19.3(7) and 166A-19.20(b), is the entire State of North Carolina; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with

the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3(3) and 166A-19.2l(b); and

WHEREAS, with the concurrence of the Council of State, the undersigned hereby waives the registration requirements of N.C. Gen. Stat. §§ 20-86.1 and 20-382, the fuel tax requirements of N.C. Gen. Stat. § 105-449.47, and the size and weight requirements of N.C. Gen. Stat. §§ 20-116, 20-118 and 20-119 that would apply to vehicles carrying emergency relief supplies or services or to assist with the restoration of utility services; and

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

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the undersigned may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, medical supplies and (2) vehicles used in the restoration of utility services; and

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

Section 1.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina due to loss of power and other essential utilities as a result of the impacts from the severe weather event.

For purposes of this Executive Order, the emergency area is the entire State of North Carolina ("the Emergency Area").

Section 2.

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

Section 3.

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety ("DPS"), or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

Section 5.

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

Section 6.

DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381.

Section 7.

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, and vehicles carrying essentials and equipment for any debris removal in support of emergency relief efforts in the Emergency Area.

Section 8.

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

a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer ("GVWR") or 90,000 pounds gross weight, whichever is less.
b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.

Section 9.

Vehicles referenced under Sections 7 and 8 of this Executive Order shall be exempt from the following registration requirements:

a. The requirement to obtain a temporary trip permit and payment of the associated $50.00 fee listed in N.C. Gen. Stat. § 105-449.49.
b. The requirement of filing a quarterly fuel tax return as the exemption in N.C. Gen. Stat. § 105-449.45(b)(1) applies.
c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority are waived; however, vehicles shall maintain the required limits of insurance as required.
d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 10.

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

Section 11.

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

Section 12.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 6 through 11 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 13.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are being used for bearing equipment and supplies for utility restoration, debris removal, and carrying essentials in commerce in the State of North Carolina.

Section 14.

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

Section 15.

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

Section 16.

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

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 30th day of October in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State

DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) INTENT TO ISSUE NPDES WASTEWATER DISCHARGE PERMIT #NC0000272 WITH PROPOSED REMOVAL OF COLOR VARIANCE

PERMIT APPLICATION

Notice is hereby given in accordance with NC General Statutes (G.S.) 150B-21.2 and G.S. 150B-21.3A, G.S. 143-214.1 and federal regulations at 40 Code of Federal Regulations (CFR) 131.20 (b), 40 CFR 131.14 and 40 CFR 25.5 that the DEQ, Division of Water Resources (DWR) intends to amend effluent permit requirements applicable to Blue Ridge Paper Products, LLC. Public comment or objection to the draft permit modification is invited. All comments received by January 29, 2021 will be considered in the final determination regarding permit issuance and permit provisions.

Blue Ridge Paper Products LLC, (d/b/a Evergreen Packaging), Permit Number NC0000272. Blue Ridge Paper Products, LLC is authorized to discharge wastewater from a facility located at the Blue Ridge Paper Products Wastewater Treatment Plant, off Highway 215 (175 Main Street), Canton, Haywood County, NC to receiving waters designated as the Pigeon River, French Broad River Basin, in accordance with effluent limitations. Some of the parameters are water quality limited. This discharge may affect future allocations in this portion of the French Broad River Basin. The location of the Outfall is: Latitude: $35^{0}32'08"$; Longitude: $82^{0}50'42"$.
The thermal component of the discharge is subject to effluent limitations under Title 15A North Carolina Administrative Code (NCAC) Subchapter 02B .0211 (18), which proposes thermal effluent limitations disallowing an exceedance of 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F). The permit holder has requested a continuance of a Clean Water Act Section 316(a) variance. On the basis of 15A NCAC 02B .0208 (b), and other lawful standards and regulations, DWR proposes to continue the 316(a) variance in conjunction with the renewal of the permit.

The draft wastewater permit and all related documents are available online at: https://deq.nc.gov/news/events/public-notices-hearings. Printed copies of the draft permit and related documents may be reviewed at the department's Asheville Regional Office. To make an appointment to review the documents, please call 828-296-4500. Public comment on the draft permit and on the proposed removal of the existing color variance should be mailed to: Wastewater Permitting, Attn: Blue Ridge Paper Products Permit, 1617 Mail Service Center, Raleigh, N.C., 27699-1617. Public comments may also be submitted by email to: publiccomments@ncdenr.gov. Please be sure to include "Blue Ridge Paper Products" in the email's subject line.

COLOR VARIANCE INFORMATION

Notice is also hereby given in accordance with NC G.S. 150B-21.2 and G.S. 150B-21.3A, G.S. 143-214.1 and federal regulations at 40 CFR 131.20 (b), 40 CFR 131.14 and 40 CFR 25.5 that the NC Environmental Management Commission (EMC) is requesting comment on removing the color variance from the effluent permit requirements applicable to Blue Ridge Paper Products, LLC. All comments received by January 29, 2021 will be considered. Comments should be mailed to: Wastewater Permitting, Attn: Blue Ridge Paper Products Permit, 1617 Mail Service Center, Raleigh, N.C., 27699-1617. Public comments may also be submitted by email to: publiccomments@ncdenr.gov. Please be sure to include "Blue Ridge Paper Products" in the email's subject line. Public records related to the EMC consideration of the variance are located at: https://deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission-71

BACKGROUND

The effluent permit limit requirements applicable to Blue Ridge Paper Products, LLC established in compliance with NC G.S. 143-215.1, other lawful standards and regulations promulgated and adopted by the EMC, and the Clean Water Act (Act), as amended, previously contained a variance provision to the state's narrative, aesthetic, water quality standard for color. The variance was granted July 13, 1988, by the EMC, under provisions in G.S. 143-215.3(e). Further, the variance has been continued under regulations contained in 15A NCAC 02B .0226, Exemptions From Surface Water

Quality Standards: "Variances from applicable standards, revisions to water quality standards or site-specific water quality standards may be granted by the Commission on a case-by-case basis pursuant to G.S. 143-215.3(e), 143-214.3 or 143-214.1. A listing of existing variances shall be maintained and made available to the public by the Division. Exemptions established pursuant to this Rule shall be reviewed as part of the Triennial Review of Water Quality Standards conducted pursuant to 40 CFR 131.10(g)."

NC DEQ DWR has concluded that a variance from the narrative provision at 15A NCAC 02B .0211(12), historically interpreted as an instream true color value of 50 platinum cobalt units (PCU), is no longer necessary. As outlined in the accompanying supporting materials, significant improvements to the instream concentrations of color in the Pigeon River, combined with specific limits on color and an updated reevaluation regarding the narrative provision and protection of the designated uses, support removal of the variance. While 40 CFR Part 131 requires that "a State may not adopt Water Quality Standard (WQS) variances if the designated use and criterion addressed by the WQS variance can be achieved..." by implementing certain effluent measures, the permit contains technology-based effluent limits (see page 4 of the draft permit) that result in achieving the same goal and are in accordance with the most recent US EPA Technology Review Workgroup recommendations. In addition to the removal of the variance, the 2020 draft permit includes monitoring requirements that the facility meet a monthly average delta (Δ) Color of 50 PCU at the Fiberville Bridge, when the Pigeon River flow at Canton is equal or above the Monthly 30Q2 flow of 129 cubic feet per second. Previously, a Settlement Agreement between NC, Tennessee (TN), and the US Environmental Protection Agency (EPA) required that the facility meet an instream color of 50 PCU at the TN/NC state line, located approximately 40 river miles below the discharge. A summary of the history of the variance, review of applicable regulations, and a reevaluation of the stream conditions is located at: https://deq.nc.gov/news/events/public-notices-hearings

RECOMMENDATION

In accordance with state and federal regulations, the proposed variance modification to the permit is effectively a change to water quality standards and subject to public hearing. Under 40 CFR Part 131.14 (b)(1)(v) the state has reevaluated the Color Variance, examined the highest attainable condition using all existing and readily available information and, now, provides notification to obtain public input on this reevaluation, to confirm the finding that the present condition for color corresponds to meeting the applicable criterion at 15A NCAC 02B .0211(12) and that a variance is no longer required for this facility per the intent of 40 CFR Part 131. Upon completion of the review process, and certification under 40 CFR Part 132.5(b)(2) from the State's Attorney General's office that proper notification has been given, the results of the EMC decisions will be submitted to the EPA for action.

ONLINE PUBLIC HEARING

In the abundance of caution, and to address protective measures to help prevent the spread of COVID-19, the hearing will be held online.

Date: January 20, 2021
Time: 6 pm
WebEx link: https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e6dd914ab0c9b2593dbb23321a36af245
WebEx password: Nk2BCEzm7P2
WebEx phone number: 1-415-655-0003
WebEx access code: 171 787 6586 (Please see information below regarding registering for, joining, and commenting at the public hearing.)

REGISTRATION

To register for the hearing and provide your preference regarding speaking at the hearing, please visit:
https://forms.office.com/Pages/ResponsePage.aspx?id=3IF2etC5mkSFw-zCbNftGRcM2xmuszROiks3JDQp2_RURjJSWUpMRThRSURXVzA5WFU5MkdNUzk1UC4u

Or scan the following QR code with your phone:

Registration must be completed by 12:00 pm on January 20, 2021. If you have any problems registering online, please call 919-707-9011 or email peter.johnston@ncdenr.gov by the registration deadline of 12:00 pm on January 20, 2021.

The Division of Water Resources highly recommends testing your computer's WebEx capabilities prior to the hearing at https://www.webex.com/test-meeting.html. For instructions about digital ways to join the public hearing, please refer to the WebEx Help Center online at https://help.webex.com/en-us/ .

To comment during the hearing after your name is called as a registered speaker and/or after the hearing officer asks if any people wish to comment following the registered speakers:

- If you join the hearing by phone, press *3 to “raise your hand,” speak, and press *3 to “lower your hand.”

- If you join the hearing online, press the “raise your hand” icon, speak, and press the “lower your hand” icon.

- The Hearing Officer may limit the length of time that you may speak, so that all those who wish to speak may do so.

PUBLIC NOTICE
NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER RESOURCES

The Division of Water Resources (DWR) Director intends to establish an interim maximum allowable concentration (IMAC) in groundwater in accordance with 15A NCAC 02L .0202 for tetrahydrofuran (THF).

The data and documents supporting the establishment of this IMAC are available at this webpage: https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/groundwater-imacs

The following IMAC value intends to be established for Class GA and GSA groundwaters:

Substance	**CAS Number**	**Concentration**
Tetrahydrofuran (THF)	109-99-9	2,000 µg/L

Persons wishing to provide comments on the intended action or the supporting information may submit electronically to **IMACcomments@ncdenr.gov** or may mail comments to:

N.C. DEQ Division of Water Resources, Attn: Bridget Shelton
DWR Planning Section
1611 Mail Service Center
Raleigh, N.C. 27699-1611

Comments should be submitted no later than **5:00 PM on December 16, 2020**. Thank you.

If you have any questions, please contact Bridget Shelton at 919-707-9022.

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0101.*

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

Proposed Effective Date: *April 1, 2021*

Public Hearing:
Date: *December 18, 2020*
Time: *10:00 a.m.*
Location: *This public hearing will be held by teleconference at (919) 715-0769 (no access code).*

Reason for Proposed Action: *On February 5, 2020, the Commission for Public Health adopted an amendment to 10A NCAC 41A .0101 under emergency procedures and simultaneously proposed to amend 10A NCAC 41A .0101 under temporary procedures to update the communicable diseases and conditions reporting requirements to include novel coronavirus infections. The emergency amendment went into effect on February 17, 2020. The temporary amendment was subsequently amended to also including novel coronavirus infections causing death, adopted on March 24, 2020, and became effective April 24, 2020. The Commission for Public Health is now proposing to adopt a permanent amendment to ensure that these reporting requirements do not expire from the Code.*

Comments may be submitted to: *Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email cphcomment@lists.ncmail.net*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☒ **State funds affected**
☒ **Local funds affected**
☒ **Substantial economic impact (>= $1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required**

CHAPTER 41 - EPIDEMIOLOGY HEALTH

SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - COMMUNICABLE DISEASE CONTROL

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

(1) acquired immune deficiency syndrome (AIDS) - 24 hours;
(2) acute flaccid myelitis – 7 days;
(3) anaplasmosis – 7 days;
(4) anthrax - immediately;
(5) arboviral infection, neuroinvasive – 7 days;
(6) babesiosis – 7 days;
(7) botulism - immediately;
(8) brucellosis - 7 days;
(9) campylobacter infection - 24 hours;
(10) Candida auris - 24 hours;
(11) Carbapenem-Resistant Enterobacteriaceae (CRE) – 24 hours;
(12) chancroid - 24 hours;
(13) chikungunya virus infection - 24 hours;
(14) chlamydial infection (laboratory confirmed) - 7 days;
(15) cholera - 24 hours;
(16) Creutzfeldt-Jakob disease – 7 days;
(17) cryptosporidiosis – 24 hours;
(18) cyclosporiasis – 24 hours;
(19) dengue - 7 days;
(20) diphtheria - 24 hours;

(21) Escherichia coli, shiga toxin-producing infection - 24 hours;
(22) ehrlichiosis – 7 days;
(23) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
(24) gonorrhea - 24 hours;
(25) granuloma inguinale - 24 hours;
(26) Haemophilus influenzae, invasive disease - 24 hours;
(27) Hantavirus infection – 7 days;
(28) Hemolytic-uremic syndrome – 24 hours;
(29) Hemorrhagic fever virus infection – immediately;
(30) hepatitis A - 24 hours;
(31) hepatitis B - 24 hours;
(32) hepatitis B carriage - 7 days;
(33) hepatitis C, acute – 7 days;
(34) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
(35) influenza virus infection causing death – 24 hours;
(36) legionellosis - 7 days;
(37) leprosy – 7 days;
(38) leptospirosis - 7 days;
(39) listeriosis – 24 hours;
(40) Lyme disease - 7 days;
(41) Lymphogranuloma venereum - 7 days;
(42) malaria - 7 days;
(43) measles (rubeola) - immediately;
(44) meningitis, pneumococcal - 7 days;
(45) meningococcal disease - 24 hours;
(46) Middle East respiratory syndrome (MERS) - 24 hours;
(47) monkeypox – 24 hours;
(48) mumps - 7 days;
(49) nongonococcal urethritis - 7 days;
(50) novel coronavirus infection causing death – 24 hours;
(51) novel coronavirus infection – immediately;
~~(50)~~(52) novel influenza virus infection – immediately;
~~(51)~~(53) plague - immediately;
~~(52)~~(54) paralytic poliomyelitis - 24 hours;
~~(53)~~(55) pelvic inflammatory disease – 7 days;
~~(54)~~(56) psittacosis - 7 days;
~~(55)~~(57) Q fever - 7 days;
~~(56)~~(58) rabies, human - 24 hours;
~~(57)~~(59) rubella - 24 hours;
~~(58)~~(60) rubella congenital syndrome - 7 days;
~~(59)~~(61) salmonellosis - 24 hours;
~~(60)~~(62) severe acute respiratory syndrome (SARS) – 24 hours;
~~(61)~~(63) shigellosis - 24 hours;
~~(62)~~(64) smallpox - immediately;
~~(63)~~(65) spotted fever rickettsiosis – 7 days;
~~(64)~~(66) Staphylococcus aureus with reduced susceptibility to vancomycin – 24 hours;
~~(65)~~(67) streptococcal infection, Group A, invasive disease - 7 days;
~~(66)~~(68) syphilis - 24 hours;
~~(67)~~(69) tetanus - 7 days;
~~(68)~~(70) toxic shock syndrome - 7 days;
~~(69)~~(71) trichinosis - 7 days;
~~(70)~~(72) tuberculosis - 24 hours;
~~(71)~~(73) tularemia – immediately;
~~(72)~~(74) typhoid - 24 hours;
~~(73)~~(75) typhoid carriage (Salmonella typhi) - 7 days;
~~(74)~~(76) typhus, epidemic (louse-borne) - 7 days;
~~(75)~~(77) vaccinia – 24 hours;
~~(76)~~(78) varicella – 24 hours;
~~(77)~~(79) vibrio infection (other than cholera) – 24 hours;
~~(78)~~(80) whooping cough – 24 hours;
~~(79)~~(81) yellow fever – 7 days; and
~~(80)~~(82) zika virus – 24 hours.

(b) For purposes of reporting, "confirmed human immunodeficiency virus (HIV) infection" is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for Mycobacterium tuberculosis, Neisseria gonorrhoeae, and syphilis specified in G.S. 130A-139, laboratories shall report using electronic laboratory reporting (ELR), secure telecommunication, or paper reports.

(1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
(A) Anaplasma ~~spp.~~ spp., the causes of anaplasmosis.
(B) Any ~~hantavirus~~ hantavirus. ~~or hemorrhagic fever virus.~~
(C) Any hemorrhagic fever virus.
~~(C)~~(D) Arthropod-borne virus (any type).
~~(D)~~(E) Babesia spp., the cause of babesiosis.
~~(E)~~(F) Bacillus anthracis, the cause of anthrax.
~~(F)~~(G) Bordetella pertussis, the cause of whooping cough (pertussis).
~~(G)~~(H) Borrelia burgdorferi, the cause of Lyme disease (confirmed tests).
~~(H)~~(I) Brucella spp., the causes of brucellosis.
~~(I)~~(J) Campylobacter spp., the causes of campylobacteriosis.
~~(J)~~(K) Candida auris.

~~(K)~~(L) Carbapenem-Resistant Enterobacteriaceae (CRE).
~~(L)~~(M) Chlamydia trachomatis, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
~~(M)~~(N) Clostridium botulinum, a cause of botulism.
~~(N)~~(O) Clostridium tetani, the cause of tetanus.
(P) Coronavirus, novel human strain.
~~(O)~~(Q) Corynebacterium diphtheriae, the cause of diphtheria.
~~(P)~~(R) Coxiella burnetii, the cause of Q fever.
~~(Q)~~(S) Cryptosporidium spp., the cause of human cryptosporidiosis.
~~(R)~~(T) Cyclospora ~~cayetanesis,~~ cayetanensis, the cause of cyclosporiasis.
~~(S)~~(U) Dengue virus.
~~(T)~~(V) Ehrlichia spp., the causes of ehrlichiosis.
~~(U)~~(W) Shiga toxin-producing Escherichia coli, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
~~(V)~~(X) Francisella tularensis, the cause of tularemia.
~~(W)~~(Y) Hepatitis A virus.
~~(X)~~(Z) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
~~(Y)~~(AA) Human Immunodeficiency Virus, the cause of AIDS.
~~(Z)~~(BB) Legionella spp., the causes of legionellosis.
~~(AA)~~(CC) Leptospira spp., the causes of leptospirosis.
~~(BB)~~(DD) Listeria monocytogenes, the cause of listeriosis.
~~(CC)~~(EE) Measles virus.
~~(DD)~~(FF) Middle East respiratory syndrome virus.
~~(EE)~~(GG) Monkeypox.
~~(FF)~~(HH) Mumps virus.
~~(GG)~~(II) Mycobacterium leprae, the cause of leprosy.
~~(HH)~~(JJ) Plasmodium falciparum, P. malariae, P. ovale, and P. vivax, the causes of malaria in humans.
~~(II)~~(KK) Poliovirus (any), the cause of poliomyelitis.
~~(JJ)~~(LL) Rabies virus.
~~(KK)~~(MM) Rickettsia spp., the cause of spotted fever rickettsiosis.
~~(LL)~~(NN) Rubella virus.
~~(MM)~~(OO) Salmonella spp., the causes of salmonellosis.
~~(NN)~~(PP) Shigella spp., the causes of shigellosis.
~~(OO)~~(QQ) Smallpox virus, the cause of smallpox.
~~(PP)~~(RR) Staphylococcus aureus with reduced susceptibility to ~~vanomycin.~~ vancomycin.
~~(QQ)~~(SS) Trichinella spiralis, the cause of trichinosis.
~~(RR)~~(TT) Vaccinia virus.
~~(SS)~~(UU) Varicella virus.
~~(TT)~~(VV) Vibrio spp., the causes of cholera and other vibrioses.
~~(UU)~~(WW) Yellow fever virus.
~~(VV)~~(XX) Yersinia pestis, the cause of plague.
~~(WW)~~(YY) Zika virus.

(2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
(A) Group A Streptococcus pyogenes (group A streptococci).
(B) Haemophilus influenzae, serotype b.
(C) Neisseria meningitidis, the cause of meningococcal disease.

(3) Positive serologic test results, as specified, for the following infections:
(A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
(i) Any arthropod-borne virus associated with neuroinvasive disease.
(ii) Anaplasma spp., the cause of anaplasmosis.
(iii) Any hantavirus or hemorrhagic fever virus.
(iv) Chlamydia psittaci, the cause of psittacosis.
(v) Chikungunya virus.
(vi) Coxiella burnetii, the cause of Q fever.
(vii) Dengue virus.
(viii) Ehrlichia spp., the causes of ehrlichiosis.
(ix) Measles (rubeola) virus.
(x) Mumps virus.
(xi) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
(xii) Rubella virus.
(xiii) Varicella virus.
(xiv) Yellow fever virus.
(B) The presence of IgM serum antibodies to:
(i) Any arthropod-borne virus associated with neuroinvasive disease.
(ii) Chikungunya virus.
(iii) Chlamydia psittaci.

(iv) Dengue virus.
(v) Hepatitis A virus.
(vi) Hepatitis B virus core antigen.
(vii) Mumps virus.
(viii) Rubella virus.
(ix) Rubeola (measles) virus.
(x) Yellow fever virus.

(4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes and all results from tests to determine HIV viral load.

(5) Identification of CRE from a clinical specimen associated with either infection or colonization, including all susceptibility results and all phenotypic or molecular test results.

(d) Laboratories utilizing electronic laboratory reporting (ELR) shall report in addition to those listed under Paragraph (c) of this Rule:

(1) All positive laboratory results from tests used to diagnosis chronic Hepatitis C Infection, including the following:
(A) Hepatitis C virus antibody tests (including the test specific signal to cut-off (s/c) ratio);
(B) Hepatitis C nucleic acid tests;
(C) Hepatitis C antigen(s) tests; and
(D) Hepatitis C genotypic tests.

(2) All HIV genotypic test results, including when available:
(A) The entire nucleotide sequence; or
(B) The pol region sequence (including all regions: protease (PR)/reverse transcriptase (RT) and integrase (INI) genes, if available).

(3) All test results for Interferon Gamma Release Assays.

(e) For the purposes of reporting, Carbapenem-Resistant Enterobacteriaceae (CRE) are defined as:

(1) Enterobacter ~~spp,~~ spp., E.coli or Klebsiella spp positive for a known carbapenemase resistance mechanism or positive on a phenotypic test for carbapenemase production; or

(2) Enterobacter ~~spp,~~ spp., E.coli or Klebsiella spp resistant to any carbapenem in the absence of carbapenemase resistance mechanism testing or phenotypic testing for carbapenemase production.

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

***Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10A .1102; 10B .0227, amend the rules cited as 15A NCAC 10B .0116, .0202, .0203; 10C .0205, .0211, .0305, .0314, .0316, .0321, .0322, .0401; 10D .0102, .0103; 10J .0103, and readopt with substantive changes the rules cited as 15A NCAC 10B .0110; and 10C .0402.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.ncwildlife.org/Proposed-Regulations*

Proposed Effective Date: *August 1, 2021*

Public Hearing:
Date: *January 12, 2021*
Time: *7:00 pm*
Location: *Craven County Courthouse, 302 Broad Street, New Bern, NC 28560*

Date: *January 14, 2021*
Time: *7:00 pm*
Location: *AVS Catering and Banquet Center, 2045 N. Fayetteville Street, Asheboro, NC 27203*

Date: *January 19, 2021*
Time: *7:00 pm*
Location: *McDowell Technical Community College, 54 College Drive, Marion, NC 28752*

Date: *January 21, 2021*
Time: *7:00 pm*
Location: *Register in advance for this webinar: https://ncwildlife.zoom.us/webinar/register/WN_jef8D745QLmI6b-b81hy8Q or join by phone toll free (877-853-5247 or 888-788-0099) using Webinar ID: 938 2215 0018*

Reason for Proposed Action: *Each year, the N.C. Wildlife Resources Commission reviews and adjusts as needed, seasons, bag limits, and the management of land, in order to achieve conservation management goals, comply with statutory changes, and respond to constituent requests.*

Comments may be submitted to: *Rule-making Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☒ **State funds affected**
☒ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required**

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .1100 - WAIVER

15 NCAC 10A .1102 EMERGENCY CLOSURES AND WAIVERS

(a) The Commission may prohibit or restrict public access to and use of Wildlife Resources Commission property if the Commission finds that the closure is necessary to protect public health, public safety, or wildlife resources. Closures exercised under this Paragraph shall only be exercised for the duration of the threat.

(b) The Commission may waive any rule in this Chapter or portion thereof, that is not statutorily required, upon declaration of a national emergency, disaster, or state of emergency, by a federal, state, or local governmental authority impacting North Carolina. Waivers exercised under this Paragraph shall only be exercised for the duration of the declaration.

(c) The Commission may delegate emergency closure and waiver authority to the Executive Director.

(d) The following factors shall be considered in determining whether to restrict or prohibit public access or use, or waive requirements of rule:

(1) need for the closure or waiver;
(2) degree of benefit to the public, if applicable;
(3) degree of benefit to the resource, if applicable;
(4) degree of disruption to the Commission; and
(5) cost to the Commission.

(e) All closures and waivers shall be posted on the Commission website at www.ncwildlife.org.

(f) It is unlawful to use, enter, or remain on Wildlife Resources Commission Property that is closed pursuant to this Rule.

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

15A NCAC 10B .0110 ATTENDANCE OF TRAPS

(a) Every trap shall be visited daily and any animal caught therein removed, except for completely submerged conibear type traps which shall be visited once every 72 hours and any animal caught therein removed.

(b) Remote trap checking systems may be used in lieu of visiting the trap, provided the system has the following features:

(1) a control unit that remains in continuous operation and reports trap status to a centralized application database at least once every 24 hours;
(2) notification alarms that report trap closures and system health issues within one hour of detection via email and text-based messaging systems; and
(3) on-demand control unit testing capabilities for determining trap status, signal strength, and battery condition via remote system check-in.

(c) If the remote trap checking system control unit reports a trap closure, the trap shall be physically visited within 24 hours of the time the trap was reported closed.

(d) If a remote trap checking system control unit fails to report trap status within a 24-hour period, or reports a system health issue, the trap shall be physically visited within 24 hours of the last time an open trap signal was received.

(e) Remote trap checking system users shall maintain records of trap status and notification alarms for a period of no less than seven days after receipt. Records shall be made available for inspection upon request by a representative of the Commission.

Authority G.S. 113-134; 113-291.6.

15A NCAC 10B .0116 PERMITTED ARCHERY EQUIPMENT

(a) "Archery equipment" means any device that has a solid, stationary handle, two limbs, and a string, that uses non-pneumatic means to propel a single arrow or bolt and may be used to take game and nongame species.

(b) When used for taking bear, deer, elk, wild turkey, alligator, and feral swine, longbows ~~Longbows~~ and recurved bows ~~having~~ shall have a minimum pull of 40 pounds, compound bows having a minimum pull of 35 pounds, and crossbows ~~having~~ shall have a minimum pull of 100 pounds. ~~pounds shall be used for taking bear, deer, elk, wild turkey, alligator, and feral swine.~~

(c) Archery equipment utilizing an elastic string and having a minimum pull of 40 pounds may be used to take deer, wild turkey, small game animals, nongame animals, and nongame fish.

(d) Only arrows and bolts with a fixed minimum broadhead width of seven-eighths of an inch or a mechanically opening broadhead with a width of at least seven-eighths of an inch in the open position shall be used for taking bear, deer, elk, wild turkey, alligator, and feral swine.

(e) Blunt-type arrow heads may be used in taking small animals and birds including rabbits, squirrels, quail, grouse, and pheasants.

(f) Poisonous, drugged, or explosive arrowheads shall not be used for taking any wildlife.

Authority G.S. 113-134; 113-291.1(a).

SECTION .0200 - HUNTING

15A NCAC 10B .0202 BEAR

(a) Open Seasons for hunting bear shall be from the:

(1) Monday on or nearest October 15 through the Saturday before Thanksgiving and the third

Monday after Thanksgiving through January 1 in and west of Surry, Wilkes, Caldwell, Burke, and Cleveland counties;

(2) Second Monday in November through January 1 in Bladen, Brunswick, Carteret, Columbus, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender, Robeson, and Sampson counties;

(3) Second Saturday in November through the second Sunday thereafter and the third Saturday after Thanksgiving through the fifth Sunday after Thanksgiving in Beaufort, Bertie, Craven, Hertford, Jones, Martin, and Washington counties;

(4) Second Saturday in November through the third Sunday thereafter and the third Saturday after Thanksgiving through the fifth Sunday after Thanksgiving in Dare, Hyde, and Tyrrell counties;

(5) Second Saturday in November through the second Sunday thereafter and the third Saturday after Thanksgiving through the fifth Sunday after Thanksgiving in Currituck, Gates, and Perquimans counties;

(6) Second Sunday in November through the following ~~Sunday~~ Sunday, when November 1 falls on a Sunday the season shall be from the third Sunday in November through the following Sunday, and the third Saturday after Thanksgiving through the fifth Sunday after Thanksgiving in Camden, Chowan, and Pasquotank counties;

(7) Third Saturday in November though the fifth Sunday thereafter in Edgecombe, Greene, Halifax, Lenoir, Nash, Northampton, Pitt, Wayne, and Wilson counties; and

(8) Concurrent with the open season for all lawful weapons for hunting deer as specified in 15A NCAC 10B .0203(a)(1) in Alamance, Alexander, Anson, Cabarrus, Caswell, Catawba, Chatham, Davie, Davidson, Durham, Franklin, Forsyth, Gaston, Granville, Guilford, Harnett, Hoke, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Union, Vance, Wake, Warren, and Yadkin counties.

(b) Restrictions

(1) For purposes of this Paragraph, "bait" means any natural, unprocessed food product that is a grain, fruit, nut, vegetable, or other material harvested from a plant crop that is not modified from its raw components.

(2) Bears shall not be taken with the use or aid of:

(A) any processed food product as defined in G.S. 113-294(r), any animal, animal part or product, salt, salt lick, honey, sugar, sugar-based material, syrups, candy, pastry, gum, candy block, oils, spices, peanut butter, or grease;

(B) any extracts of substances identified in Part (A) of this Subparagraph;

(C) any substances modified by substances identified in Part (A) of this Subparagraph, including any extracts of those substances; or

(D) any bear bait attractant, including sprays, aerosols, scent balls, and scent powders.

(3) Bears may be taken with the aid of bait from the Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties in Subparagraph (a)(1) of this Rule.

(4) Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraphs (a)(2) through (a)(6) of this Rule.

(5) Bears shall not be taken while in the act of consuming bait.

(6) Hunters shall not take bears using dogs in the following counties: Alamance south of Interstate 85, Anson west of N.C. Hwy 742, Cabarrus, Chatham, Davie, Davidson, Franklin, Forsyth, Gaston, Guilford, Lee, Lincoln, Mecklenburg, Montgomery, Orange south of Interstate 85, Randolph, Rockingham, Rowan, Stanly, Union, and Wake south of N.C. Hwy 98. In all other counties and parts of counties, hunters may take bears using dogs and may release dogs in the vicinity of bait.

(c) No Open Season. It shall be unlawful to take bear on posted bear sanctuaries except when authorized by permit issued by the Commission. See 15A NCAC 10D .0106 for posted bear sanctuaries.

(d) The daily bag limit for bear is one, the possession limit is one, and the season limit is one.

Authority G.S. 113-134; 113-291.1; 113-291.2; 113-291.7; 113-305.

15A NCAC 10B .0203 DEER (WHITE-TAILED)

(a) Open Seasons (All Lawful Weapons) for hunting deer:

(1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken on all game lands except Buffalo Cove, Nicholson Creek, Rockfish Creek, Sandhills, and South Mountains Game Lands (Refer to 15A NCAC 10D .0103 for Deer With Visible Antlers seasons on these Game Lands), during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bladen, Brunswick, Carteret, Columbus*, Cumberland, Craven, Dare, Duplin, Harnett, Hoke, Hyde,

Jones, Lenoir, Moore, New Hanover, Onslow, Pamlico, Pender, Richmond, Robeson, Sampson, Scotland, Tyrrell, and Washington counties.

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

(B) Saturday on or nearest October 15 through January 1 in all of Bertie, Camden, Chowan, Currituck, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Johnston, Martin, Nash, Northampton, Pasquotank, Perquimans, Pitt, Vance, Wake, Warren, Wayne, and Wilson counties.

(C) Saturday before Thanksgiving Day through January 1 in all of Alexander, Alleghany, Ashe, Catawba, Cleveland, Davie, Forsyth, Gaston, Iredell, Lincoln, Polk, Rutherford, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

(D) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, and Yancey counties.

(E) Two Saturdays before Thanksgiving Day through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties.

(F) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell, and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in that part of Hyde county known as Lake Mattamuskeet National Wildlife Refuge; in those parts of Dare and Hyde counties known as Alligator River National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

(2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in Parts (A), (B), (C), (D), (E), (F), and (G) of this Subparagraph (Refer to 15A NCAC 10D .0103 for either-sex deer seasons on Game Lands). Deer of either sex may be taken during the open season identified in Part (H) of this Subparagraph.

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell, and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in those parts of Currituck County known as the Currituck National Wildlife Refuge and the Mackay Island National Wildlife Refuge.

(B) The open either-sex deer hunting dates established by the appropriate military commands at each of the military installations listed in this Paragraph, during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.

(C) Youth either-sex deer hunts. First Saturday in October for youth either-sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission; the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission. A youth

is defined as a person under 18 years of age.

(D) The first open Saturday of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe*, Haywood, Henderson, Madison, and Transylvania counties.
*Except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280

(E) The first open day of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule through the first Saturday thereafter in all of Avery, Burke, Caldwell, McDowell, Mitchell, and Yancey counties.

(F) The first open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule through the second Friday thereafter in all of Cleveland, Polk, and Rutherford counties.

(G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln, and Gaston counties and in the following parts of counties: Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and Henderson; That part east of NC 191 and north and west of NC 280.

(H) The fourth Saturday in September in all counties, subject to the following restriction: only persons under the age of 18 years may hunt.

(b) Open Seasons (Archery) for hunting deer:

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer may be taken with archery equipment during the following seasons:

(A) Saturday on or nearest September 10 through the day immediately preceding the first open day of the Blackpowder Firearms and Archery Seasons described in Subparagraph (c)(1) of this Rule; and the Sunday immediately following the closing of blackpowder firearms and archery season identified in Part (c)(1)(B) of this Rule to the Sunday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (a)(1)(D) of this Rule except on Buffalo Cove, Nicholson Creek, Rockfish Creek, Sandhills, and South Mountains Game Lands (Refer to 15A NCAC 10D .0103 for Archery seasons on these Game Lands).

(B) Sunday immediately following the closing of the open season for Deer With Visible Antlers through January 1 in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (a)(1)(D) of this Rule.

(2) Restrictions

(A) In the areas of the State where the Commission is authorized to regulate the use of dogs as provided in G.S. 113-291.5, dogs may not be used for hunting deer during the archery season, except a single dog on a leash may be used to retrieve a dead or wounded deer in accordance with G.S. 113-291.1(k).

(B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the archery deer hunting season.

(C) Deer of either sex may be taken during archery seasons specified by Part (b)(1)(A) of this Rule.

(D) Only deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, shall be taken during the archery season specified by Part (b)(1)(B) of this Rule.

(c) Open Seasons (Blackpowder Firearms and Archery) for hunting deer:

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with blackpowder firearms and archery equipment during the following seasons:

(A) Two Saturdays preceding the first day of the Deer with Visible Antlers seasons described in Parts (a)(1)(A), (B), (C), (E), and (F) of this Rule through the second Friday thereafter except on Buffalo Cove, Nicholson Creek, Rockfish Creek, Sandhills, and South Mountains Game Lands (Refer to 15A NCAC 10D .0103 for Blackpowder Firearms and Archery seasons on these Game Lands):

(B) Monday on or nearest October 1 through the second Saturday thereafter in the counties and parts of counties

having the open seasons for Deer With Visible Antlers specified by Part (a)(1)(D) of this Rule.

(2) Restrictions

(A) Deer of either sex may be taken during blackpowder firearms and archery season in any county or county part set forth in Part (a)(2)(G) of this Rule that has either-sex days for all lawful weapons and in the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, and Cleveland. Deer of either sex may be taken on the first Saturday day of this season only in all other counties.

(B) In the areas of the State where the Commission is authorized to regulate the use of dogs as provided in G.S. 113-291.5, dogs shall not be used for hunting deer during the blackpowder firearms and archery seasons, except a single dog on a leash may be used to retrieve a dead or wounded deer in accordance with G.S. 113-291.1(k).

(3) As used in this Rule, blackpowder firearms means "Any firearm - including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system - manufactured in or before 1898, that cannot use fixed ammunition; any replica of this type of firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; and any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading or cylinder-loading handgun that is designed to use blackpowder, blackpowder substitute, or any other propellant loaded through the ~~muzzle or cylinder~~ muzzle, cylinder, or breech and that cannot use fixed ammunition."

(d) Open Season (Urban Season) for hunting deer:

(1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the State, as defined in G.S. 160A-1(2), from the second Saturday following January 1 through the sixth Sunday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.

(2) Participation. Cities that intend to participate in the urban season shall send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee at 1722 Mail Service Center, Raleigh, N.C. 27699-1700. Cities shall also submit a map of the city's boundaries within which the urban season shall apply.

(3) Restrictions:

(A) In the areas of the State where the Commission is authorized to regulate the use of dogs as provided in G.S. 113-291.5, dogs shall not be used for hunting deer during the urban season, except a single dog on a leash may be used to retrieve a dead or wounded deer in accordance with G.S. 113-291.1(k).

(B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(e) Bag limits. The possession and season limit is six deer, two of which may be deer with visible antlers and four of which may be antlerless deer. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. In addition to the bag limits described above, a hunter may obtain multiple bonus antlerless deer harvest report cards from the Wildlife Resources Commission or any Wildlife Service Agent to allow the harvest of two additional antlerless deer per card for deer harvested during the season described in Paragraph (d) of this Rule within the boundaries of participating municipalities, except on State-owned game lands. Antlerless deer harvested and reported on the bonus antlerless harvest report card shall not count as part of the possession and season limit. The bag limits described above do not apply to deer harvested in areas covered in the Deer Management Assistance Program (DMAP) as described in G.S. 113-291.2(e) for those individuals using Commission-issued DMAP tags and reporting harvest as described on the DMAP license. Season bag limits shall be set by the number of DMAP tags issued and in the hunters' possession. All deer harvested under this program, regardless of the date of harvest, shall be tagged with these DMAP tags and reported as instructed on the DMAP license. The hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license for deer tagged with the DMAP tags. Any deer harvested on lands enrolled in the DMAP and not tagged with DMAP tags may only be harvested during the regularly established deer seasons subject to all the restrictions of those seasons, including bag limits, and reported using the big game harvest report card or the bonus antlerless harvest report card.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2; 113-291.5.

15A NCAC 10B .0227 WILD QUAIL MANGEMENT AREAS

(a) A Wild Quail Management Area shall be land maintained to enhance enjoyment of sportsmen and support wild bobwhite quail conservation under signed agreement between the landowner(s) and the Wildlife Resources Commission.

(b) The following minimum qualifications shall apply to all Wild Quail Management Areas:

(1) At least 1,500 acres of contiguous land; and

(2) A minimum of 15 percent of the land shall be maintained in year-round bobwhite quail habitat.

(c) Wild bobwhite quail habitat shall be any habitat described as early successional habitat within the North Carolina Wildlife Action Plan, available online, free of charge, at www.ncwildlife.org.

(d) Landowners interested in establishing a Wild Quail Management Area shall contact the Commission as described on the Commission's website at www.ncwildlife.org.

(e) The signed agreement between the landowner(s) and the Commission shall include at a minimum:

(1) A list of all owners of land included in the Wild Quail Management Area;

(2) County parcel identification information for each parcel to be included in the Wild Quail Management Area;

(3) A scaled map of the Wild Quail Management Area with the areas to be maintained in year-round bobwhite quail habitat clearly identified;

(4) Management practices to be used to maintain bobwhite quail habitat and populations; and

(5) Any reporting requirements in addition to the minimum requirements in Subparagraph (g)(6) of this Rule that are specific to the individual Wild Quail Management Area.

(f) Property inspection:

(1) All potential properties shall be inspected by a representative of the Commission prior to acceptance into the program; and

(2) Wild Quail Management Areas shall be inspected by a representative of the Commission at least once every five years.

(g) The following shall apply to all Wild Quail Management Areas:

(1) No domestically raised upland game birds shall be released on Wild Quail Management Areas;

(2) The hunting of wild bobwhite quail shall only be permitted during the established seasons in 15A NCAC 10B .0208.

(3) Supplemental feeding, if conducted, shall be for the primary purpose of ensuring that wild bobwhite quail populations remain stable during droughts or other periods of stressful environmental conditions. Supplemental feed shall:

(A) be broadcast into quail habitat along a minimum linear distance of at least one mile per 100 acres of habitat at a rate of three bushels per mile;

(B) be broadcast on a bi-weekly schedule during at least five months each year

(C) be broadcast using a non-stationary spreader;

(D) be only natural grains or seed; and

(E) not be placed to attract birds for the purpose of hunting.

(4) Except for wild bobwhite quail on Wild Quail Management Areas, no wild birds may be taken near or with the aid of supplemental feed.

(5) Trapping for raccoon, striped skunk, and opossum on Wild Quail Management Areas for the purpose of nest predator control shall be allowed from the end of the established trapping season in 15A NCAC 10B .0303 through May 31. Enclosed foot-hold traps with a one-way trigger or cage traps may be used, and trapped raccoons, striped skunks, and opossums may be euthanized or released at the trap site.

(6) An annual report for the period of June 1 through May 31 shall be submitted to the Commission within 30 days of the end of the reporting period, and shall include at least the following:

(A) number of days and hours wild bobwhite quail were hunted;

(B) total annual harvest of wild bobwhite quail;

(C) total number of coveys flushed;

(D) supplemental feeding activities;

(E) number of trap nights, number of animals trapped and their disposition or release, by species, for trapping activity conducted during trapping seasons established by 15A NCAC 10B .0303; and

(F) number of trap nights, number of animals trapped and their disposition or release, by species, for trapping activity conducted outside of trapping seasons established by 15A NCAC 10B .0303.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

(1) "Natural bait" means any living or dead organism (plant or animal), or parts thereof, or prepared substances designed to attract fish by the sense of taste or smell.

(2) "Single hook" means a fish hook with only one point.

(3) "Artificial lure" means a fishing lure that neither contains nor has been treated by any substance that attracts fish by the sense of taste or smell.

(4) "Artificial fly" means one single hook dressed with feathers, hair, thread, tinsel, rubber, or any similar material to which no additional hook, spinner, spoon or similar device is added.

(5) "Youth anglers" are individuals under 18 years of age.

(b) For purposes of this Rule, 15A NCAC 10C .0316, and 15A NCAC 10D .0104, the following classifications apply:

(1) "Public Mountain Trout Waters" are all waters included in this Rule and so designated in 15A NCAC 10D .0104.

(2) "Catch and Release/Artificial Flies and Lures Only Trout Waters" are Public Mountain Trout Waters where only artificial flies and lures having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.

~~(3) "Catch and Release/Artificial Lures Only Trout Waters" are Public Mountain Trout Waters where only artificial lures having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.~~

~~(4)~~(3) "Delayed Harvest Trout Waters" are Public Mountain Trout Waters where between October 1 and one-half hour after sunset on the Friday before the first Saturday of the following June, it is unlawful to possess natural bait, use more than one single hook on an artificial lure, or harvest or possess trout while fishing. From 6:00 a.m. on the first Saturday in June until noon that same day, only youth anglers may fish and these waters have no bait or lure restrictions. From noon on the first Saturday in June until October 1, anglers of all ages may fish and these waters have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.

~~(5)~~(4) "Hatchery Supported Trout Waters" are Public Mountain Trout Waters that have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.

~~(6)~~(5) "Special Regulation Trout Waters" are Public Mountain Trout Waters where watercourse-specific regulations apply. Waters designated as such do not include tributaries unless otherwise noted.

~~(7)~~(6) "Wild Trout Waters" are Public Mountain Trout Waters which are identified as such in this Rule or 15A NCAC 10D .0104. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing these waters. Waters designated as such do not include tributaries unless otherwise noted.

~~(8)~~(7) "Wild Trout Waters/Natural Bait" are Public Mountain Trout Waters where all artificial lures and natural baits, except live fish, may be used provided they are fished using only one single hook. Waters designated as such include tributaries unless otherwise noted.

~~(9)~~(8) "Undesignated Waters" are all other waters in the State. These waters have no bait or lure restrictions. ~~Trout may not be possessed while fishing these waters from March 1 until 7:00 a.m. on the first Saturday in April.~~

(c) Seasons, creel, and size limits. Seasons, creel, and size limits for trout in all waters are listed in Rule .0316 of this Subchapter.

(d) Classifications. This Paragraph designates waters in each county that have a specific classification. Waters on game lands are so designated in 15A NCAC 10D .0104, unless otherwise indicated in this Paragraph. All other waters are classified as Undesignated Waters.

(1) Alleghany

(A) Delayed Harvest Trout Waters are as follows:

Little River (S.R. 1133 bridge to 275 yards downstream of the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank])

(B) Hatchery Supported Trout Waters are as follows:

Big Pine Creek (S.R. 1464 bridge to confluence with Brush Creek)
Bledsoe Creek
Brush Creek (N.C. 21 bridge to confluence with Little River, except where posted against trespassing)
Cranberry Creek
(Big) Glade Creek
Little River (275 yards downstream from the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank] to McCann Dam)
~~Meadow Fork~~
Pine Swamp Creek
Piney Fork
Prathers Creek

(C) Wild Trout Waters are as follows:

All waters located on Stone Mountain State Park

(2) Ashe County

(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:

Big Horse Creek (Virginia state line to Mud Creek at S.R. 1363, excluding tributaries)

(B) Delayed Harvest Trout Waters are as follows:

Big Horse Creek (S.R. 1324 bridge to North Fork New River)
Helton Creek (SR 1372 bridge to North Fork New River)
South Fork New River (upstream end of Todd Island to the SR 1351 bridge)
Trout Lake

(C) Hatchery Supported Trout Waters are as follows:

Beaver Creek (N.C. 221 to confluence of Beaver Creek and South Beaver Creek)
Big Horse Creek (Mud Creek at S.R. 1363 to S.R. 1324 bridge)

Big Laurel Creek (S.R. 1315 bridge to confluence with North Fork New River)
Buffalo Creek (S.R. 1133 bridge to N.C. 194-88 bridge)
Cranberry Creek (Alleghany Co. line to South Fork New River)
Nathans Creek
North Fork New River (Watauga Co. line to Sharp Dam)
Old Fields Creek (N.C. 221 to South Fork New River)
Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
Roan Creek
Three Top Creek

(3) Avery County

(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
Wilson Creek (game land portion)

~~(B) Catch and Release/Artificial Lures Only Trout Waters are as follows:~~
~~Wilson Creek (game land portion)~~

~~(C)~~(B) Hatchery Supported Trout Waters are as follows:
Boyde Coffey Lake
Elk River (S.R. 1305 crossing immediately upstream of Big Falls to the Tennessee state line)
Linville River (Land Harbor line [below dam] to the Blue Ridge Parkway boundary line, except where posted against trespassing)
Milltimber Creek
North Toe River — upper (Watauga St. to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespassing)
North Toe River — lower (S.R. 1164 to Mitchell Co. line, except where posted against trespassing)
Squirrel Creek
Wildcat Lake

~~(D)~~(C) Wild Trout Waters are as follows:
Birchfield Creek
Cow Camp Creek
Cranberry Creek (headwaters to U.S. 19E/N.C. 194 bridge)
Gragg Prong
Horse Creek
Kentucky Creek
North Harper Creek
Plumtree Creek
Roaring Creek
Rockhouse Creek
Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
South Harper Creek
Webb Prong

(4) Buncombe County

(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
Carter Creek (game land portion)

(B) Hatchery Supported Trout Waters are as follows:
Bent Creek (headwaters to N.C. Arboretum boundary line)
Cane Creek (headwaters to S.R. 3138 bridge)
Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
Dillingham Creek (Corner Rock Creek to Ivy Creek)
Ivy Creek (Ivy River)(Dillingham Creek to U.S. 19-23 bridge)
Lake Powhatan
Reems Creek (Sugar Camp Fork to U.S. 19-23 bridge, except where posted against trespassing)
Rich Branch (downstream from the confluence with Rocky Branch)
Stony Creek
Swannanoa (S.R. 2702 bridge near Ridgecrest to Wood Avenue bridge [intersection of N.C. 81 and U.S. 74A in Asheville], except where posted against trespassing)

(5) Burke County

(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
Henry Fork (portion on South Mountains State Park)

(B) Delayed Harvest Trout Waters are as follows:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)

(C) Hatchery Supported Trout Waters are as follows:
Carroll Creek (game land portion above S.R. 1405)
Henry Fork (lower South Mountain State Park line downstream to S.R. 1919 at Ivy Creek)
Linville River portion within Linville Gorge Wilderness area and portion below Lake James powerhouse from

upstream bridge on S.R. 1223 to Muddy Creek)

(D) Special Regulation Trout Waters are as follows:
Catawba River (Muddy Creek to City of Morganton water intake dam)

(E) Wild Trout Waters are as follows:
All waters located on South Mountains State Park, except those waters identified in Parts A and B of this Subparagraph

(6) Caldwell County

(A) Delayed Harvest Trout Waters are as follows:
Wilson Creek (game land portion below Lost Cove Creek to Philips Branch)

(B) Hatchery Supported Trout Waters are as follows:
Boone Fork Pond
Buffalo Creek (mouth of Joes Creek to McCloud Branch)
Joes Creek (first falls upstream of S.R. 1574 to confluence with Buffalo Creek)
Wilson Creek (Phillips Branch to Brown Mountain Beach Dam, except where posted against trespassing)
Yadkin River (Happy Valley Ruritan Community Park to S.R. 1515)

(C) Wild Trout Waters are as follows:
Buffalo Creek (Watauga Co. line to Long Ridge Branch including game land tributaries)
Joes Creek (Watauga Co. line to first falls upstream of the end of S.R. 1574)
Rockhouse Creek

(7) Cherokee County

(A) Hatchery Supported Trout Waters are as follows:
Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
Hyatt Creek (Big Dam Branch to Valley River)
Junaluska Creek (Ashturn Creek to Valley River)
Shuler Creek (Joe Brown Hwy [S.R. 1325] bridge to Tennessee state line)
Valley River (S.R. 1359 to U.S. 19 Business bridge in Murphy)

(B) Special Regulation Trout Waters are as follows:
Apalachia Reservoir

(C) Wild Trout Waters/Natural Bait are as follows:
Bald Creek (game land portion)
Dockery Creek (game land portion)
North Shoal Creek (game land portion)

(8) Clay County

(A) Delayed Harvest Trout Waters are as follows:
Fires Creek (Rockhouse Creek to the foot bridge in the USFS Fires Creek Picnic Area)

(B) Hatchery Supported Trout Waters are as follows:
Buck Creek (game land portion downstream of U.S. 64 bridge)
Fires Creek (foot bridge in the USFS Fires Creek Picnic Area to S.R. 1300)
Tusquitee Creek (Compass Creek to lower S.R. 1300 bridge)

(9) Graham County

(A) Delayed Harvest Trout Waters are as follows:
(Big) Snowbird Creek (USFS footbridge at the old railroad junction to USFS Rd. 2579)

(B) Hatchery Supported Trout Waters are as follows:
Calderwood Reservoir (Cheoah Dam to Tennessee state line)
Cheoah Reservoir
Panther Creek (confluence of Stand Creek and Rock Creek to Lake Fontana)
Santeetlah Creek (Johns Branch to Lake Santeetlah)
(Big) Snowbird Creek (USFS Road 2579 to S.R. 1127 bridge)
Stecoah Creek (upper game land boundary to Lake Fontana)
Tulula Creek (S.R. 1201 to lower bridge on S.R. 1275)
West Buffalo Creek
Yellow Creek (Lake Santeetlah hydropower pipeline to Cheoah River)

(C) Wild Trout Waters are as follows:
Little Buffalo Creek
South Fork Squally Creek
Squally Creek

(D) Wild Trout Waters/Natural Bait are as follows:
Deep Creek
~~Franks Creek~~
Long Creek (game land portion)

(10) Haywood County

(A) Delayed Harvest Trout Waters are as follows:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)

(B) Hatchery Supported Trout Waters are as follows:

Cold Springs Creek (Fall Branch to Pigeon River)
Jonathan Creek (upstream S.R. 1302 bridge to Pigeon River, except where posted against trespassing)
Pigeon River (Stamey Cove Branch to upstream U.S. 19-23 bridge)
Richland Creek (Russ Avenue [U.S. 276] bridge to U.S. 19 bridge)
West Fork Pigeon River (Tom Creek to Queen Creek, including portions on game lands, except Middle Prong)

(C) Wild Trout Waters/Natural Bait are as follows:
~~Hemphill Creek~~
Hurricane Creek

(11) Henderson County

(A) Delayed Harvest Trout Waters are as follows:
North Fork Mills River (game land portion below the Hendersonville watershed dam)

(B) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (end of S.R. 1611 to Rutherford County line)
Cane Creek (railroad bridge upstream of S.R. 1551 bridge to U.S. 25 bridge)
Clear Creek (Laurel Fork to S.R. 1582)
Green River (Lake Summit powerhouse to game land boundary)
(Big) Hungry River (S.R. 1885 to Green River)

(12) Jackson County

(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
Flat Creek
Tuckasegee River (upstream from the Clark property)

(B) Delayed Harvest Trout Waters are as follows:
Tuckasegee River (downstream N.C. 107 bridge to the falls located 275 yards upstream of the U.S. 23-441 bridge [marked by a sign on each bank])

(C) Hatchery Supported Trout Waters are as follows:
Balsam Lake
Bear Creek Lake
Cedar Cliff Lake
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Dark Ridge Creek (Jones Creek to Scott Creek)
Greens Creek (Greens Creek Baptist Church on S.R. 1370 to Savannah Creek)
Savannah Creek (Shell Branch to Cagle Branch)
Scott Creek (Dark Ridge Creek to Tuckasegee River, except where posted against trespassing)
Tanasee Creek Lake
Tuckasegee River — upper (John Brown Branch to the downstream N.C. 107 bridge)
Tuckasegee River — lower (falls located 275 yards upstream of U.S. 23-441 bridge [marked by a sign on each bank] to S.R. 1534 bridge at Wilmot)
Wolf Creek Lake

(D) Wild Trout Waters are as follows:
Gage Creek
North Fork Scott Creek
Tanasee Creek
Whitewater River (downstream from Silver Run Creek to South Carolina state line)
Wolf Creek (except Balsam Lake and Wolf Creek Lake)

(E) Wild Trout Waters/Natural Bait are as follows:
~~Buff Creek~~
Chattooga River (S.R. 1100 bridge to the South Carolina state line)
Lower Fowler Creek (game land portion)
Scotsman Creek (game land portion)

(13) Macon County

(A) Delayed Harvest Trout Waters are as follows:
Nantahala River (Whiteoak Creek to Nantahala hydropower discharge canal)

(B) Hatchery Supported Trout Waters are as follows:
Burningtown Creek (Left Prong to Little Tennessee River)
Cartoogechaye Creek (downstream U.S. 64 bridge to Little Tennessee River)
Cliffside Lake
Cullasaja River (Sequoyah Dam to U.S. 64 bridge near junction of S.R. 1672)
Nantahala River — upper (Dicks Creek to Whiteoak Creek)
Nantahala River — lower (Nantahala hydropower discharge canal to Swain Co. line)
Queens Creek Lake

(C) Wild Trout Waters/Natural Bait are as follows:

Chattooga River (S.R. 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)

(14) Madison County

(A) Delayed Harvest Trout Waters are as follows:
Big Laurel Creek (N.C. 208 bridge to the U.S. 25-70 bridge)
Shelton Laurel Creek (N.C. 208 bridge at Belva to the confluence with Big Laurel Creek)
Spring Creek (N.C. 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Ave.)

(B) Hatchery Supported Trout Waters are as follows:
Big Laurel Creek (Puncheon Fork to the S.R. 1318 [Big Laurel Rd.] bridge downstream of Bearpen Branch)
Big Pine Creek (S.R. 1151 bridge to French Broad River)
Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
Max Patch Pond
Meadow Fork Creek (Meadow Fork Campground to Spring Creek)
Puncheon Fork (Wolf Laurel Branch to Big Laurel Creek)
Roaring Fork (Fall Branch to Meadow Fork)
Shelton Laurel Creek (confluence of Big Creek and Mill Creek to N.C. 208 bridge at Belva)
Shut-in Creek
Spillcorn Creek
Spring Creek (junction of N.C. 209 and N.C. 63 to USFS Rd. 223)
West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)

(C) Wild Trout Waters/Natural Bait are as follows:
Big Creek (headwaters to the lower game land boundary)

(15) McDowell County

(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
Newberry Creek (game land portion)

(B) Delayed Harvest Trout Waters are as follows:
Catawba River (portion adjacent to Marion Greenway)
Curtis Creek (game land portion downstream of the USFS boundary at Deep Branch)
Mill Creek (U.S. 70 bridge to I-40 bridge)

(C) Hatchery Supported Trout Waters are as follows:
Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
Catawba River (Catawba Falls Campground to Old Fort Recreation Park)
Little Buck Creek (game land portion)
~~Mill Creek (upper railroad bridge to U.S. 70 bridge, except where posted against trespassing)~~
North Fork Catawba River (headwaters to North Cove School at S.R. 1569 bridge)

(16) Mitchell County

(A) Delayed Harvest Trout Waters are as follows:
Cane Creek (N.C. 226 bridge to S.R. 1189 bridge)
North Toe River (U.S. 19E bridge to N.C. 226 bridge)

(B) Hatchery Supported Trout Waters are as follows:
Big Rock Creek (headwaters to N.C. 226 bridge at S.R. 1307 intersection)
Cane Creek (S.R. 1219 to N.C. 226 bridge)
East Fork Grassy Creek
Grassy Creek (East Fork Grassy Creek to mouth)
Little Rock Creek (Green Creek bridge to Big Rock Creek, except where posted against trespassing)
North Toe River (Avery Co. line to S.R. 1121 bridge)

(C) Wild Trout Waters are as follows:
Green Creek (headwaters to Green Creek bridge, except where posted against trespassing)
Little Rock Creek (above Green Creek bridge, including all tributaries, except where posted against trespassing)
Wiles Creek (game land boundary to mouth)

(17) Polk County

(A) Delayed Harvest Trout Waters are as follows:
Green River (Fishtop Falls Access Area to the confluence with Cove Creek)

(B) Hatchery Supported Trout Waters are as follows:

Green River (Mouth of Cove Creek to the natural gas pipeline crossing)
North Pacolet River (Joels Creek to N.C. 108 bridge)

(18) Rutherford County
(A) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (Henderson Co. line to U.S. 64/74 bridge, except where posted against trespassing)

(19) Stokes County
(A) Hatchery Supported Trout Waters are as follows:
Dan River (Virginia state line downstream to a point 200 yards below the end of S.R. 1421)

(20) Surry County
(A) Delayed Harvest Trout Waters are as follows:
Ararat River (portion adjacent to the Ararat River Greenway)
Mitchell River (0.6 miles upstream of the end of S.R. 1333 to the lowermost bridge on S.R. 1330)
(B) Hatchery Supported Trout Waters are as follows:
Ararat River (S.R. 1727 bridge downstream to the N.C. 103 bridge)
Big Elkin Creek (dam 440 yards upstream of N.C. 268 bridge to a point 265 yards downstream of N.C. 268 [marked by a sign on each bank])
Fisher River (Cooper Creek)(Virginia state line to I-77 bridge)
Little Fisher River (Virginia state line to N.C. 89 bridge)
Lovills Creek (U.S. 52 Business bridge to Ararat River)
Pauls Creek (Virginia state line to .3 miles below S.R. 1625 bridge)

(21) Swain County
(A) Delayed Harvest Waters Trout Waters are as follows:
Tuckasegee River (U.S. 19 bridge to Slope Street bridge)
(B) Hatchery Supported Trout Waters are as follows:
Alarka Creek (game land boundary to Fontana Reservoir)
Calderwood Reservoir (Cheoah Dam to Tennessee state line)
Cheoah Reservoir
Connelly Creek (Camp Branch to Tuckasegee River)
Deep Creek (Great Smoky Mountains National Park Boundary line to Tuckasegee River)
Nantahala River (Macon Co. line to existing Fontana Lake water level)

(22) Transylvania County
(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
(B) Delayed Harvest Trout Waters are as follows:
East Fork French Broad River (East Fork Baptist Church to the downstream S.R. 1107 bridge)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
(C) Hatchery Supported Trout Waters are as follows:
Davidson River (Avery Creek to lower USFS boundary)
French Broad River (confluence of North Fork French Broad River and West Fork)
French Broad River to the Island Ford Rd. [S.R. 1110] Access Area
Middle Fork French Broad River (upstream U.S. 178 bridge to French Broad River)
West Fork French Broad River (S.R. 1312 to confluence with North Fork French Broad River)
(D) Wild Trout Waters are as follows:
All waters located on Gorges State Park
Whitewater River (downstream from Silver Run Creek to South Carolina state line)
(E) Wild Trout Waters/Natural Bait are as follows:
North Fork French Broad River (game land portion downstream of S.R. 1326)
Thompson River (S.R. 1152 to South Carolina state line, except where posted against trespassing)

(23) Watauga County
(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
Laurel Creek (confluence of North and South Fork Laurel creeks to Elk Creek, excluding tributaries)
Pond Creek (headwaters to Locust Ridge Rd. bridge, excluding the pond adjacent to Coffee Lake)
(B) Delayed Harvest Trout Waters are as follows:
Lake Coffey

Watauga ~~River (adjacent to intersection of S.R. 1557 and S.R. 1558 to N.C. 105 bridge and S.R.~~ River – upper (S.R. 1114 bridge to ~~the~~ Valle Crucis Community Park lower boundary)
Watauga River – lower (S.R. 1103 bridge to confluence with Laurel Creek)

(C) Hatchery Supported Trout Waters are as follows:
Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of S.R. 1201 and S.R. 1203)
Beech Creek
Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
Buckeye Creek Reservoir
Cove Creek (S.R. 1233 bridge at Zionville to S.R. 1214 bridge at Sherwood)
Dutch Creek (second bridge on S.R. 1134 to mouth)
Elk Creek (S.R. 1510 bridge at Triplett to Wilkes Co. line, except where posted against trespassing)
Laurel Creek (S.R. 1123 bridge at S.R. 1157 intersection to Watauga River)
Meat Camp Creek (S.R. 1340 bridge at S.R. 1384 intersection to N.C. 194)
Middle Fork New River (adjacent to intersection of S.R. 1539 and U.S. 321 to South Fork New River)
Norris Fork Creek
South Fork New River (canoe launch 70 yards upstream of U.S. 421 bridge to lower boundary of Brookshire Park)
Stony Fork (S.R. 1500 bridge at S.R. 1505 intersection to Wilkes Co. line)

(D) Wild Trout Waters are as follows:
Dutch Creek (headwaters to second bridge on S.R. 1134)
Howard Creek
Maine Branch (headwaters to North Fork New River)
North Fork New River (from confluence with Maine and Mine branches to Ashe Co. line)
Watauga River (Avery Co. line to S.R. 1580 bridge)
Winkler Creek (lower bridge on S.R. 1549 to confluence with South Fork New River)

(24) Wilkes County

(A) Delayed Harvest Trout Waters are as follows:
East Prong Roaring River (Bullhead Creek downstream to Stone Mountain State Park lower boundary)
Elk Creek — upper (Watauga Co. line to lower boundary of the Blue Ridge Mountain Club)
Elk Creek — lower (portion on Leatherwood Mountains development)
Reddies River (Town of North Wilkesboro water intake dam to confluence with the Yadkin River)
Stone Mountain Creek (from falls at Alleghany Co. line to confluence with East Prong Roaring River and Bullhead Creek)

(B) Hatchery Supported Trout Waters are as follows:
Basin Creek (S.R. 1730 bridge to confluence with Lovelace Creek)
Bell Branch Pond
Boundary Line Pond
Cub Creek (.5 mile upstream of S.R. 2460 bridge to S.R. 1001 bridge)
Darnell Creek (North Prong Reddies River)(downstream ford on S.R. 1569 to confluence with North Fork Reddies River)
East Prong Roaring River (Stone Mountain State Park lower boundary to S.R. 1002 bridge)
Fall Creek (S.R. 1300 bridge to confluence with South Prong Lewis Fork, except where posted against trespassing)
Middle Fork Reddies River (Clear Prong)(headwaters to bridge on S.R. 1580)
Middle Prong Roaring River (headwaters to second bridge on S.R. 1736)
North Fork Reddies River (Vannoy Creek)(headwaters to Union School bridge on S.R. 1559)
Pike Creek
Pike Creek Pond
South Fork Reddies River (S.R. 1355 bridge to confluence with Middle Fork Reddies River)
South Prong Lewis Fork (Fall Creek to U.S. 421 bridge adjacent to S.R. 1155 intersection)

(C) Wild Trout Waters are as follows:
All waters located on Stone Mountain State Park, except East Prong Roaring River from Bullhead Creek downstream to the Stone Mountain State Park lower boundary where Delayed Harvest Trout Waters

regulations apply, and Stone Mountain Creek from falls at Alleghany County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park where Delayed Harvest Trout Waters regulations apply

(25) Yancey County

(A) Catch and Release/Artificial Flies and Lures Only Trout Waters are as follows:
South Toe River (headwaters to Upper Creek)
Upper Creek

(B) Delayed Harvest Trout Waters are as follows:
Cane River (Blackberry Ridge Rd. to downstream boundary of Cane River County Park)

(C) Hatchery Supported Trout Waters are as follows:
Bald Mountain Creek (except where posted against trespassing)
Cane River (Bee Branch [S.R. 1110] to Bowlens Creek)
Price Creek (junction of S.R. 1120 and S.R. 1121 to Indian Creek)
South Toe River (Clear Creek to lower boundary line of Yancey Co. Recreation Park, except where posted against trespassing)

(D) Wild Trout Waters are as follows:
Cattail Creek (bridge at Mountain Farm Community Rd. to N.C. 197 bridge)
Lickskillet Creek
Middle Creek (game land boundary to mouth)

Authority G.S. 113-272; 113-292.

15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES

(a) It shall be unlawful to transport, purchase, possess, sell, or stock in the public or private waters of North Carolina any live individuals of:

~~(1) piranha;~~
~~(2) "walking catfish" (Clarias batrachus);~~
~~(3) snakehead fish (from the Family Channidae, formerly Ophiocephalidae);~~
~~(4) black carp (Mylopharyngodon piceus);~~
~~(5) bighead carp (Hypophthalmichthys nobilis);~~
~~(6) silver carp (Hypophthalmichthys molitrix);~~
~~(7) rudd (Scardinius erythropthalomus);~~
~~(8) round goby (Neogobius melanostomus);~~
~~(9) tubenose goby (Proterorhinus marmoratus);~~
~~(10) ruffe (Gymnocephalus cernuus);~~
~~(11) Japanese mysterysnail (Cipangopaludina japonica);~~
~~(12) Chinese mysterysnail (Cipangopaludina chinensis malleata);~~
~~(13) red rim melania (Melanoides tuberculatus);~~
~~(14) virile crayfish (Orconectes (Gremicambarus) virilis);~~
~~(15) rusty crayfish (Orconectes (Procericambarus) rusticus);~~
~~(16) Australian red claw crayfish or "red claw" (Cherax quadricarinatus, or other species of "giant" crayfish species in the genus Cherax);~~
~~(17) white amur or "grass carp" (Ctenopharyngodon idella);~~
~~(18) swamp or "rice" eel (Monopterus albus);~~
~~(19) red shiner (Cyprinella lutrensis);~~
~~(20) zebra mussel (Dreissena polymorpha);~~
~~(21) quagga mussel (Dreissena rostriformis bugensis) or any mussel in the family Dreissenidae; or~~
~~(22) redtail catfish (Phractocephalus hemioliopterus).~~
(1) African longfin eel (Anguilla mossambica);
(2) amur sleeper (Perccottus glenii);
(3) applesnail (any species of the genus Pomacea);
(4) Asian swamp eel, swamp or rice eel (Monopterus albus);
(5) Australian red claw crayfish or red claw (Cherax quadricarinatus, or other species in the genus Cherax);
(6) bigclaw crayfish (Faxonius placidus);
(7) bighead carp (Hypophthalmichthys nobilis);
(8) black carp (Mylopharyngodon piceus);
(9) brown hoplo (Hoplosternum littorale);
(10) Chinese mysterysnail (Cipangopaludina chinensis);
(11) Creole painted crayfish (Faxonius palmeri creolanus);
(12) Crucian Carp (Carassius carassius);
(13) European eel (Anguilla anguilla);
(14) European minnow (Phoxinus phoxinus);
(15) European perch (Perca fluviatilis);
(16) Japanese mysterysnail (Cipangopaludina japonica);
(17) marbled Crayfish or Marmorkrebs (Procambarus virginalis or Procambarus fallax f. virginalis);
(18) olive mysterysnail (Viviparus subpurpureus);
(19) Oriental weatherfish (Misgurnus anguillicaudatus);
(20) piranha (any species of the genera Pristobrycon, Pygocentrus, Pygopristis, or Serrasalmus);
(21) Prussian Carp (Carassius gibelio);
(22) quagga mussel (Dreissena rostriformis bugensis) or any mussel in the family Dreissenidae;
(23) red shiner (Cyprinella lutrensis);
(24) red-rim melania (Melanoides tuberculatus or Melanoides tuberculata);
(25) redtail catfish (Phractocephalus hemioliopterus);

(26) round goby (Neogobius melanostomus);
(27) rudd (Scardinius erythropthalomus or Scardinius erythrophthalmus);
(28) ruffe (Gymnocephalus cernuus or Gymnocephalus cernua);
(29) rusty crayfish (Faxonius rusticus);
(30) shortfin eel (Anguilla australis);
(31) silver carp (Hypophthalmichthys molitrix);
(32) snakehead fish (from the Family Channidae, formerly Ophiocephalidae);
(33) tubenose goby (Proterorhinus marmoratus, Proterorhinus semilunaris, and Proterorhinus semipellucidus);
(34) virile crayfish (Faxonius virilis);
(35) walking catfish (any member of the genus Batrachus);
(36) white amur or grass carp (Ctenopharyngodon idella), except for triploid individuals as permitted in Paragraph (b) of this Rule;
(37) yellow bass (Morone mississippiensis); or
(38) zebra mussel (Dreissena polymorpha).

(b) A person may buy, possess, or stock grass carp that have been certified to be triploid or sterile, only for the purpose of controlling aquatic vegetation under a permit issued by the Executive Director or his or her designee based on an evaluation of the potential for escapement and threat to sensitive aquatic habitats.
(c) It shall be unlawful to transport, possess, or release live river herring, also known as alewife or blueback herring, in the waters of the Little Tennessee River in and upstream of Lake Santeetlah and Cedar Cliff Lake, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps, and bridge crossings.

Authority G.S. 113-134; 113-274(c)(1c); 113-292.

SECTION .0300 - GAME FISH

15A NCAC 10C .0305 LARGEMOUTH BASS

(a) The daily creel limit for Largemouth Bass is five fish, except in waters identified in Paragraphs (b), (c), (d), ~~and~~ (j), and (l) of this Rule. There is no minimum size limit for Largemouth Bass, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of this Rule. There is no closed season, except for waters identified in Paragraph (l) of this Rule.
(b) In Lake Cammack in Alamance County, and Lake Holt in Granville County the daily creel limit for Largemouth Bass is 10 fish and no more than two fish greater than 14 inches may be possessed.
(c) In Lake Santeetlah in Graham County, there is no daily creel limit for Largemouth Bass and Smallmouth Bass less than 14 inches. The daily creel limit for Largemouth Bass and Smallmouth Bass greater than 14 inches is five fish in aggregate.
(d) In Lake Chatuge in Clay County, the daily creel limit for Largemouth Bass, Smallmouth Bass, Alabama Bass, and Spotted Bass is 10 fish in aggregate. The minimum size limit for Largemouth Bass is 12 inches.
(e) The minimum size limit for Largemouth Bass is 14 inches in the following:
(1) Lake Raleigh in Wake County;
(2) Lake Sutton in New Hanover County;
(3) Pungo Lake in Washington and Hyde counties;
(4) New Lake in Hyde County; and
(5) Currituck, Roanoke, Croatan, Albemarle sounds, and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Meherrin River, Yeopim River, Pasquotank River, Perquimans River, Little River, Big Flatty Creek, North River, Northwest River, Scuppernong River, Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge, and all other associated tributaries and canals in these river systems.

(f) In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties, the minimum size limit for Largemouth Bass is 16 inches.
(g) In Lake Phelps in Tyrrell and Washington counties, the minimum size limit for Largemouth Bass is 14 inches, and no fish between 16 and 20 inches may be possessed.
(h) In Shearon Harris Reservoir in Chatham and Wake counties and Lake Hampton in Yadkin County, there is no minimum size limit for Largemouth Bass, but only two Largemouth Bass less than 14 inches and no Largemouth Bass between 16 and 20 inches may be possessed.
(i) In Lake Thom-A-Lex in Davidson County, the minimum size limit for Largemouth Bass is 18 inches.
(j) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, ~~Virginia) there~~ Virginia), the daily creel limit for Largemouth Bass, Smallmouth Bass, and Spotted Bass is 5 fish in aggregate. There is no minimum size limit for Largemouth Bass, but no fish between 14 and 22 inches in length may be possessed and only one Largemouth Bass, Smallmouth Bass, or Spotted Bass greater than 22 inches may be possessed.
(k) In Lake Mattamuskeet and associated canals in Hyde County, the minimum size limit for Largemouth Bass is 16 inches and only one Largemouth Bass greater than 20 inches may be possessed.
(l) In Jean Guite Creek and associated canals within the Town of Southern ~~Shores,~~ Shores in Dare ~~County,~~ County and in the ponds associated with Martin Marietta Park in Craven County, no Largemouth Bass may be possessed.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0314 STRIPED BASS

(a) The daily creel limit for Striped Bass and its hybrids is four fish in the aggregate, except in waters identified in Paragraphs (b), (e), (f), (g), (h), (i), and (j) of this Rule. The minimum size limit for these fish is 20 inches, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this Rule. There is no closed season, except for waters identified in Paragraphs (g), (h), (i), (j), and (k) of this Rule.
(b) In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA and in John H. Kerr Reservoir, the daily creel limit on Striped Bass and its hybrids is two in the aggregate and the minimum size limit is 20

inches from October 1 through May 31. From June 1 through September 30, the daily creel limit on Striped Bass and its hybrids is four in the aggregate with no minimum size limit.
(c) In Lake Gaston and Roanoke Rapids Reservoir, the minimum size limit for Striped Bass and its hybrids is 20 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.
(d) In Lake Norman, Hyco Lake, Moss Lake, Mountain Island Reservoir, Oak Hollow Lake, Lake Thom-A-Lex, Lake Townsend, and Salem Lake the minimum size limit for Striped Bass and its hybrids is 16 inches.
(e) In Lake Chatuge in Clay County, the daily creel limit is 15 in the aggregate. There is no minimum size limit, but only two may be greater than 22 inches.
(f) In Lake Mattamuskeet, and in the Pee Dee River and its tributaries downstream from the Blewett Falls Dam to the South Carolina state line, the daily creel limit for Striped Bass and its hybrids is three fish in the aggregate, and the minimum size limit is 18 inches.
(g) In the inland fishing waters of Neuse, Pungo, and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95 not specified in Paragraphs (f), (h), (i), and (j) of this Rule, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate. The minimum size limit is 26 inches. In these waters, the season for taking and possessing Striped Bass is closed from May 1 through September 30.
(h) In the inland fishing waters of the Cape Fear River and its tributaries downstream of Buckhorn ~~Dam,~~ Dam and in the ponds associated with Martin Marietta Park in Craven County, the season for taking and possessing Striped Bass is closed year-round.
(i) In the inland and joint fishing waters of the Roanoke River Striped Bass Management Area, as established in 15A NCAC 03R .0201 and identified in 15A NCAC 10C .0110, which includes the Roanoke, Cashie, Middle, and Eastmost rivers and their tributaries, the open season for taking and possessing Striped Bass and its hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate, and the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be possessed in the daily creel limit. Only one fish larger than 27 inches may be possessed in the daily creel limit.
(j) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), the Striped Bass fishing season, size limits, and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
(k) In accordance with G.S. 113-292, the Executive Director may, by proclamation, suspend, or extend the hook-and-line season for Striped Bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0316 TROUT

(a) The daily creel limit for trout in Hatchery-Supported Trout Waters is seven fish. There is no minimum size limit for these fish. The open season is from 7 a.m. on the first Saturday in April until March 1, except for waters designated in Paragraph (g) of this Rule.
(b) The daily creel limit for trout in Wild Trout Waters and Wild Trout/Natural Bait Trout Waters is four fish. The minimum size limit for these fish is seven inches. There is no closed season.
(c) No trout may be harvested from Catch and Release/Artificial Flies and Lures Only Trout ~~Waters or Catch and Release/Artificial Flies Only Trout~~ Waters. Trout may not be possessed while fishing these waters.
(d) The daily creel limit for trout in Delayed Harvest Trout Waters is seven fish. There is no minimum size limit for these fish. The Youth-only Delayed Harvest Trout Water Season is from 6 a.m. on the first Saturday in June until 12 p.m. that same day. During this season only individuals under the age of 18 may fish. From 12 p.m. on the first Saturday in June until September 30, the Delayed Harvest Trout Waters Season is open for all anglers. From October 1 to one-half hour after sunset on the Friday before the first Saturday in June, trout may not be harvested or possessed while fishing these waters. Delayed Harvest Trout Waters are closed to all fishing from one-half hour after sunset on the Friday before the first Saturday in June to 6 a.m. on the first Saturday in June.
(e) The daily creel limits, size limits, and seasons for trout in Special Regulation Trout Waters are as follows:

(1) Apalachia Reservoir (Cherokee County) the daily creel limit is three trout. There is no minimum size limit, but only one may be greater than 14 inches. There is no closed season.
(2) Catawba River (Burke County) from Muddy Creek to the City of Morganton water intake dam the daily creel limit is two fish. The minimum size limit is 14 inches. There is no closed season.

(f) The daily creel limit for trout in undesignated trout waters is seven fish. There is no minimum size limit for these fish.
(g) There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area and the impounded waters of the following power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.

(1) Bear Creek Lake;
(2) Buckeye Creek Reservoir;
(3) Calderwood Reservoir;
(4) Cedar Cliff Lake;
(5) Cheoah Reservoir;
(6) Cliffside Lake;
(7) Tanassee Creek Lake;
(8) Queens Creek Lake; and
(9) Wolf Lake.

(h) In designated Public Mountain Trout Waters the season for taking all species of fish is the same as the trout fishing season.
(i) All trout water designations and manners of take are set forth in 15A NCAC 10C .0205.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0321 SMALLMOUTH BASS

(a) The daily creel limit for Smallmouth Bass is five fish, except in waters identified in Paragraphs ~~(b) and (c)~~(b), (c), and (d) of this Rule. There is no minimum size limit for Smallmouth Bass, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), and (d) of this Rule. There is no closed season.

(b) In Lake Santeetlah in Graham County, there is no daily creel limit for Largemouth Bass and Smallmouth Bass less than 14 inches. The daily creel limit for Largemouth Bass and Smallmouth Bass greater than 14 inches is five fish in aggregate.

(c) In Lake Chatuge in Clay County, the daily creel limit for Largemouth Bass, Smallmouth Bass, Alabama Bass, and Spotted Bass is 10 fish in aggregate. There is no minimum size limit for Smallmouth Bass.

(d) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, ~~Virginia) there~~ Virginia), the daily creel limit for Largemouth Bass, Smallmouth Bass, and Spotted Bass is 5 fish in aggregate. There is no minimum size limit for Smallmouth Bass, but no fish between 14 and 22 inches in length may be possessed and only one Largemouth Bass, Smallmouth Bass, or Spotted Bass greater than 22 inches may be possessed.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0322 ALABAMA BASS AND SPOTTED BASS

(a) There is no daily creel limit for Alabama Bass or Spotted Bass, except for waters identified in paragraph (b) and (c) of this Rule. There is no minimum size limit or closed season.

(b) In Lake Chatuge in Clay County, the daily creel limit for Largemouth Bass, Smallmouth Bass, Alabama Bass, and Spotted Bass is 10 fish in aggregate.

(c) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, ~~Virginia) there~~ Virginia), the daily creel limit for Largemouth Bass, Smallmouth Bass, and Spotted Bass is 5 fish in aggregate. There is no minimum size limit for Spotted Bass, but no fish between 14 and 22 inches in length may be possessed and only one Largemouth Bass, Smallmouth Bass, or Spotted Bass greater than 22 inches may be possessed.

Authority G.S. 113-134; 113-292.

SECTION .0400 – JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line, grabbling, or special device with a special device fishing license.

(b) Nongame fishes may be taken by hook and line, grabbling, or special device with a special device fishing license at any time without restriction as to size limits or creel limits, except as designated in this Rule.

(c) Special devices may only be used to take nongame fishes with a special device fishing license in those counties and waters with open season designated in Rule .0407 of this Section.

(d) Archery equipment may only be used for the take of catfish on Pee Dee River downstream of Blewett Falls Dam to the South Carolina state line and all tributaries.

(e) Set hooks, jug hooks, and trotlines may be used to take nongame fishes as designated in 15A NCAC 10C .0206.

(f) The season for taking nongame fishes by hook and line in designated public mountain trout waters is the same as the trout fishing season. Trout seasons are designated in 15A NCAC 10C .0316.

(g) Freshwater mussels, including the Asiatic clam (Corbicula fluminea), may be taken only from impounded waters, except mussels shall not be taken in:

(1) Lake Waccamaw in Columbus County; and
(2) University Lake in Orange County.

The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (Corbicula fluminea).

(h) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.

(i) While boating on or fishing in the following inland fishing waters, no person shall take river herring (alewife and blueback herring) that are greater than six inches in length, or possess such herring regardless of origin in:

(1) Roanoke River downstream of Roanoke Rapids Dam;
(2) Tar River downstream of Rocky Mount Mill Dam;
(3) Neuse River downstream of Falls Lake Dam;
(4) Cape Fear River downstream of Buckhorn Dam;
(5) Pee Dee River downstream of Blewett Falls Dam;
(6) Lumber River, including Drowning Creek;
(7) all the tributaries to the rivers listed above; and
(8) all other inland fishing waters east of I-95.

(j) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, it is unlawful to take ~~channel, white,~~ channel or blue catfish by means other than hook and line; the daily creel limit for channel catfish is seven. Waters where this creel limit applies shall be posted on-site with signs indicating the creel limit.

(k) The daily creel limit for blue catfish greater than 32 inches is one fish in the following ~~reservoirs:~~ waters:

(1) Lake Norman;
(2) Mountain Island Lake;
(3) Lake Wylie;
(4) Badin Lake;
(5) Lake Tillery;
(6) John H. Kerr Reservoir (North Carolina portion);
(7) Dan River (Downstream of the Union Street Dam in Danville, VA)

~~(7)~~(8) Lake Gaston (North Carolina portion); and
~~(8)~~(9) Roanoke Rapids Reservoir.

(l) The daily creel limit is five catfish in aggregate on the Pee Dee River downstream of Blewett Falls Dam to the South Carolina state line and all tributaries.

(m) The daily creel limit for American eels taken from or possessed, regardless or origin, while boating on or fishing in inland fishing waters is 25, and the minimum size limit is 9 inches. Eels greater than 9 inches in length and with a minimum body depth greater than ½ inch may be cut for use as bait.

(n) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Mountain Island Reservoir, and Lake Wylie, except that one fish per day may be taken with archery equipment.

(o) Grass carp shall not be taken or possessed on Lake Norman and the North Carolina portion of John H. Kerr Reservoir, except for scientific study by permit issued by the Wildlife Resources Commission.

(p) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits, and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

(q) No person while fishing shall remove the head or tail or otherwise change the appearance of any nongame fish specified in Paragraphs (h), (i), (k), (m), and (p) of this Rule having a size limit so as to render it impractical to measure its total original ~~length.~~ length, except as provided in Paragraph (m) of this Rule. No person while fishing shall change the appearance of any nongame fish specified in Paragraphs (g), (h), (j), (k), (l), (m), (n), (o), and (p) of this Rule having a daily creel limit so as to obscure its identification or render it impractical to count the number of fish in ~~possession.~~ possession, except as provided in Paragraph (m) of this Rule.

(r) Nongame fishes taken by hook and line, grabbling, or by special device with a special device fishing license may be sold, with the following exceptions:

(1) alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties);
(2) blue crab; and
(3) bowfin.

(s) Margined madtom and tadpole madtom shall not be taken or possessed from inland fishing waters.

Authority G.S. 113-134; 113-272; 113-292.

15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT OR PERSONAL CONSUMPTION

(a) It is unlawful to take nongame fish for bait or personal consumption in the inland waters of North Carolina using equipment other than:

(1) a net of dip net design not greater than six feet across;
(2) a seine of not greater than 12 feet in length (except in Lake Waccamaw in Columbus County where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
(3) a cast net;
(4) a bow net for the seasons and waters in which the use of bow nets is authorized in 15A NCAC 10C .0407;
(5) a dip net when used in conjunction with a licensed hand-crank electrofisher;
(6) a gig (except in Public Mountain Trout Waters);
(7) up to three traps for the seasons and waters in which the use of traps is authorized in 15A NCAC 10C .0407;
(8) up to two eel pots;
(9) a spear gun for the seasons and waters in which the use of a spear gun is authorized in 15A NCAC 10C .0407;
(10) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, from which all fish and animals are removed daily, and that are labeled with the user's Wildlife Resources Commission customer number or name and address;
(11) a hand-held line with a single bait attached;
(12) a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device, with a limit of one line per person and no more than one line per vessel; or
(13) a collapsible crab trap with the largest open dimension not greater than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved or lowered to the bottom, with a limit of one trap per person.

(b) The use of equipment under this Rule requires a valid license that provides basic inland fishing privileges.

(c) It is unlawful to sell nongame fishes or aquatic animals taken under this Rule.

(d) Game fishes taken shall be returned unharmed to the water, except white perch may be taken when captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of I-95 and in the Tar River Reservoir (Nash County).

(e) No person shall take or possess during one day more than 200 nongame fish in aggregate for bait or personal consumption subject to the size and creel limits identified in 15A NCAC 10C .0401.

(f) Any fishes taken for bait purposes are included within the daily possession limit for that species.

(g) It is unlawful to take nongame fish for bait from the following waters:

(1) Public Mountain Trout Waters (except in impounded waters of power reservoirs and municipally-owned water supply reservoirs);

(2) Bear Creek in Chatham County;
(3) Deep River in Chatham, Lee, and Moore counties and downstream of Coleridge Dam in Randolph County;
(4) Fork Creek in Randolph County; and
(5) Rocky River in Chatham County.

(i) No person while fishing shall remove the head or tail or otherwise change the appearance of any nongame fish having a size limit identified in 15A NCAC 10C .0401 so as to render it impractical to measure its total original ~~length.~~ length, except as provided in 15A NCAC 10C .0401(m). No person while fishing shall change the appearance of any nongame fish having a daily creel limit identified in 15A NCAC 10C .0401 so as to obscure its identification or render it impractical to count the number of fish in ~~possession.~~ possession, except as provided in 15A NCAC 10C .0401(m).

Authority G.S. 113-134; 113-272; 113-272.3; 113-292.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

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

(1) "Permanent Hunting Blind" means any structure that is used for hunter concealment, constructed from manmade or natural materials, and that is not disassembled and removed at the end of each day's hunt.
(2) "Target shooting" means the discharge of a firearm for purposes other than hunting, trapping, or self-defense.
(3) "Youth" means individuals under 18 years of age.

(b) Trespass. Entry on game lands for purposes other than hunting, trapping, or fishing shall be as authorized by the landowner. The Wildlife Resources Commission has identified the following areas on game lands that have additional restrictions on entry or usage:

(1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
(2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
(3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
(4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry are able to demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
(5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land ~~shall~~ may be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public. ~~public due to topographical features or activities occurring on the area.~~
(6) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.
(7) Restricted Deer Hunting Zone. On portions of game lands posted as "Restricted Deer Hunting Zones" the use of dogs for taking deer is prohibited, except as allowed by permit as provided in G.S. 113-264(d).
(8) Day Use Only Zone. On portions of game lands posted as "Day Use Only Zones" the use by the general public shall be prohibited from sunset to sunrise.
(9) Sensitive Habitat Zone. Portions of game lands posted as "Sensitive Habitat Zones" are closed to all use by the general public during the dates specified on the sign, and entry upon such an area for any purpose is prohibited without first obtaining written approval of such entry or use from an authorized agent of the Wildlife Resources Commission by calling 919-707-0150 and requesting a permit.

The Commission shall conduct a public input meeting in the area where the game land is located before establishing the following zones: archery, restricted firearms, restricted ~~restricted~~ deer hunting, day use only, or sensitive habitat. After the input meeting, the public comments shall be presented at an official Commission meeting for final determination.

(c) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall

be established on any game land by any person, firm, corporation, county, or municipality, except as permitted by the landowner.

(d) Use of weapons. No person shall discharge:

(1) any weapon within 150 yards of any game land building or designated game land camping area, except where posted otherwise;

(2) any weapon within 150 yards of any residence located on or adjacent to game lands, except on Butner-Falls of Neuse and Jordan game lands; and

(3) any firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun shall adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Butner-Falls of Neuse, Jordan, Kerr Scott, and Vance game lands, no person shall possess loaded firearms, ammunition, bows and arrows, crossbows, or other weapons except as provided in the Code of Federal Regulations, Title 36, Chapter III, Part 327.13, which is incorporated by reference, including subsequent amendments and editions, free of charge, at:
http://www.ecfr.gov/cgi-bin/text-idx?SID=75b0c14fb2c26906cf64a267eb69b052&mc=true&node=se36.3.327_113&rgn=div8. On Buckhorn, Chatham, Harris, Hyco, Lee, Mayo, and Sutton Lake game lands; Pee Dee River Game Land north of U.S. 74; and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

(1) the firearm is a .22 caliber pistol with a barrel not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition carried as a side arm;

(2) the firearm is cased or not immediately available for use;

(3) the firearm is used by persons participating in field trials on field trial areas; or

(4) the firearm is possessed in designated camping areas for defense of persons and property.

(e) Game Lands License: Hunting and Trapping

(1) Requirement. Except as provided in Subparagraph (4) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, running dogs, or training dogs using wildlife shall have in his or her possession a game lands license in addition to the appropriate hunting or trapping license, or a license that conveys the game land use privilege.

(2) For Commission-sanctioned field trials, active participants (as defined in 15A NCAC 10B .0114) in a field trial using wildlife shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege, except non-residents may substitute hunting licenses from their state(s) of residence.

(3) For any other field trial using wildlife occurring on game lands, judges and active participants shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege.

(4) Exceptions:

(A) a person under 16 years of age may hunt on game lands on the license of his parent or legal guardian;

(B) on the game lands described in Rule .0103(e)(1) of this Section, the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(f) Field Trials and Training Dogs. Any individual or organization sponsoring a field trial on the Sandhills Field Trial area ~~or the Laurinburg Fox Trial facility,~~ shall file with the Commission an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars ($200.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of seventy-five dollars ($75.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Sandhills Field Trial area ~~or the Laurinburg Fox Trial facility~~ without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approved use. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays, and Saturdays from October 1 through

April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities, and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the mission of the agency.

(g) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302, and .0303, trapping of furbearing ~~animals~~ animals, armadillos, coyotes, and groundhogs is permitted on game lands during the applicable open trapping ~~seasons,~~ seasons established by rule. Foxes can be trapped on game lands from November 1 through the end of February in any county with an open fox trapping season that falls between November 1 and the end of February. Foxes may not be taken by trapping on game lands in counties with a closed fox trapping season or during any fox trapping season that occurs outside the dates of November 1 through the end of February. Additionally, fox trapping is allowed on game lands in Clay, Graham, Henderson, Macon, and Tyrrell counties with a daily bag limit of two and a season bag limit of 10 from the first to the fourth Saturday in January. ~~except that trapping~~ Trapping is prohibited:

(1) on the ~~field trial course~~ J Robert Gordon Field Trial Area of ~~the~~ Sandhills Game Land;
(2) in posted "safety zones" located on any game land;
(3) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
(4) on the John's River Waterfowl Refuge in Burke ~~County; and~~ County;
(5) on the DuPont State Forest Game ~~Lands.~~ Lands; and
(6) from April 1 through October 31.

~~On those areas of State owned land known collectively as the Roanoke River Wetlands, controlled trapping is allowed under a permit system.~~ At each trap, trappers may use a single bait site of grain, fruit, or other foods when trapping if the food is less than 3 cubic inches and is completely covered to prevent it from being seen from above. Feathers, including those with attached skin or entire bird wings, hair with or without skin or hide, and bones that include no attached meat, organs, or viscera are not considered other foods and are excluded from this requirement.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained, and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

(1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
(2) is a disabled sportsman as defined in Paragraph (k) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (m) of this Rule and is abiding by the rules described in Paragraph (m).

(i) Camping.

(1) No person shall camp on any game land except on an area designated by the landowner for camping.
(2) On game lands owned by the State of North Carolina, where the North Carolina Wildlife Resources Commission is the primary custodian, the maximum period of consecutive overnight camping at any designated camping area is 14 days within any 30-day period from May 1 through August 31. After 14 consecutive days of camping, all personal belongings shall be removed from the game land.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for permit hunts for disabled sportsmen offered by the Commission and use of designated blinds during those hunts, an individual shall possess a Disabled Veteran Sportsman license, a Totally Disabled Sportsman license, or a disabled sportsman hunt certification issued by the Commission. In order to qualify for the certification, the applicant shall provide medical certification of one or more of the following disabilities:

(1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;
(2) paralysis of one or more limbs;
(3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
(4) disease, injury, or defect confining the person to a wheelchair, walker, or crutches; or
(5) deafness.

On game lands where the privileges described in Paragraph (m) of this Rule apply, participants in the program may operate electric wheel chairs, all terrain vehicles, or other passenger vehicles:

(1) on ungated or open-gated roads normally closed to vehicular traffic; and
(2) on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel.

Each program participant may be accompanied by one companion provided such companion has in his possession the companion card issued by the Commission. Hunters who qualify under the Disabled Sportsman Program and their companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except

for those blinds located on the Restricted Area of Caswell Game Land.

(l) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, domesticated animals, except hunting dogs and raptors where otherwise permitted for hunting or training purposes, or feral animals, or hatchery-raised fish on game lands without prior written authorization. It is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall be given when release of such animals is determined by a Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (k) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but shall comply with the terms of their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act (42 U.S.C. 126) may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules section of the regulations digest and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted for wildlife food or cover. One companion, who is identified by a companion card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle where it can easily be seen by Commission staff outside the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (k) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(p) Shooting Ranges. On public shooting ranges managed by the Commission, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills, or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except for activities that have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede, or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post, or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range shall obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard shall leave the shooting range if directed to by law enforcement officers or to leave by Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Open days and hours of operation shall be designated on signs and at least one such sign shall be posted at the entrance to each shooting range. No person, when using any shooting range, shall do any act that is prohibited or neglect to do any act that is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

(q) Limited-access Roads. During the months of June, July, and August, roads posted as "Limited-access Roads" are open to motorized vehicles from 5:00 a.m. to 10:00 p.m. only. These roads shall be posted with the opening and closing times.

(r) No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal that has been so mutilated.

(s) Baiting. Except as provided in Paragraph (g) of this Rule, no person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization from an agent of the Commission. Written authorization may be provided for Commission authorized projects or Commission contractors to meet specific objectives. Except as authorized by

rule, no person shall take or attempt to take any wild birds or wild animals attracted to such foods.

Authority G.S. 113-129; 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 143-318.10.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic or gates, or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts, or wire to a tree on any game land designated herein. This prohibition does not apply to lag-screw steps or portable stands that are removed after use with no metal remaining in or attached to the tree.

(d) Time and Manner of Taking. Hunting is allowed on game lands only during the open season for game animals and game birds, unless hunting is allowed by permit. Individual game lands or parts thereof may be closed to hunting or limited to specific dates by this Chapter. Persons shall hunt only with weapons lawful for the open game animal or game bird seasons. On managed waterfowl impoundments, persons shall:

(1) not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates;
(2) not hunt after 1:00 p.m. on such hunting dates;
(3) not set decoys out prior to 4:00 a.m.;
(4) remove decoys by 3:00 p.m. each day; and
(5) not operate any vessel or vehicle powered by an internal combustion engine.

On designated youth waterfowl days, youths may hunt on managed waterfowl impoundments from ½ hour before sunrise to sunset. On designated veterans and military waterfowl days, veterans, as defined in 38 USC 101, and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty other than for training, with valid credentials may hunt on game lands and impoundments not designated as permit-only areas from ½ hour before sunrise to sunset. Restrictions (1), (3), and (5) in this Paragraph shall apply. On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." ~~No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal that has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.~~

(e) Definitions:

(1) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days within the federally-announced season.
(2) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days, except for game lands in this Rule that specifically allow hunting on Tuesdays, Thursday, and Fridays. Falconry may also be practiced on Sundays. These "open days" also apply to either-sex deer hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
(3) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken on the open days of Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday during the open seasons.
(4) For purposes of this Section, "Seven Days per Week Area" refers to a Game Land on which game may be taken during the open season on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, Saturdays, and Sundays. On Sundays, the following shall be prohibited:
    (A) hunting between 9:30 AM and 12:30 PM;
    (B) the use of a firearm to take deer that are run or chased by dogs;
    (C) hunting within 500 yards of a place of religious worship, as defined by G.S. 14-54.1(b), or any accessory structure thereof.
(5) For purposes of this Section, "Four Days per Week Area" refers to a Game Land on which game may be taken during the open season on Tuesdays, Thursdays, Saturdays, and Sundays. On Sundays, the following shall be prohibited:
    (A) hunting between 9:30 AM and 12:30 PM;
    (B) the use of a firearm to take deer that are run or chased by dogs;
    (C) hunting within 500 yards of a place of religious worship, as defined by G.S. 14-54.1(b), or any accessory structure thereof.

(f) Hunting with Dogs on Game Lands. Deer shall not be taken with the use of dogs on game lands in counties or parts of counties where taking deer with dogs is prohibited as described in 15A NCAC 10B .0109.

(g) The listed seasons and restrictions apply in the following game lands:

(1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan, and Stanly counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter in that portion in Montgomery county, and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davidson, Davie, Rowan, and Stanly counties.
(C) On the Lick Creek Tract, deer and bear hunting is archery only.

(2) Alligator River Game Land in Tyrrell County
(A) ~~Six~~ Seven Day per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Bear may only be taken the first Saturday, Monday, and Tuesday of ~~three hunting days during~~ the November Bear Season and the second Saturday, Monday, and Tuesday ~~first three hunting days during the second week~~ of the December Bear Season.

(3) Angola Bay Game Land in Duplin and Pender counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Target shooting is prohibited.
(D) Bear shall not be harvested on Sunday.

(4) Bachelor Bay Game Land in Bertie ~~, Martin,~~ and Washington counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(5) Bertie County Game Land in Bertie County
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Target Shooting is prohibited.

(6) Bladen Lakes State Forest Game Land in Bladen County
(A) Three Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Except for blackpowder firearms, rifles larger than .22 caliber rimfire shall not be used.
(D) On the Singletary Lake Tract, the use of dogs for hunting deer and bear is prohibited.
(E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
(F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
(G) The use of dogs for pursuing or taking foxes shall be prohibited from February 15 through August 1.

(7) Brinkleyville Game Land in Halifax County
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(C) Horseback riding is prohibited.
(D) Target Shooting is prohibited.

~~(8) Brunswick County Game Land in Brunswick County~~
~~(A) Hunting is by permit only.~~
~~(B) The use of dogs for hunting deer is prohibited.~~

~~(9)~~(8) Buckhorn Game Land in Orange County
(A) Hunting is by permit only.
(B) Horseback riding is prohibited.

~~(10)~~(9) Buckridge Game Land in Tyrrell County.
(A) Three Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Bear may only be taken the first Saturday, Monday, and Tuesday ~~three hunting days during~~ of the November Bear Season and the ~~first three hunting days of the second week~~ second Saturday, Monday, and Tuesday of the December Bear Season. ~~If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days.~~
(D) Target shooting is prohibited.

~~(11)~~(10) Buffalo Cove Game Land in Caldwell and Wilkes Counties
(A) ~~Six~~ Seven Days per Week Area
(B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving Day through the third Saturday after Thanksgiving. Deer of either sex may be taken with archery equipment on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving

Day. Deer with visible antlers may be taken with archery equipment the Monday immediately following the closing of the Deer With Visible Antlers Season, as described in this Part, through January 1. Deer of either sex may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter.

(C) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

(D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

~~(12)~~(11) Bullard and Branch Hunting Preserve Game Land ~~s~~ in Robeson County

(A) ~~Three~~ Four Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) Bear shall not be harvested on Sunday.

~~(13)~~(12) Butner - Falls of Neuse Game Land in Durham, Granville, and Wake counties

(A) Six Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(C) Waterfowl shall be taken only on:

(i) the opening and closing days of the applicable waterfowl seasons;

(ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and

(iii) Tuesdays, Thursdays, and Saturdays of the applicable waterfowl seasons.

On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.

(D) Horseback riding is prohibited.

(E) Target shooting is prohibited.

(F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.

(G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.

(H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals. On designated bicycle riding areas, the use of bicycles is allowed from May 15 through August 31, and on Sundays only from September 1 through May 14.

(I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.

(J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.

~~(14)~~(13) Buxton Woods Game Land in Dare County:

(A) Six Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.

(C) Target shooting is prohibited.

~~(15)~~(14) Cape Fear River Wetlands Game Land in Pender County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.

(D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road, and south of NC 210 to the Black River.

(E) Target shooting is prohibited.

(F) Bear shall not be harvested on Sunday.

~~(16)~~(15) Carteret County Game Land in Carteret County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(C) The use of dogs for hunting deer is prohibited.

(D) Bear hunting on the Salters Creek Tract is by permit only.

(E) Bear shall not be harvested on Sunday.

~~(17)~~(16) R. Wayne Bailey-Caswell Game Land in Caswell County

(A) Three Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer

With Visible Antlers Season through the second Wednesday thereafter.

(C) Horseback ~~riding~~ riding, including all equine species, is allowed seven days per week from May 16 – August 31, ~~only during June, July, and August,~~ and on Sundays only, September 1 – May 15. ~~during the remainder of the year except during open turkey and deer seasons.~~ Horseback riding is allowed only on roads opened to vehicular traffic and on those gated roads and trails that are posted for equestrian use. People age 16 or older horseback riding on this game land shall possess a Game Lands license.

(D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting, and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR 1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.

(E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.

(F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.

(G) Target shooting is prohibited, except at the R. Wayne Bailey-Caswell Shooting Range.

~~(18)~~(17) Chatham Game Land in Chatham County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(C) Wild turkey hunting is by permit only.

(D) Horseback ~~riding~~ riding, including all equine species, is allowed seven days per week from May 16 – August 31, ~~only during June, July, and August,~~ and on Sundays only September 1 – May 15. ~~during the remainder of the year except during open turkey and deer seasons.~~ .

(E) Target shooting is prohibited.

~~(19)~~(18) Chowan Game Land in Chowan County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.

(C) Bear shall not be harvested on Sunday.

~~(20)~~(19) Chowan Swamp Game Land in Bertie, Gates, and Hertford counties.

(A) Six Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) Bear hunting is restricted to the first Saturday, Monday, and Tuesday ~~three hunting days during~~ of the November bear season and the second Saturday, Monday, and Tuesday ~~first three hunting days during the second week~~ of the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.

(D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

(E) Horseback riding is prohibited except during May 16 through August 31 and on Sundays only September 1 through May 15 on those roads that are open to vehicular traffic and on those gated roads and trails posted for equestrian use.

(F) Target shooting is prohibited.

~~(21)~~(20) Cold Mountain Game Land in Haywood County

(A) ~~Six~~ Seven Days per Week Area

(B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

(C) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

~~(22)~~(21) Columbus County Game Land in Columbus County.

(A) ~~Three~~ Four Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) Deer hunting on the Campbell Tract shall be by permit only.

~~(23)~~(22) Croatan Game Land in Carteret, Craven, and Jones counties
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on the following days:
  - (i) the opening and closing days of the applicable waterfowl seasons;
  - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
  - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl day in October through the end of all waterfowl seasons, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
- (E) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
- (F) Bear shall not be harvested on Sunday.

~~(24)~~(23) Currituck Banks Game Land in Currituck County
- (A) ~~Six~~ Seven Days per Week Area
- (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of all waterfowl seasons.
- (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not use a firearm.
- (D) The boundary of the game land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- (H) Bear shall not be harvested on Sunday.

~~(25)~~(24) Dan River Game Land in Rockingham County
- (A) Three Days per Week Area
- (B) Deer hunting is by permit only.
- (C) Wild turkey hunting is by permit only.
- (D) Horseback riding is prohibited except on those areas posted for equestrian use. People age 16 or older horseback riding on this game land must possess a Game Lands license.
- (E) Target shooting is prohibited.

~~(26)~~(25) Dare Game Land in Dare and Hyde counties
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
- (C) No hunting is allowed on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.

~~(27)~~(26) Dover Bay Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.

~~(28)~~(27) DuPont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by permit only.
- (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.

~~(29)~~(28) Elk Knob Game Land in Watauga County
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.

~~(30)~~(29) Embro Game Land in Halifax and Warren counties
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
- (C) Horseback riding is prohibited.
- (D) Target Shooting is prohibited.

~~(31)~~(30) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
  - (i) the opening and closing days of the applicable waterfowl seasons;

(ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
(iii) Tuesdays and Saturdays of the applicable waterfowl seasons.

(D) Beginning on the first open waterfowl season day in October through the end of all waterfowl seasons, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek, and Hobucken.

(E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.

(F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

(G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.

(H) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting is prohibited on the Beaufort County portion north of NC-33.

(I) Bear shall not be harvested on Sunday.

~~(32)~~(31) Green River Game Land in Henderson, and Polk counties

(A) Six Days per Week Area

(B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

(C) Horseback riding is prohibited.

~~(33)~~(32) Green Swamp Game Land in Brunswick County

(A) Six Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) On that portion north of Big Macedonia Road, east of Makatoka Road, south of Little Macedonia Road, and west of Green Swamp Road, hunting and trapping is by permit only.

(D) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting is prohibited on that portion of the game land that is north of Big Macedonia Road, east of Makatoka Road, south of Little Macedonia Road, and west of Green Swamp Road.

~~(34)~~(33) Gull Rock Game Land in Hyde County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
(i) the opening and closing days of the applicable waterfowl seasons; and
(ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
(iii) Tuesdays and Saturdays of the applicable waterfowl season.

(D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.

(E) Bear may only be taken the first Saturday, Monday, and Tuesday of ~~three hunting days during~~ the November Bear Season and the second Saturday, Monday, and Tuesday ~~first three hunting days during the second week~~ of the December Bear Season, except for that portion designated as bear sanctuary.

~~(35)~~(34) Harris Game Land in Chatham, Harnett, and Wake counties

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(C) Waterfowl shall be taken only on the following days:
(i) Tuesdays, Fridays, and Saturdays of the applicable waterfowl seasons;
(ii) Thanksgiving, Christmas, and New Year's Days; and
(iii) the opening and closing days of the applicable waterfowl seasons.

(D) The use or construction of permanent hunting blinds shall be prohibited.

(E) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.

(F) Target shooting is prohibited.

(G) Horseback riding is prohibited.

~~(36)~~(35) Headwaters State Forest Game Land in Transylvania County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season

~~(37)~~(36) Hill Farm Game Land in Stokes County- hunting and trapping is by permit only.

~~(38)~~(37) Holly Shelter Game Land in Pender County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on the following days:
  - (i) the opening and closing days of the applicable waterfowl seasons;
  - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
  - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
- (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited:
  - (i) all open days on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road; and
  - (ii) on Tuesdays, Thursdays, and Fridays, with the exception of Thanksgiving, Christmas, and New Year's days, and except for the area north of Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, where the use of dogs for deer and bear hunting is by permit only.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (I) Target shooting is prohibited, except on the Holly Shelter Shooting Range.
- (J) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.

~~(39)~~(38) Hyco Game land in Person County
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
- (C) Target shooting is prohibited.

~~(40)~~(39) J. Morgan Futch Game Land in Tyrrell County - hunting and trapping is by permit only.

~~(41)~~(40) Johns River Game Land in Burke County
- (A) Hunting is by permit only.
- (B) During permitted deer hunts, deer of either sex may be taken by permit holders.
- (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31, except by lawful waterfowl hunting permit holders and only on those days written on the permits.
- (D) The use or construction of permanent hunting blinds is prohibited.
- (E) Camping and the presence of campers and tents in designated Hunter Camping Areas is limited to August 31 through the last day of February and March 31 through May 14.

~~(42)~~(41) Jordan Game Land in Chatham, Durham, Orange, and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on:
  - (i) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
  - (ii) Thanksgiving, Christmas, and New Year's Days; and
  - (iii) the opening and closing days of the applicable waterfowl seasons.

(D) Horseback ~~riding~~ riding, including all equine species, is ~~prohibited except~~ allowed only on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed seven days per week from May 16 – August 31, ~~only during June, July, and August,~~ and on Sundays only from September 1 – May 15. ~~the remainder of the year except during open turkey and deer seasons.~~ People age 16 or older must obtain ~~who ride horseback on trails occurring entirely within the game land boundaries shall possess~~ a Game Lands ~~license.~~ license prior to engaging in horseback riding on any area other than the American Tobacco Trail.

(E) Target shooting is prohibited.

(F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.

(G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.

~~(43)~~(42) Juniper Creek Game Land in Brunswick and Columbus counties

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.

(C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

(D) Bear shall not be harvested on Sunday.

~~(44)~~(43) Kerr Scott Game Land in Wilkes County

(A) Six Days per Week Area

(B) Use of centerfire rifles is prohibited.

(C) Use of blackpowder firearms, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.

(D) Tree stands shall not be left overnight; and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.

(E) Deer of either sex may be taken on all open days of the applicable Deer With Visible Antlers season.

(F) Hunting on posted waterfowl impoundments is by permit only.

(G) The use of firearms for hunting wild turkey is prohibited.

~~(45)~~(44) Lantern Acres Game Land in Tyrrell and Washington counties

(A) Six Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) Wild turkey hunting is by permit only.

(D) The use of dogs for hunting deer on the Godley Tract is prohibited.

(E) Waterfowl hunting on posted waterfowl impoundments is by permit only.

~~(46)~~(45) Lee Game Land in Lee County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(C) Target shooting is prohibited.

~~(47)~~(46) Light Ground Pocosin Game Land in Pamlico County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.

(C) Bear shall not be harvested on Sunday.

~~(48)~~(47) Linwood Game Land in Davidson County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.

~~(49)~~(48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(C) Horseback riding is prohibited.

(D) The use of dogs for hunting deer is prohibited.

(F) Target Shooting is prohibited.

~~(50)~~(49) Mayo Game Land in Person County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(C) Waterfowl shall be taken only on:

(i) Tuesdays, Thursdays, and Saturdays applicable waterfowl seasons;

(ii) Christmas and New Year's Days; and
(iii) the opening and closing days of the applicable waterfowl seasons.
(D) Target shooting is prohibited.

~~(51)~~(50) Mitchell River Game Land in Surry County
(A) ~~Three~~ Four Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second ~~Wednesday~~ Tuesday thereafter.
(C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.

~~(52)~~(51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.

~~(53)~~(52) Needmore Game Land in Macon and Swain counties.
(A) ~~Six~~ Seven Days per Week Area
(B) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
(C) On posted dove fields, dove hunting on the opening day of dove season is by permit only.

~~(54)~~(53) Neuse River Game Land in Craven County
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Camping is allowed any time within 100 yards of the Neuse River on that portion of the game land that lies west of NC-43.

~~(55)~~(54) New Lake Game Land in Hyde and Tyrrell counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Bear shall not be harvested on Sunday.

~~(56)~~(55) Nicholson Creek Game Land in Hoke County
(A) Three Days per Week Area
(B) Deer of either sex may be taken with archery equipment on open hunting days from the Saturday on or nearest September 10 through the fourth Friday before Thanksgiving Day.
(C) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving Day through the Wednesday of the second week thereafter.
(D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day.
(E) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season.
(F) The use of dogs for hunting deer is prohibited.
(G) Wild turkey hunting is by permit only.
(H) On Lake Upchurch, the following activities are prohibited:
(i) Operating any vessel or vehicle powered by an internal combustion engine; and
(ii) Swimming.
(I) Target shooting is prohibited.

~~(57)~~(56) North River Game Land in Camden and Currituck counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
(D) Hunting on the posted waterfowl impoundment is by permit only.
(E) Bear shall not be harvested on Sunday.

~~(58)~~(57) Northwest River Marsh Game Land in Currituck County
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
(D) Bear shall not be harvested on Sunday.

~~(59)~~(58) Pee Dee River Game Land in Anson, Montgomery, Richmond, and Stanly counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.

(D) Target shooting is prohibited.

(E) Horseback riding is allowed seven days per week from May 16 through August 31, and on Sundays only September 1 through May 15 only on roads opened to vehicular traffic and gated roads and trails posted for equestrian use. ~~only during the following times:~~

~~(i) during June, July, and August; and~~

~~(ii) on Sundays during the other months or parts of months when deer and turkey seasons are closed.~~

(F) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting shall be prohibited on that portion south of US-74.

~~(60)~~(59) Perkins Game Land in Davie County

(A) ~~Three~~ Four Days per Week Area

(B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers ~~Season.~~ Season through the second Tuesday thereafter.

(C) Horseback riding is prohibited from November 1 through January 1.

(D) Target Shooting is prohibited.

~~(61)~~(60) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga, and Yancey counties

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

(C) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).

(D) The use of bicycles shall be restricted to designated trails on the Linville River Tract (Burke County). Persons engaged in the act of hunting on the Linville River Tract during any open day of an applicable season for game birds or game animals shall be exempt from this restriction.

~~(62)~~(61) Pond Mountain Game Land in Ashe County

(A) ~~Six~~ Seven Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.

(C) Horseback riding is prohibited except on designated trails from May 16 through August 31 and Sundays from September 1 through October 31. All horseback riding is prohibited from November 1 through May 15.

~~(63)~~(62) Pungo River Game Land in Hyde County

(A) Six Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

~~(64)~~(63) Rendezvous Mountain State Forest Game Land in Wilkes County

(A) Three Days per Week Area

(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Wednesday thereafter.

(C) Bear hunting is prohibited.

~~(65)~~(64) Rhodes Pond Game Land in Cumberland and Harnett counties

(A) Hunting is by permit only.

(B) Swimming is prohibited on the area.

~~(66)~~(65) Roanoke River Wetlands in Bertie, Halifax, Martin, and Northampton counties

(A) Hunting and trapping is by Permit only.

(B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.

(C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.

(D) Target Shooting is prohibited.

~~(67)~~(66) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.

~~(68)~~(67) Robeson Game Land in Robeson County

(A) ~~Three~~ Four Days per Week Area

(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(C) Bear shall not be harvested on Sunday.

~~(69)~~(68) Rockfish Creek Game Land in Hoke County

(A) Three Days per Week Area

(B) Deer of either sex may be taken with archery equipment on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving Day.

(C) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving Day through the Wednesday of the second week thereafter.

(D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day.
(E) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season.
(F) The use of dogs for hunting deer is prohibited.
(G) Wild turkey hunting is by permit only.
(H) Taking fox squirrels is prohibited.
(I) Target shooting is prohibited.

~~(70)~~(69) Rocky Run Game Land in Onslow County - Hunting is by permit only.

~~(71)~~(70) Sampson Game Land in Sampson County
(A) ~~Three~~ Four Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) Target shooting is prohibited.
(D) Bear shall not be harvested on Sunday.

~~(72)~~(71) Sandhills Game Land in Hoke, Moore, Richmond, and Scotland counties
(A) Three Days per Week Area
(B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
(i) deer of either-sex may be taken with archery equipment on all the open days of the archery season through the fourth Friday before Thanksgiving Day; with blackpowder firearms and archery equipment all the open days of the blackpowder firearms season through the third Wednesday before Thanksgiving Day; and only deer with visible antlers may be taken with all legal weapons from the second Saturday before Thanksgiving Day through the Saturday following Thanksgiving Day;
(ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
(iii) squirrel (gray and fox) may be taken all the open days from the second Saturday before Thanksgiving Day through the Saturday following Thanksgiving Day;
(iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving Day through the Saturday following Thanksgiving Day;
(v) waterfowl may be taken on open days during any waterfowl season;
(vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt; and
(vii) raccoon and opossum may be taken on open days from sunrise Monday on or nearest October 15 through the last day of February.
(C) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day except on the J. Robert Gordon Field Trial Grounds.
(D) The archery season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving Day and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving Day through January 1. Deer of either sex may be taken with archery equipment on all open hunting days during the archery season, by permit during the Deer with Visible antlers season, and the blackpowder firearms season as stated in this Subparagraph. Only deer with visible antlers may be taken from the third Monday after Thanksgiving Day through January 1.
(E) Blackpowder firearms season is all the open days from the fourth Saturday preceding Thanksgiving Day through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving Day through January 1. Deer of either sex may be taken with blackpowder firearms on all open hunting days during the blackpowder firearms season and by permit during the Deer With Visible Antlers season. Only deer with visible antlers may be taken from the third Monday after Thanksgiving Day through January 1.
(F) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.

(G) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
(H) Wild turkey hunting is by permit only.
(I) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless participating in authorized field trials. Horseback riding is allowed on the remainder of the Sandhills Game Land seven days per week on roads that are open to vehicular traffic and gated roads and trails posted for equestrian use.
(J) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
(K) Target shooting is prohibited, except at the John F. Lentz Hunter Education Complex.

~~(73)~~(72) Sandy Creek Game Land in Nash and Franklin ~~Counties~~ counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(C) Horseback riding is prohibited.
(D) The use of dogs for hunting deer is prohibited.
(E) Target Shooting is prohibited.

~~(74)~~(73) Sandy Mush Game Land in Buncombe and Madison counties.
(A) Three Days per Week Area
(B) Deer of either sex may be taken the first open Saturday of the applicable Deer with Visible Antlers season.
(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
(D) Dogs shall only be trained on Mondays, Wednesdays, and Saturdays and only as allowed in 15A NCAC 10D .0102(f).
(E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
(F) Target shooting is prohibited.

~~(75)~~(74) Second Creek Game Land in Rowan County-hunting is by permit only.

~~(76)~~(75) Shocco Creek Game Land in Franklin, Halifax, Nash, and Warren counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(C) Horseback riding is prohibited.
(D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
(E) Target Shooting is prohibited.

~~(77)~~(76) South Mountains Game Land in Burke, Cleveland, McDowell, and Rutherford counties
(A) ~~Six~~ Seven Days per Week Area
(B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving Day through the third Saturday after Thanksgiving. Deer of either sex may be taken with archery equipment on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving Day. Deer with visible antlers may be taken with archery equipment the Monday immediately following the closing of the Deer With Visible Antlers Season, as described in this Part, through January 1. Deer of either sex may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter.
(C) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
(D) Horseback riding is prohibited except on designated trails during the following dates:
(i) January 2 through March 31;
(ii) May 16 through August 31;
(iii) Sundays only - April 1 through May 15; and
(iv) Sundays only - September 1 through January 1.

~~(78)~~(77) Stones Creek Game Land in Onslow County
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.
(D) Swimming in all lakes is prohibited.

(E) Waterfowl ~~on posted waterfowl impoundments~~ may be taken only on the following days:
(i) the opening and closing days of the applicable waterfowl seasons;
(ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
(iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
(F) Target shooting is prohibited.
(G) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.

~~(79)~~(78) Suggs Mill Pond Game Land in Bladen and Cumberland counties
(A) Hunting and trapping is by permit only.
(B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
(C) Entry is prohibited on scheduled hunt or trapping days except for:
(i) hunters or trappers holding special hunt or trapping permits; and
(ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
(D) During the period of November 1 through January 31, except on Sundays, the use of vessels on Suggs Mill Pond Lake and Little Singletary Lake is limited to waterfowl hunting only by waterfowl hunters possessing a valid and current Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d).
(E) During the period of November 1 through March 15, the use of vessels on managed waterfowl impoundments is limited to waterfowl hunting only by waterfowl hunters possessing a valid and current Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d).

~~(80)~~(79) Sutton Lake Game Land in New Hanover and Brunswick counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
(C) Target shooting is prohibited.
(D) Bear shall not be harvested on Sunday.

~~(81)~~(80) Tar River Game Land in Edgecombe County
(A) Hunting is by permit only
(B) Target Shooting is prohibited

~~(82)~~(81) Texas Plantation Game Land in Tyrrell County - hunting and trapping is by permit only.

~~(83)~~(82) Three Top Mountain Game Land in Ashe County
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
(C) Horseback riding is prohibited.

~~(84)~~(83) Thurmond Chatham Game Land in Alleghany and Wilkes counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15. People age 16 or older horseback riding on this game land shall possess a Game Lands license.
(D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.

~~(85)~~(84) Tillery ~~game~~ Game Land in Halifax County
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(C) Horseback riding is prohibited.
(D) The use of dogs for hunting deer is prohibited.
(E) Wild turkey hunting is by permit only.
(F) Target Shooting is prohibited.

~~(86)~~(85) Toxaway Game Land in Jackson and Transylvania counties
(A) ~~Six~~ Seven Days per Week Area
(B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

~~(87)~~(86) Uwharrie Game Land in Davidson, Montgomery, and Randolph counties
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
- (C) On the posted waterfowl impoundment, waterfowl may be taken only on the following days:
  - (i) the opening and closing days of the applicable waterfowl seasons;
  - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
  - (iii) Mondays, Wednesdays and Saturdays of the applicable waterfowl seasons.
- (D) Target shooting is prohibited, except at the Flintlock Valley Shooting Range.

~~(88)~~(87) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles, and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.

~~(89)~~(88) Van Swamp Game Land in Beaufort and Washington counties
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first Saturday, Monday, and Tuesday of ~~three hunting days during~~ the November Bear Season and the second Saturday, Monday, and Tuesday ~~first three hunting days during the second week~~ of the December Bear Season.

~~(90)~~(89) Voice of America Game Land in Beaufort County
- (A) Hunting and trapping is by permit only.
- (B) Target Shooting is prohibited.

~~(91)~~(90) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
  - (i) the opening and closing days of the applicable waterfowl seasons;
  - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
  - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October through the end of all waterfowl seasons, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
  - (i) access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d);
  - (ii) hunting is by permit only; and
  - (iii) the use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- (G) Target Shooting is prohibited.

~~(92)~~(91) Whitehall Plantation Game Land in Bladen and Pender counties
- (A) Hunting and trapping is by permit only.
- (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (C) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting is prohibited on the Long Ridge Tract.

~~(93)~~(92) William H. Silver Game Land in Haywood County
- (A) ~~Six~~ Seven Days per Week Area
- (B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding, including all equine species, is prohibited.

(h) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications shall be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter

making a kill shall validate the kill and report the kill to a wildlife cooperator agent or by phone.

(i) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

(1) Bertie, Halifax and Martin counties—Roanoke River Wetlands;
(2) Bertie County—Roanoke River National Wildlife Refuge;
(3) Bladen County—Suggs Mill Pond Game Lands;
(4) Burke County—John's River Waterfowl Refuge;
(5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting);
(6) Dare County—Roanoke ~~Sound~~ Marshes Game Lands; and
(7) Henderson and Transylvania counties—DuPont State Forest Game Lands.

(j) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission may be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

(k) Feral swine may be taken by licensed hunters during the open season for any game animal or game bird using any legal manner of take allowed during those seasons. Dogs may not be used to hunt feral swine except on game lands that allow the use of dogs for hunting deer or bear, and during the applicable deer or bear season.

(l) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where prohibited in Paragraph (h) of this Rule.

(m) Veterans and Military Waterfowl Days. On the day declared by the Commission to be Veterans and Military Waterfowl Days, veterans, as defined in 38 USC 101, and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty other than for training, with valid credentials may hunt on game lands and impoundments not designated as permit-only areas.

(n) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken shall be identified on each permit. If the hunt has a limited weapon choice, the allowed weapons shall be stated on each permit.

(o) As used in this Rule, horseback riding includes all equine species.

(p) When waterfowl hunting is authorized in this Rule on Christmas and New Years' Day and those days fall on Sundays, the open waterfowl hunting day shall be the following day.

Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305.

SUBCHAPTER 10J - WILDLIFE CONSERVATION AREA REGULATIONS

15A NCAC 10J .0103 HUNTING ON WILDLIFE CONSERVATION AREAS

(a) Safety Requirements. No person while hunting on any area designated and posted as a wildlife conservation area shall be under the influence of alcohol or any narcotic drug.

(b) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any area designated and posted as a wildlife conservation area. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(c) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on areas designated and posted as wildlife conservation areas is permitted during the open season for the game or furbearing species being hunted. Waterfowl hunters shall not enter the areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each date. No person shall operate any vessel or vehicle powered by an internal combustion engine on the waters of any area designated and posted as a wildlife conservation area. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any area designated and posted as a wildlife conservation area, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent and no person shall take or attempt to take any game birds or game animals attracted to such foods. No person shall use an electronic calling device for the purpose of attracting wild birds or wild animals. No live wild animals or wild birds shall be removed from any designated wildlife conservation area except with the written permission of the landowner.

(d) Hunting Dates:

(1) Any game may be taken during the open seasons ~~on the following wildlife conservation areas~~ and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. ~~Additional restrictions apply as indicated in parentheses following specific designations:~~
(2) Except as otherwise indicated, the following designated wildlife conservation areas or indicated portions thereof are closed to all hunting:

(A) Nona Pitt Hinson Cohen Wildlife Conservation Area - Richmond County.
(B) John D. Lewis Wildlife Conservation Area - Wayne County.

Authority G.S. 113-134; 113-136; 113-264; 113-291.2; 113-291.5; 113-305.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0305.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.ncwildlife.org/Proposed-Regulations*

Proposed Effective Date: *April 1, 2021*

Public Hearing:
Date: *December 17, 2020*
Time: *3:00 p.m.*
Location: *Join online using this link: https://ncwildlife.zoom.us/j/91896263266?pwd=SEd5NktkbEhFbkRCdzVwc1R4bTlDZz09 or join by phone toll free (888-788-0099 or 877-853-5247) using Webinar ID: 918 9626 3266*

Reason for Proposed Action: *The Town of Ocean Isle Beach submitted an application and resolution requesting rulemaking for a no-wake zone in the waters of the Intracoastal Waterway (ICW) shore to shore from a point 100 yards east of the NC Hwy 904 Odell Williamson Bridge to a point 100 yards west of the bridge. The no-wake zone is necessary to mitigate boater safety hazards in the narrow channel with heavy vessel traffic on both sides of the bridge and obstructions caused by the bridge fender system, as well as a boating access area that is adjacent to the bridge. The WRC obtained concurrence from the US Army Corps of Engineers Wilmington District on July 2, 2020 to place a no-wake zone within the waters of the ICW.*

Comments may be submitted to: *Rule-making Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.
☒ **State funds affected**
☒ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required**

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0305 BRUNSWICK COUNTY

(a) Regulated Areas. This Rule shall apply to the waters and portions of waters described as follows:

(1) Lockwoods Folly River in the Town of Varnamtown, from a point at 33.94966 N, 78.22587 W 500 yards northwest of the boat ramp located at the end of SR 1123 otherwise known as Fisherman Road, to a point at 33.94498 N, 78.22206 W, 180 yards southeast of the boat ramp, and including the portion of the river otherwise known as Mill Creek where it meets Lockwoods Folly River directly across from the boat ramp, to a point 100 feet northeast at 33.94687 N, 78.22235 W;
(2) Calabash River in the Town of Calabash, from a point in the water at the end of Marina Drive at 33.88638 N, 78.56254 W to a point 650 yards southwest at the southern end of the deep-sea fishing docks at 33.88344 N, 78.56751 W;
(3) the Small Boat Harbor, shore to shore beginning at its intersection with the Intracoastal Waterway at a point at 33.91685 N, 78.02865 W;
(4) Shallotte River east of SR 1233, otherwise known as Village Point Road SW south of the Town of Shallotte, shore to shore from its intersection with the Intracoastal Waterway at a point at 33.91477 N, 78.37103 W to point 500 feet north at 33.91613 N, 78.37126 W;
(5) Montgomery Slough otherwise known as Davis Creek, within 100 yards of the hotel and marina at the northern end of 57th Place West in the Town of Oak Island;
(6) the waters in the natural and concrete canals located on the south side of the Intracoastal Waterway, east of N.C. Highway 904 in the Town of Ocean Isle Beach;

(7) Town Creek east of SR 1609, otherwise known as Clearview Lane in Town Creek Township, shore to shore from a point at 34.16788 N, 78.07139 W, north and east around a bend in the creek to a point at 34.16910 N, 78.07030 W;

(8) Montgomery Slough, otherwise known as Davis Creek, shore to shore from its entrance at the Intracoastal Waterway west of SW Yacht Drive at a point at 33.92145 N, 78.19408 W, to the canal end at NE 40th Street in the Town of Oak Island; ~~and~~

(9) Intracoastal Waterway in the Town of Sunset Beach, shore to shore from a point 150 yards east of the Sunset Boulevard South bridge at 33.88173 N, 78.50995 W, to a point 50 yards west of the bridge at 33.88111 N, ~~78.51194 W.~~ 78.51194 W; and

(10) Intracoastal Waterway in the Town of Ocean Isle Beach, shore to shore from a point 100 yards east of the NC Hwy 904 Odell Williamson Bridge at 33.89578 N. 78.43870 W. to a point 100 yards west of the bridge at 33.89567 N, 78.44092 W.

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

(c) Placement of Markers. The following agencies shall be the designated agencies for the placement of markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:

(1) the Board of Aldermen of Varnamtown for areas indicated in Subparagraph (a)(1) of this Rule;

(2) the Board of Commissioners of Brunswick County for areas indicated in Subparagraphs (a)(2) through (8) of this Rule; ~~and~~

(3) the North Carolina Wildlife Resources Commission for the area indicated in Subparagraph (a)(9) of this ~~Rule.~~ Rule; and

(4) the Town of Ocean Isle Beach for the area indicated in Subparagraph (a)(10) of this Rule.

Authority G.S. 75A-3; 75A-15.

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***Notice** is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Commission for Public Health intends to readopt with substantive changes the rules cited as 15A NCAC 18A .1724, .3101, .3105, .3107, and .3802.*

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

Proposed Effective Date: *April 1, 2021*

Public Hearing:
Date: *January 11, 2021*
Time: *10:00 a.m.*

Location: *This public hearing will be held by teleconference at (919) 715-0769 (no access code).*

Reason for Proposed Action: *Pursuant to G.S. 150B-21.3A, periodic review and expiration of existing rules, the Commission for Public Health is proposing to readopt 15A NCAC 18A .1724, .3101, .3105, .3107, .3801 with substantive changes to update these rules to reflect current requirements and processes and clarify language.*

Comments may be submitted to: *Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email cphcomment@lists.ncmail.net*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☒ **Approved by OSBM**
☒ **No fiscal note required**

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1700 - PROTECTION OF WATER SUPPLIES

15A NCAC 18A .1724 DISINFECTION OF WATER ~~SUPPLIES~~ SYSTEMS

(a) A water ~~supply~~ system ~~serving an establishment~~ regulated under this Section ~~Subchapter~~ shall be disinfected upon completion of construction, maintenance, repairs, pump installation, or a report of a confirmed positive coliform ~~sample as follows:~~ sample. Wells shall be disinfected as required in 15A NCAC 02C ~~.0111.~~ .0111, which is hereby incorporated by reference, including any subsequent amendments and editions.

~~(1) chlorine in sufficient quantities to produce a chlorine residual of at least 100 milligrams per liter (mg/l) shall be placed in the supply;~~

(2) a chlorine solution shall be placed in the supply in such a manner as to contact any water-contact parts and materials above the normal water level;

(3) a chlorine solution shall stand in the supply for a period of at least 24 hours; and,

(4) the supply shall flow to waste until no disinfectant can be measured with a test kit that measures chlorine levels.

(b) A spring enclosure shall be disinfected upon completion of construction, maintenance, repairs, pump installation, or a report of a confirmed positive coliform sample as follows:

(1) the interior walls surfaces of the spring enclosure shall be washed or swabbed with a chlorine solution of at least 100 milligrams per liter (mg/1) or greater of chlorine residual; residual approved by the Department;

(2) the disinfectant shall be poured into the spring, the service pipe shall be plugged, and water shall be retained in the spring storage for at least 24 hours, or, or disinfectant shall be fed into the spring continuously for at least 24 hours; and

(3) the spring shall flow to waste until no disinfectant can be measured with a test kit that measures chlorine levels.

Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257; 130A-315.

SECTION .3100 - CHILDHOOD LEAD POISONING PREVENTION PROGRAM

15A NCAC 18A .3101 DEFINITIONS

As used in this article, unless the context requires otherwise: The following definitions shall apply throughout this Section:

(1) "Inspection" is a surface by surface investigation to determine the presence of lead-based paint and may include dust and soil sampling and a report of the results.

(2) "Risk assessment" is an on-site investigation of a residential housing unit to discover any lead-based paint hazards. A risk assessment includes:

(a) an investigation of the age, history, management, and maintenance of the residential housing unit;

(b) the number of children less than six years old and women of child-bearing potential who are residents;

(c) a visual assessment;

(d) limited environmental sampling; and

(e) preparation of a report identifying acceptable abatement, remediation, and interim control strategies based on specific conditions.

(3)(1) "Child-occupied facility" means as defined at G.S. 130A-131.7(2).

(2) "Department" means the North Carolina Department of Health and Human Services.

(3) "High contact areas for children" means areas including sandboxes, gardens, play areas, pet sleeping areas, and areas within three feet of a residential housing unit or child-occupied facility.

(4) "Residential housing unit" means as defined at G.S. 130A-131.7(16).

(5) "Safe work practices" are methods used to avoid creating lead-based paint hazards during on-site work that disturbs paint that may contain lead lead. Such methods include: as set forth in the United States Environmental Protection Agency publication "Steps to Lead Safe Renovation, Repair, and Painting," which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: https://www.epa.gov/sites/production/files/2013-11/documents/steps_0.pdf.

(a) taking precautions to prevent the spread of lead-contaminated dust by limiting access to the work area to workers only until final cleanup is completed and by having workers remove protective clothing such as gloves and shoes before leaving the work area;

(b) covering the work area including doorways and sealing floors, closets, and cabinets with heavy duty polyethylene plastic secured with duct tape or the equivalent;

(c) For exterior surfaces, securing heavy duty polyethylene plastic on the ground from the foundation extending 10 feet beyond the perimeter of the work area;

(d) shutting off the heating, ventilation, and cooling system and covering heating, ventilation, and cooling registers with heavy duty polyethylene plastic secured with duct tape or the equivalent;

(e) protecting workers by providing necessary protective equipment, training, and cleanup equipment and by not allowing eating, drinking, chewing gum or tobacco, or smoking in the work area;

(f) protecting occupants which may include temporary relocation as necessary;

(g) protecting occupants' belongings by covering with heavy duty polyethylene plastic secured with duct tape or the equivalent or by removing them from the work area;

(h) misting interior painted surfaces before disturbing and hand scraping all loose paint, wallpaper, and plaster;

(i) wet sweeping and collecting and containing visible debris and plastic sheeting in a secure container;

(j) performing specialized cleaning upon completion of work to remove residual dust and debris;

(k) removing all materials, tools, and contained debris from the work area and the residential housing unit upon completion of maintenance activities; and

(l) avoiding unsafe practices, including prohibited methods listed in G.S. 130A-131.9C(g).

(4)(6) "Specialized cleaning" is the use of cleaning protocols that have been shown to be effective in removing lead-contaminated dust as set forth in specified by the U.S. United States Department of Housing and Urban Development publication in the "Guidelines Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," Housing which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: https://www.hud.gov/sites/documents/SECOND_EDITION_2012.PDF. and any updates and revisions.

(5)(7) "Visual inspection" means is an on-site assessment investigation by the Department or its agent authorized pursuant to 15A NCAC 01O .0101(4) a certified lead inspector or a certified lead risk assessor to determine compliance with the approved remediation plan as set forth in G.S. 130A-131.9C. the completion of abatement, remediation, and maintenance standard activities. A visual inspection shall include paint, dust, or soil sampling, and a notification of the results.

Authority G.S. 130A-131.5; 130A-131.7; 130A-131.8; 130A-131.9A.

15A NCAC 18A .3105 LEAD POISONING HAZARD AND CLEARANCE STANDARD FOR SOIL

(a) Bare soil at a residential housing unit or a child-occupied facility is a lead poisoning hazard when:

(1) it contains greater than 400 parts per million lead in high contact areas for children children; including sandboxes, gardens, play areas, pet sleeping areas, and areas within three feet of a residential housing unit or a child-occupied facility; or

(2) except as specified in Subparagraph (a)(1) of this Rule, it contains 1200 2000 parts per million lead or greater in other locations at a residential housing unit or a child-occupied facility. facility where contact by children is less likely; or

(3) it is determined by the Department to be hazardous to children less than six years old pursuant to 15 U.S.C. 2681 et seq., 42 U.S.C. 4851 et seq. and the regulations promulgated under these Sections.

(b) Unless other remediation is otherwise determined by the Department to be necessary to protect the public health based on the basis of credible site-specific evidence including soil lead bioavailability, soil lead speciation, or soil particle size, land use and condition, or epidemiologic or other relevant scientific data, all remediation plans pursuant to G.S. 130A-131.9C shall require that that: (1) bare soil lead concentrations greater than 400 parts per million and less than 2000 parts per million at a residential housing unit or a child-occupied facility in high contact areas for children including sandboxes, gardens, play areas, pet sleeping areas, and areas within three feet of the unit or facility or bare soil areas containing 1200 parts per million lead or greater in other locations at a residential housing unit or a child-occupied facility be:

(A)(1) permanently covered with four to six inches of gravel, gravel or mulch, or sod with a vegetative mulch that shall be maintained and replaced as often as necessary to ensure there is four to six inches of cover;

(2) covered with sod or other vegetative cover that shall be maintained and replaced as often as necessary to ensure there is sod or other vegetative cover;

(B)(3) physically restricted by a permanent barrier;

(C)(4) removed; or

(D)(5) paved over with concrete or asphalt; asphalt.

(2) bare soil lead concentrations of 2000 parts per million or greater at a residential housing unit or a child-occupied facility be:

(A) physically restricted by a permanent barrier;

(B) removed; or

(C) paved over with concrete or asphalt; and

(3) ground coverings such as gravel, mulch, sod, or other vegetative covers must be established and maintained.

Authority G.S. 130A-131.5; 130A-131.7; 130A 131.8; 130A-131.9A-C.

15A NCAC 18A .3107 MAINTENANCE STANDARD

The following shall apply to property owners and managing agents of pre-1978 residential housing units implementing the maintenance standard set forth in Rule .3106(b) of this Section:

(a)(1) Property owners and managing agents shall use safe work practices to repair and repaint deteriorated paint on interior surfaces of a

residential housing unit and to correct the cause of ~~deterioration~~ deterioration, including structural conditions causing water infiltration, interior moisture, and poor paint adhesion. For pre-1950 single family and duplex residential housing units, property owners and managing agents shall repair and repaint both interior and exterior ~~surfaces~~ surfaces, including all walls, ceilings, windows, porches, decks, garages, railings, and steps, and shall correct the causes of deterioration. In addition, for pre-1950 single family and duplex residential housing units, property owners and managing agents shall establish and maintain a sod or other vegetative cover in areas of bare soil within three feet of the residential housing unit.

~~(b)~~(2) Property owners and managing agents shall conduct specialized cleaning on interior horizontal surfaces to remove dust that may contain lead.

~~(c)~~(3) Property owners and managing agents shall correct conditions in which painted surfaces are rubbing, binding, or being damaged to protect the integrity of the paint and to prevent the generation of lead dust.

~~(d)~~(4) Subject to the occupant's approval, property owners and managing agents shall steam shampoo carpets or use other specialized cleaning methods to remove dust that may contain lead.

~~(e)~~(5) Property owners and managing agents shall provide ~~smooth and cleanable~~ interior horizontal surfaces that are smooth, non-absorbent, and easy to clean by recoating deteriorated hardwood floors with a durable coating, replacing or recovering worn-out linoleum floors, making interior window sills smooth and cleanable, capping window troughs with vinyl or aluminum coil stock, and providing drainage from storm window frames.

~~(f)~~(6) Property owners and managing agents shall provide occupants with the Environmental Protection Agency-developed ~~pamphlet~~ pamphlets "Protect Your Family from Lead in Your ~~Home",~~ Home," which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: https://www.epa.gov/lead/protect-your-family-lead-your-home-english and "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools," which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: https://www.epa.gov/lead/renovate-right-important-lead-hazard-information-families-child-care-providers-and-schools-0, ~~any~~ summaries of any reports prepared pursuant to G.S. 130A-131.9A ~~by a certified lead inspector or a certified lead risk assessor~~ on lead-based paint ~~hazards,~~ hazards at the property, ~~an educational pamphlet developed by the Department describing the maintenance standard and the effects of compliance on the owner,~~ and ~~information related to~~ copies of previous certificates of compliance issued.

Authority G.S. 130A-131.5; 130A-131.7; 130A-131.9D; 130A-131.9E; 130A-131.9F; 130A-131.9G.

SECTION .3800 - PRIVATE DRINKING WATER WELL SAMPLING

15A NCAC 18A .3802 SAMPLE COLLECTION

(a) Within 30 days after it issues a certificate of completion for a ~~newly constructed~~ private drinking water ~~well,~~ well that is newly constructed on or after the Effective Date of this Rule, the local health department shall ~~obtain~~ collect water samples and submit them to a certified laboratory for analyses or ensure that water samples are collected ~~the water obtained~~ from the well ~~has been sampled~~ by a certified laboratory and tested by a certified ~~laboratory,~~ laboratory. All testing shall be done in accordance with the rules of this Section.

(b) Samples collected from private drinking water wells pursuant to the rules of this Section shall be collected by an employee of a local health ~~department,~~ department or a certified laboratory. The sample collector shall use aseptic sampling techniques for collection of coliform bacteria and sampling techniques and containers for chemical constituents following methods described in 40 ~~Code of Federal Regulations~~ CFR 141.23 ~~Inorganic Chemical Sampling and Analytical Requirements~~ and 40 ~~Code of Federal Regulations~~ CFR 143.4, ~~143.4 Monitoring,~~ which are hereby incorporated by reference including any subsequent ~~amendments,~~ amendments ~~additions or editions.~~ and editions, and available free of charge at: https://www.ecfr.gov/. ~~A copy may be obtained from the National Archives and Records Administration through their website at http://www.gpoaccess.gov/cfr/index.html.~~

(c) Water samples shall be collected from the sample tap at the well or the closest accessible collection point to the water source at ~~with~~ a threadless sample tap, ~~capable of being disinfected,~~ provided the sampling point shall precede any water treatment devices.

(d) It is the responsibility of the well owner to provide access and a source of power for the purpose of collecting the required water sample.

(e) For all ~~new~~ newly constructed private drinking water wells, samples for total coliform and fecal coliform bacteria shall be collected after the disinfectant agent has been flushed from the well and water supply system. The water shall ~~be determined to~~ be free of disinfectant before collection of samples for bacteria. Required water samples shall not be collected from wells that are not constructed and located in accordance with the rules of 15A NCAC 02C .0100 and ~~.0300.~~ .0300, which are hereby incorporated by reference, including any subsequent amendments and editions.

(f) Samples shall be transported to the laboratory following the procedures for sample preservation and within holding times required in 40 ~~Code of Federal Regulations 141.21(f) Analytical Methodology,~~ CFR 141.23 ~~Inorganic Chemical Sampling and Analytical Requirements,~~ and 143.4, and 141.21(f), ~~143.4 Monitoring,~~ which ~~are~~ is hereby incorporated by reference including any subsequent ~~amendments,~~ amendments ~~additions or editions.~~ and editions, and available free of charge at: https://www.ecfr.gov./ ~~Copies may be obtained from the National Archives and Records Administration through their website at http://www.gpoaccess.gov/cfr/index.html.~~

~~(g) Additional or retest samples may be collected if:~~

~~(1) during the permitting, construction and sampling process, information indicates the potential for other contaminants to be present in the groundwater source; or~~

~~(2) if necessary to confirm initial testing results.~~

Authority G.S. 87-97.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Chiropractic Examiners intends to adopt the rule cited as 21 NCAC 10 .0216 and amend the rules cited as 21 NCAC 10 .0103 and .0203.*

Link to agency website pursuant to G.S. 150B-19.1(c): *www.ncchiroboard.com*

Proposed Effective Date: *July 1, 2021*

Public Hearing:
Date: *December 16, 2020*
Time: *10:00 a.m.*
Location: *Join Zoom Meeting*
https://us02web.zoom.us./j/85334923014?pwd=ODM3WElyTIMwL0h3MFJWNnc4RmNtZz09
Meeting ID: 853 3492 3014
Password: 950511

Reason for Proposed Action:
***21 NCAC 10 .0103** - Clarify the Board election process.*
***21 NCAC 10 .0203** - Update the examination process.*
***21 NCAC 10 .0216** - Provide a process by which a member of the regulated public can seek relief from a rule promulgated by the Board.*

Comments may be submitted to: *Dr. Joe Siragusa, NC Board of Chiropractic Examiners, 9121 Anson Way, Suite 200, Raleigh, NC 27615*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SECTION .0100 - ORGANIZATION OF BOARD

21 NCAC 10 .0103 STRUCTURE OF BOARD

(a) Election of Candidates for Appointment to the Board. As necessary to meet the requirements of G.S. 90-140, the Board shall hold ~~the~~ an election ~~of~~ for chiropractic candidates for ~~appointment to the Board at its March and September meeting at a time, date, and place to be selected by the Board and~~ appointment. Notice of the election shall be published on the Board's website at https://ncchiroboard.com at least ~~90~~ 30 days in advance of the election.

(b) The election shall be administered by the Board of Chiropractic Examiners. Any member of the Board who is nominated to succeed himself or herself shall be disqualified from conducting the vote in which he or she is a nominee.

(c) ~~Nomination shall be made from the floor and shall require two seconds. Any prospective nominee may withdraw his or her name from consideration by an oral statement to that effect.~~ Each candidate shall provide two letters of endorsement from chiropractors licensed by the Board. The letters shall be submitted to the Board no less than 21 days before the election.

(d) If less than three candidates are elected, the Board shall provide additional names to the Governor, President Pro Tempore of the Senate, and Speaker of the House in order to comply with G.S. 90-140.

Authority G.S. 90-139; 90-140; 90-142.

SECTION .0200 - PRACTICE OF CHIROPRACTIC

21 NCAC 10 .0203 NORTH CAROLINA EXAMINATION

(a) Eligibility. Only those applicants who meet the requirements of this Rule and G.S. 90-143 or, in the case of reciprocity

applicants, G.S. 90-143.1, and who have submitted a written application and paid the non-refundable application fee pursuant to Rule 21 NCAC 10 .0202 shall be allowed to take the North Carolina examination.

(b) Dates of Examination. The North Carolina examination shall be given at least ~~once each year, and additional examination dates may~~ four times during the calendar year and will be scheduled based on the number of applications received. The Board shall announce an examination date not less than ~~90~~ 30 days in advance, and the ~~date, time, and location~~ date of upcoming examinations shall be published on the Board's website, www.ncchiroboard.com. The Board shall also individually notify ~~an~~ each eligible applicant of the ~~date, time, and location~~ date of the next examination ~~as soon as possible~~ after the applicant's non-refundable application fee has been paid and the written application completed.

(c) National Boards. Except as provided in Paragraph (e) of this Rule, in order to take the North Carolina examination, an applicant who has never been licensed in this State or who is not a reciprocity applicant shall first achieve a score of 375 or higher on each of the following examinations given by the National Board of Chiropractic Examiners: ~~Part I, Part II, Part III (WCCE), the elective examination (termed "Physiotherapy" by the National Board), and Part IV.~~ Parts I-IV.

(d) Report of Scores. The applicant shall arrange for his or her test results from any National Board examination to be reported to the North Carolina Board. Failure to comply with this ~~provision~~ Paragraph shall be a basis for delaying the issuance of a license.

(e) Waiver of National Boards. Notwithstanding the requirements of Paragraph (c) of this Rule, an applicant who submits National Board examinations in conformity with the following schedule shall not be disqualified from licensure in North ~~Carolina;~~ Carolina:

(1) An applicant who graduated from chiropractic college before July 1, 1966 shall not be required to submit a score from any National Board examination.

(2) An applicant who graduated from chiropractic college between July 1, 1966 and June 30, 1986 shall be required to submit scores of 375 or higher on National Board Part I, Part II, and the elective examination termed ~~"Physiotherapy"~~ " Physiotherapy," but shall not be required to submit a score on Part III (WCCE) or Part IV.

(3) An applicant who graduated from chiropractic college between July 1, 1986 and June 30, 1997 shall be required to submit scores of 375 or higher on National Board Part I, Part II, the elective examination termed "Physiotherapy," and Part ~~III (WCCE)~~ III, but shall not be required to submit a score on Part IV.

In order to receive a license, an applicant who qualifies for a waiver of any National Board score shall take and pass the SPEC examination and the North Carolina Examination ~~and satisfy all other requirements for licensure.~~ pursuant to G.S. 90-143.3 and Rule .0202 of this Section.

(f) SPEC Examination. In order to take the North Carolina examination, a reciprocity applicant, a waiver applicant pursuant to Paragraph (e) of this Rule, or an applicant previously licensed in this State whose license has been cancelled pursuant to G.S. 90-155 for more than 180 days shall first take and pass the Special Purpose Examination for Chiropractic ("SPEC"). The SPEC exam is administered by the National Board of Chiropractic Examiners. The passing score shall be 375 or higher.

(g) Nature of Examination. The North Carolina examination shall be a ~~written~~ test of an applicant's knowledge of North Carolina chiropractic jurisprudence. ~~No part of the examination shall be open book, and no reference material of any kind shall be allowed in the examination area.~~ The passing grade shall be 75 percent.

~~(h) Review of Examination. An applicant who has failed the North Carolina examination may request a review of his or her examination if the request is made in writing and received by Board not later than 20 days after issuance of the examination results. Unless the applicant requests to review his or her answers in person, the review shall be limited to a re-tabulation of the applicant's score to make certain no clerical errors were made in grading. If the applicant requests to review his or her answers in person, the applicant shall be permitted to do so at the Board office in the presence of a representative of the Board and for a period of not more than 30 minutes. The applicant shall not be permitted to discuss the examination with any member of the Board, grader, or test administrator.~~

Authority G.S. 90-142; 90-143; 90-143.1; 90-143.3; 90-144; 90-145; 90-146. ~~93B-8.~~

21 NCAC 10 .0216 WAIVER

The Board may waive any rule in this Chapter that is not statutorily required if a licensee, or applicant for license or certification, submits a written request. Factors the Board shall use in determining whether to grant the waiver are:

(1) degree of disruption to the Board;
(2) cost to the Board;
(3) degree of benefit to the public;
(4) whether the requesting party had control over the circumstances that required the requested waiver;
(5) notice to and opposition by the public;
(6) need for the waiver; and
(7) previous requests for waivers submitted from the requesting party.

Authority G.S. 90-142; 150B-19(6).

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CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Licensing Board for General Contractors intends to adopt the rule cited as 21 NCAC 12A .0607 and amend the rules cited as 21 NCAC 12A .0201, .0503; 12B .0204, and .0301.*

Link to agency website pursuant to G.S. 150B-19.1(c): *www.nclbgc.org*

Proposed Effective Date: *July 1, 2021*

Public Hearing:
Date: *December 16, 2020*
Time: *9:00 a.m.*
Location: *https://global.gotomeeting.com/join/575275069*
You can also dial in using your phone. United States: +1 (872) 240-3212 Access Code: 575-275-069

Reason for Proposed Action:
21 NCAC 12A .0201 *- Define statutory terms.*
21 NCAC 12A .0503 *- Clarify the number of CE hours required upon return to valid status.*
21 NCAC 12A .0607 *- Provide a process by which a member of the regulated public can seek relief from a rule promulgated by the Board.*
21 NCAC 12B .0204 *- Require CE course providers to notify Board when credit is denied.*
21 NCAC 12B .0301 *- Clarify the nature of elective course presentations and require disclaimers.*

Comments may be submitted to: *C. Frank Wiesner, NC Licensing Board for General Contractors, 5400 Creedmoor Road, Raleigh, NC 27612; phone (919) 571-4183; fax (919) 571-4703; email Frank.Wiesner@nclbgc.org*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.
☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SUBCHAPTER 12A – GENERAL PROVISIONS

SECTION .0200 - LICENSING REQUIREMENTS

21 NCAC 12A .0201 DEFINITIONS

The following definitions shall apply to the Rules in this Chapter:

(1) Completion: As used in G.S. 87-1(b), occurs upon issuance of a certificate of occupancy by the permitting authority with jurisdiction over the project.

(2) Cost of the undertaking: As used in G.S. 87-1(a), means the final price of a project, excluding the cost of land, as evidenced by the ~~contract,~~ contract and any subsequent amendments, or in the absence of a contract, permit records, invoices, and cancelled checks.

(3) Misconduct: As used in G.S. 87-11, "misconduct" includes allowing an unlicensed person or entity to use a license or examination credential on an undertaking where a license is required. Misconduct also includes allowing a licensed person or entity to use a license or examination credential on an undertaking for which the user does not hold proper classification or limitation. Misconduct also includes dishonest or fraudulent conduct by a qualifier related to the attendance of a continuing education class described in G.S. 87-10.2.

~~(3)~~(4) Personally: As used in G.S. 87-14(a)(1), "personally" means the physical presence of the owner of the property and excludes the use of a power of attorney.

~~(4)~~(5) Solely for occupancy: As used in G.S. 87-1(b), "solely for occupancy" is restricted to the family of a person, the officers and shareholders of a firm or corporation, and guests and social invitees where no consideration is received. For purposes of G.S. 87-1(b)(2), "family" is defined as a spouse or other family member living in the same household.

~~(5)~~(6) Value: As used in G.S. 87-10(a1), means the same as "cost of the undertaking."

Authority G.S. 87-1; 87-10; 87-10.2; 87-14.

SECTION .0500 - LICENSE

21 NCAC 12A .0503 RENEWAL OF LICENSE

(a) Applications for renewal of license shall contain the following:

(1) the Social Security Number of the applicant and qualifier(s) and tax identification number for corporations, LLCs, or partnerships;

(2) the applicant's contact information;

(3) the name of business under which licensee will be operating, if any;

(4) information regarding any changes made in the status of the licensee's business, since the initial application or last renewal was submitted to the Board, whichever is later;

(5) confirmation of license limitation and classifications;

(6) information about all crimes of which the applicant has been convicted since the initial application or last renewal was submitted to the Board, whichever is later;

(7) documentation regarding all crimes referenced above;
(8) information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration, or certification agency since the initial application or last renewal was submitted to the Board, whichever is later;
(9) an attestation that the applicant maintains continued financial responsibility pursuant to Rule .0204 of this Chapter;
(10) if applicable, proof that the surety bond is maintained in compliance with Rule .0204 of this Chapter;
(11) if necessary, proof of completion of continuing education requirements; and
(12) the application fee and any accrued late fees as set forth in Rule .0304 of this Chapter.

(b) A licensee shall submit an audited financial statement as evidence of continued financial responsibility in accordance with Rule .0204 of this Chapter if the Board finds that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities based upon the information provided in the renewal application.

(c) A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an agreed-upon procedures report on a form provided by the Board or an audited financial statement with a classified balance sheet as part of any application for renewal.

(d) A corporate license shall not be renewed unless it is in good standing with the N.C. Department of the Secretary of State.

(e) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines, for paying renewal fees, and for meeting any other requirement or conditions related to the maintenance or renewal of the license issued by the Board. The applicant shall furnish to the Board a copy of the military orders or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue.

(f) If a licensee's status is invalid for reasons other than G.S. 87-10.2(h) and the licensee requests to renew its license, the licensee must submit proof of completion of six elective hours and two mandatory hours for each year not previously renewed and for the current license year.

Authority G.S. 87-1; 87-4; 87-10; 87-10.2; 87-12; 87-13; 93B-15.

SECTION .0600 - RULE-MAKING PROCEDURES

21 NCAC 12A .0607 WAIVER

The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative or if a licensee, qualifier, continuing education course provider, or continuing education course instructor submits a written request. Factors the Board shall use in determining whether to grant the waiver are:

(1) degree of disruption to the Board;
(2) cost to the Board;
(3) degree of benefit to the public;
(4) whether the requesting party had control over the circumstances that required the requested waiver;
(5) notice to and opposition by the public;
(6) need for the waiver; and
(7) previous requests for waivers submitted from the requesting party.

Authority G.S. 87-10.2(j); 150B-19.

SUBCHAPTER 12B – CONTINUING EDUCATION

SECTION .0200 – PROVIDERS

21 NCAC 12B .0204 ATTENDANCE; ROSTER REPORTS AND CERTIFICATES

(a) Qualifiers shall provide proof of identity upon arrival at a class session.

(b) At the conclusion of any continuing education course, the provider shall submit to the Board a CE Roster Report verifying each qualifier's completion of the course. The CE Roster Report shall be submitted to the Board and shall contain the following:

(1) provider's name;
(2) provider's ID number assigned by the Board;
(3) course instructor's name and ID number;
(4) course's name and ID number;
(5) course completion date; ~~and~~
(6) name and qualifier ID number of each student who completed the ~~course.~~ course; and
(7) name, qualifier ID number, and reason given for each student who requested but was denied credit by the provider.

(c) Providers shall submit the CE Roster Report electronically to the Board within seven calendar days following the end of any course, but in no case later than December 7.

(d) Providers shall submit the per student fee required by 21 NCAC 12A .0304 with the CE Roster Report.

(e) Providers shall provide a course completion certificate to each student who completes an approved continuing education course. Providers shall provide a printed or electronic certificate to a student within 10 days following the course, but in no case later than December 7, for any course completed prior to that date.

(f) A student shall not be issued a completion certificate and shall not be reported to the Board as having completed a course unless the student satisfies the attendance requirements set forth in this Subchapter.

Authority G.S. 87-10.2(d) and (e).

SECTION .0300 – COURSES

21 NCAC 12B .0301 COURSE REQUIREMENTS

(a) All continuing education courses shall:

(1) cover subject matter related to the practice of general contracting and offer knowledge or

skills that will enable general contractors to better serve consumers and the public interest;

(2) offer two or four continuing education credit hours;

(3) include materials for students that provide the information to be presented in the course; and

(4) be taught only by an instructor who possesses education or experience in a field related to the course.

(b) Mandatory courses shall cover subject matter as established by the Board, including statutes and rules applicable to general contracting, changes to the N.C. Building Codes, case studies of Board investigations, and relevant court decisions.

(c) Providers shall submit all elective courses to the Board for approval pursuant to Rule .0302 of this Subchapter.

(d) Elective courses shall be directly related to the practice of general contracting as set forth in Article 1 of Chapter 87 in the North Carolina General Statutes. Instructional time and materials shall be utilized for instructional purposes only.

(e) All elective courses shall include the following disclaimer within the first three pages or slides of the course materials: THE NORTH CAROLINA LICENSING BOARD FOR GENERAL CONTRACTORS HAS APPROVED THIS COURSE ONLY AS TO ITS RELEVANCE TO THE PRACTICE OF GENERAL CONTRACTING IN NORTH CAROLINA. THE COURSE PROVIDER AND INSTRUCTOR ARE RESPONSIBLE FOR THE ACCURACY OF THE CONTENT AND COMPLIANCE WITH ALL STATE AND FEDERAL LAWS DURING THE ADMINISTRATION OF THE COURSE.

~~(d)~~(f) Providers shall obtain approval from the Board before making any changes in the content of a prior approved elective course. Requests for approval of changes shall be made in writing.

Authority G.S. 87-10.2(b).

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CHAPTER 34 – BOARD OF FUNERAL SERVICE

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends to amend the rule cited as 21 NCAC 34B .0309.*

Link to agency website pursuant to G.S. 150B-19.1(c): *www.ncbfs.org*

Proposed Effective Date: *April 1, 2021*

Public Hearing:
Date: *January 13, 2021*
Time: *10:00 a.m.*
Location: *1033 Wade Avenue, Suite 108, Raleigh, NC 27605*

Reason for Proposed Action: *Update the process by which licensees renew their licenses.*

Comments may be submitted to: *Stephen E. Davis, North Carolina Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0300 - LICENSING

21 NCAC 34B .0309 LICENSE RENEWAL FORM

(a) To renew a funeral director, funeral service, or embalmer's license, the licensee annually shall ~~submit a form provided by the Board.~~ complete and submit to the Board a renewal application. ~~The licensee shall designate whether the licensee is on active or inactive status pursuant to G.S. 90-210.25(a). A licensee designating active status shall furnish the licensee's current place of employment, work address and telephone number, any new criminal convictions since the licensee was licensed, continuing education hours, the signature of the licensee, and any information the Board deems necessary as required by law. A licensee designating inactive status also shall furnish the licensee's name, address and telephone number, any new criminal convictions since the licensee was licensed, the signature of the licensee, and any other information the Board deems necessary as required by law. The renewal form shall inform all licensees that licenses will be forfeited if not renewed by February 1.~~ Failure to submit a completed renewal application by February 1 shall cause the licensee's license to be forfeited.

(b) The renewal form shall contain the following:

(1) The licensee's full name and license number;

(2) The licensee's physical address of personal residence, mailing address, and phone number(s);

(3) The licensee's current place of employment, work address, and telephone number;

(4) Whether the licensee's place of employment changed since the previous renewal application was submitted;
(5) Whether the licensee is on active or inactive status pursuant to G.S. 90-210.25(2);
(6) Whether the licensee is requesting to be on active or inactive status pursuant to G.S. 90-210.25(2) for the next year;
(7) Whether the licensee has been convicted of a felony or misdemeanor crime (excluding traffic infractions) since the previous renewal application was submitted and, if so, a statement providing the jurisdiction, charge, and disposition of each conviction;
(8) Whether the licensee has had an occupational or business license denied, suspended, or revoked by any local, state, or federal agency since the previous renewal application was submitted and, if so, a statement providing the reason for the denial and the date, location, and circumstances of any violation that led to action against your license, the terms of any discipline imposed by the licensing authority, and whether said terms have been satisfied;
(9) Whether the licensee has been subject to any investigation for employee misclassification since the previous renewal application was submitted;
(10) Whether the licensee has received credit for attending at least five continuing education credits of courses approved by the Board since the previous renewal application was submitted and, if so, copies of all continuing education forms showing courses attending that have not been already submitted to the Board;
(11) If the licensee is claiming an exemption from continuing education requirements, the basis for which the licensee is claiming the exemption;
(12) The licensee's signature to certify that he or she has prepared the application and has read the answers; that the information provided in the application is true; and that he or she has read the NC Industrial Commission Public Notice Statement; and
(13) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid.

Authority G.S. 90-210.23(a); 90-210.25(a)(5); 90-210.28.

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CHAPTER 36 – BOARD OF NURSING

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0817 and amend the rule cited as 21 NCAC 36 .0815.*

Link to agency website pursuant to G.S. 150B-19.1(c): *www.ncbon.com*

Proposed Effective Date: *April 1, 2021*

Public Hearing:
Date: *January 22, 2021*
Time: *1:00 p.m.*
Location: *Virtual Public Hearing: Teleconference +1.919.670.0362 Conference ID 93838627*

Reason for Proposed Action:
***21 NCAC 36 .0815** Reporting Criteria: In accordance with G.S. 90-113.74 (b2) in order to receive reports from the Department of Health and Human Services regarding prescribing behaviors, an agency must adopt/amend rules setting the criteria by which the Department may report the information to the agency. This amendment outlines additional criterion for future reports.*
***21 NCAC 36 .0817** COVID-19 Drug Preservation Rule: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. The search for potential treatments for COVID-19 has caused shortages and threatens to cause further shortages in certain drugs. On March 24, 2020, the North Carolina State Health Director requested that the Medical Board, the Board of Nursing and the Board of Pharmacy adopt the COVID-19 Drug Preservation Rule in order to alleviate shortages and ensure that these drugs are available to patients who need them. This rule was adopted as an emergency and then a temporary rule. The State Health Director has requested that the rule be adopted as a permanent rule because the state of emergency and corresponding potential drug shortages now may potentially extend beyond the expiration of the temporary rule. The Board intends to repeal the rule upon the conclusion of the state of emergency. The State Health Director has determined that the State is unlikely to suffer future shortages of two of the drugs previously listed in the temporary and emergency rule, and that those drugs may be removed from the list, while the others should remain. Note: The underlined and struck through text are changes from the temporary rule currently in effect, to the proposed permanent rule.*

Comments may be submitted to: *Angela Ellis, PO Box 2129 Raleigh NC 27602-2129, Raleigh, NC 27602-2129; email public.comment@ncbon.com*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SECTION .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

21 NCAC 36 .0815 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

(1) falls within the top two percent of those prescribing 100 morphine milligram equivalents ("MME") per patient per day; or

(2) falls within the top two percent of those prescribing 100 MMEs per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid poisoning where the prescribers authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

(c) In addition, the Department may report to the Board information regarding prescribers who meet three or more of the following criteria, if there are a minimum of five patients for each criterion:

(1) at least 25 percent of the prescriber's patients receiving opioids reside 100 miles or greater from the prescriber's practice location;

(2) the prescriber had more than 25 percent of patients receiving the same opioids and benzodiazepine combination;

(3) the prescriber had 75 percent of patients receiving opioids self-pay for the prescriptions;

(4) the prescriber had 90 percent or more of patients in a three-month period that received an opioid prescription that overlapped with another opioid prescription for at least one week;

(5) more than 50 percent of the prescriber's patients received opioid doses of 100 MME or greater per day excluding office-based treatment medications; and

(6) the prescriber had at least 25 percent of patients who used three or more pharmacies within a three-month period to obtain opioids regardless of the prescriber.

~~(c)~~(d) The Department may submit these reports to the Board upon request and may include the information described in G.S. 90-113.73(b).

~~(d)~~(e) The reports and communications between the Department and the Board shall remain confidential pursuant to G.S. 90-113.74.

Authority G.S. 90-113.74.

21 NCAC 36 .0817 COVID-19 DRUG PRESERVATION RULE

(a) The following drugs are "Restricted Drugs" as that term is used in this Rule:

(1) Hydroxychloroquine;
(2) Chloroquine;
(3) Lopinavir-ritonavir;
(4) Ribavirin; and
(5) ~~Oseltamivir;~~ Darunavir.
~~(6) Darunavir; and~~
~~(7) Azithromycin.~~

(b) A nurse practitioner shall prescribe a Restricted Drug only if that prescription bears a written diagnosis from the prescriber consistent with the evidence of its use.

(c) When a patient has been diagnosed with COVID-19, any prescription of a Restricted Drug for the treatment of COVID-19 shall:

(1) Indicate on the prescription that the patient has been diagnosed with COVID-19;
(2) Be limited to no more than a 14-day supply; and
(3) Not be refilled, unless a new prescription is issued in conformance with this Rule, including not being refilled through an emergency prescription refill.

(d) A nurse practitioner shall not prescribe a Restricted Drug for the prevention of, or in anticipation of, the contraction of COVID-19 by someone who has not yet been diagnosed.

(e) A prescription for a Restricted Drug may be transmitted orally only if all information required by this Rule is provided to the pharmacy by the nurse practitioner, or the nurse practitioner's agent, and that information is recorded in writing in accordance with 21 NCAC 46 .1819(e).

(f) This Rule does not affect orders for administration to inpatients of health care facilities.

(g) This Rule does not apply to prescriptions for a Restricted Drug for a patient previously established on that particular Restricted Drug on or before March 10, 2020.

Authority G.S. 90-171.23; 90-5.1; 90-8.2.

* *

CHAPTER 40 – BOARD OF OPTICIANS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the State Board of Opticians intends to adopt the rule cited as 21 NCAC 40 .0113.*

Link to agency website pursuant to G.S. 150B-19.1(c): *www.ncopticiansboard.org*

Proposed Effective Date: *April 1, 2021*

Public Hearing:
Date: *January 6, 2021*
Time: *9:00 a.m.*
Location: *3809 Computer Dr., Suite 102, Raleigh, NC 27609*

Reason for Proposed Action: *Provide a process by which a member of the regulated public can seek relief from a rule promulgated by the board.*

Comments may be submitted to: *Sue Hodgin, Board of Opticians, PO Box 6758, Raleigh, NC 27699-1613; phone (919) 420-1390; fax (919) 420-1361; email shodgin@ncopticiansboard.org*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SECTION .0100 - LOCATION

21 NCAC 40 .0113 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, business or training establishment, trainee, or continuing education course provider submits a written request. Factors the Board shall use in determining whether to grant the waiver are:

(1) degree of disruption to the Board;
(2) cost to the Board;
(3) degree of benefit to the public;
(4) whether the requesting party had control over the circumstances that required the requested waiver;
(5) notice to and opposition by the public;
(6) need for the waiver; and
(7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during an exercise of emergency authority by a federal, state, or local governmental authority impacting North Carolina citizens based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

Authority G.S. 90-249; 150B-19(6).

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rule cited as 26 NCAC 03 .0502.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.oah.nc.gov/*

Proposed Effective Date: *April 1, 2021*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Send public hearing request via email to Bill Culpepper, NC OAH General Counsel at bill.culpepper@oah.nc.gov*

Reason for Proposed Action: *The NC OAH electronic filing rules are patterned on the electronic filing rules of the North Carolina Business Court. At the time NC OAH adopted its electronic filing rules, the Business Court had Business Court Rule (BCR) 3.9(d), which provided that electronic service was treated the same as service by mail for purposes of Rule 6(e) of the Rules of Civil Procedure. To maintain consistency with the Business Court Rules, NC OAH adopted 26 NCAC 03 .0502(h), which reads: "Electronic service shall be treated the same as service by mail for the purpose of adding three days to the prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1."*
On October 13, 2020, the Supreme Court of North Carolina issued an Order repealing BCR 3.9(d), thereby eliminating the provision that electronic service through the Business Court's

electronic filing system is treated the same as service by mail for purposes of Rule 6(e) of the North Carolina Rules of Civil Procedure. In order for the NC OAH electronic filing rules to maintain consistency with the rules of the Business Court it is necessary to amend 26 NCAC 03 .0502 by deleting Paragraph (h).

Comments may be submitted to: *Bill Culpepper, General Counsel, Office of Administrative Hearings, 1711 New Hope Church Rd., Raleigh, NC 27609; phone (984) 236-1931; fax (984) 236-1871; email bill.culpepper@oah.nc.gov*

Comment period ends: *February 1, 2021*

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

CHAPTER 03 - HEARINGS DIVISION

SECTION .0500 – ELECTRONIC FILING

26 NCAC 03 .0502 GENERAL

(a) The Office of Administrative Hearings shall permit documents filed and served in a contested case to be filed and served electronically by means of the Electronic Filing Service Provider. All attorneys, mediators, and other parties using e-OAH shall register to use the system through a link on the OAH website at www.ncoah.com. All e-OAH users shall keep current their electronic mail address in e-OAH. When all attorneys and unrepresented parties to a contested case are registered in e-OAH, all documents filed and served in that contested case shall be filed and served electronically by means of the Electronic Filing Service Provider.

(b) In contested cases filed in e-OAH, registration as an e-OAH user constitutes consent to electronic service and receipt of contested case documents, including a notice of hearing given by OAH, by means of the Electronic Filing Service Provider.

(c) An e-OAH user shall be responsible for the readability of any document filed or served electronically by that user. Within five business days of receipt of an unreadable document filed or served electronically, the receiving party shall notify the sending party of the unreadability of the document.

(d) Pleadings and other documents filed or served electronically shall contain the electronic signature of the attorney, mediator, or party who prepared the document and the preparer's name, mailing address, electronic mail address, and telephone number. Documents prepared by an attorney shall have the attorney's North Carolina State Bar number. An attorney registered as an e-OAH user in a non-Medicaid contested case shall electronically file a notice of appearance in that contested case. An attorney's electronic signature to a petition for a contested case filed electronically shall be that attorney's notice of appearance in that contested case.

(e) Documents filed in e-OAH are filed when received by the chief hearings clerk of the Office of Administrative Hearings. Upon completion of filing, the clerk shall send the e-OAH user a confirmation receipt that includes the date and time of filing which shall be proof of filing.

(f) Documents filed electronically after 5 pm shall be deemed filed at 8 am the following business day.

(g) Documents filed in a contested case by an e-OAH user shall be filed electronically by means of the Electronic Filing Service Provider, shall be served electronically by means of the Electronic Filing Service Provider on all other attorneys or other parties registered in e-OAH in that contested case, and shall include a certificate of service.

~~(h) Electronic service shall be treated the same as service by mail for the purpose of adding three days to the prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.~~

~~(i)~~(h) A subpoena issued in a contested case by the chief hearings clerk of the Office of Administrative Hearings shall be signed electronically by the clerk.

~~(j)~~(i) In contested cases filed electronically, the applicable filing fee shall be:

(1) forwarded by first class mail or overnight express mail contemporaneously with the electronic filing;
(2) paid personally to the chief hearings clerk of the Office of Administrative Hearings within five business days of the filing; or
(3) paid by electronic funds transfer.

~~(k)~~(j) If e-OAH experiences technical failure that prevents the Office of Administrative Hearings from receiving filings in e-OAH in accordance with the Rules in this Section, either continuously or intermittently over the course of any period of time that, after 12:00 noon on such day, amounts to more than one hour, filings due that day that were not filed due to technical failure shall become due the next business day. Such delayed filings shall be deemed timely filed if accompanied by a certification attesting to the e-OAH user's failed attempts to file electronically at least two times after 12:00 noon separated by more than one hour on each day that e-OAH experiences technical failure. If a document must be filed to meet a statutory deadline on a date that e-OAH experiences technical failure, the e-OAH user shall file that document with the Office of Administrative

Hearings pursuant to Rule .0101(b) or Rule .0102(a)(2)(A) of this Chapter and shall serve that document pursuant to Rule .0102(a)(3) of this Chapter.

Authority G.S. 7A-750; 150B-23; 150B-23.2; 150B-23.3.

Note from the Codifier: *The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication.*
This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

TITLE 11 - DEPARTMENT OF INSURANCE

Rule-making Agency: *Industrial Commission*

Rule Citation: *11 NCAC 23E .0302*

Effective Date: *November 6, 2020*

Findings Reviewed and Approved by the Codifier: *October 29, 2020*

Reason for Action: *To protect the public health or safety during the COVID-19 pandemic and during any future pandemics, and to ensure that cases and filings under the jurisdiction of the Industrial Commission can be handled consistent with emergency Orders and directives of the Chief Justice of the North Carolina Supreme Court, the Industrial Commission has deemed it necessary to adopt an emergency rule that allows the Commission, in the interests of justice or to protect the public health or safety, to waive or vary the requirements of any of its rules in order to bring its rules in conformity with an emergency Order or directive of the Chief Justice that is in effect. While the Commission's rules currently include a waiver rule in most, if not all, of the Subchapters of its rules, none of the waiver rules allow the Commission to waive a rule on its own initiative unless the employee is unrepresented by counsel and all of the waiver rules appear to contemplate a waiver being granted only on a case-by-case basis. Additionally, to protect the public health or safety during the COVID-19 pandemic and during any future pandemics, and to specifically reduce in-person contacts that may contribute to the spread of disease related to sworn statements that may be required by the Commission's rules or by any other rules that apply to cases within the Commission's jurisdiction, the Industrial Commission has deemed it necessary to adopt an emergency rule as follows: during any period that an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court authorizes the taking of oaths and verifications outside the presence of a notary public, the Commission may accept any pleading, motion, petition, supporting affidavit, or other document with an affirmation or representation not attested to before a notary public so long as the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the same language as that allowed by the emergency Order or directive of the Chief Justice of the North Carolina Supreme Court. This emergency rule allows the Commission to accept affirmations or representations consistent with the Chief Justice's emergency Orders or directives, thus protecting the Commission's regulated parties, including many individuals who fall into high-risk categories for complications of COVID-19.*

CHAPTER 23 - INDUSTRIAL COMMISSION

SUBCHAPTER 23E – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION

SECTION .0300 – RULES OF THE COMMISSION

11 NCAC 23E .0302 EMERGENCY ORDERS AND DIRECTIVES OF THE CHIEF JUSTICE OF THE NORTH CAROLINA SUPREME COURT

(a) This Rule applies to all matters within the authority and jurisdiction of the Commission and to all Subchapters of the Commission's rules.

(b) In the interests of justice or to protect the public health or safety, the Commission may waive or vary the requirements or provisions of any of its rules in order to bring these requirements or provisions in conformity with an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court that is in effect. Factors the Commission shall use in determining whether to waive or vary the requirements or provisions of any of its rules in order to bring these requirements or provisions in conformity with any emergency Order or directive of the Chief Justice of the North Carolina Supreme Court that is in effect are:

(1) the necessity of waiving or varying the rule requirements or provisions; and

(2) the impact of waiving or varying the rule requirements or provisions on the regulated parties and on the Commission.

If the Commission waives or varies the requirements or provisions of a rule to bring the rule in conformity with any emergency Order or directive of the Chief Justice of the North Carolina Supreme Court, the Commission shall post a notice of the waiver or variance of the rule on its website unless the waiver or variance is case-specific and not generally applicable to the regulated public.

(c) During any period that an emergency Order or directive of the Chief Justice of the North Carolina Supreme Court authorizes the taking of oaths and verifications outside the presence of a notary public, the Commission may accept any pleading, motion, petition, supporting affidavit, or other document with an affirmation or representation not attested to before a notary public so long as the subscriber affirms the truth of the matter to be verified by an affirmation or representation in substantially the same language as that allowed by the emergency Order or directive of the Chief Justice of the North Carolina Supreme Court.

History Note: Authority G.S. 97-80; 130A-425(d); 143-166.4; 143-296; 143-300;
Emergency Adoption Eff. November 6, 2020.

*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 October 15, 2020 Meeting.

		REGISTER CITATION TO THE NOTICE OF TEXT
CRIME VICTIMS COMPENSATION COMMISSION		
Meetings of the Commission	14B NCAC 09 .0303*	34:14 NCR
Contested Cases	14B NCAC 09 .0304*	34:14 NCR
ALCOHOLIC BEVERAGE CONTROL COMMISSION		
Definitions	14B NCAC 15C .1301*	34:19 NCR
Tastings Held for Consumers	14B NCAC 15C .1303*	34:19 NCR
Special Event Compliance Procedure	14B NCAC 15C .1304*	34:19 NCR
Special Event Sale of Branded Merchandise, Point-of-Sale ...	14B NCAC 15C .1305	34:19 NCR
ABC Store Spirituous Liquor Tastings	14B NCAC 15C .1307*	34:19 NCR
ENVIRONMENTAL MANAGEMENT COMMISSION		
Total Suspended Particulates	15A NCAC 02D .0403	34:16 NCR
Compliance with Emission Control Standards	15A NCAC 02D .0501*	34:16 NCR
Purpose	15A NCAC 02D .0502*	34:16 NCR
Particulates from Fuel Burning Indirect Heat Exchangers	15A NCAC 02D .0503*	34:16 NCR
Particulates from Wood Burning Indirect Heat Exchangers	15A NCAC 02D .0504*	34:14 NCR
Particulates from Hot Mix Asphalt Plants	15A NCAC 02D .0506*	34:16 NCR
Particulates from Chemical Fertilizer Manufacturing Plants	15A NCAC 02D .0507	34:16 NCR
Particulates from Pulp and Paper Mills	15A NCAC 02D .0508*	34:16 NCR
Particulates from MICA or Feldspar Processing Plants	15A NCAC 02D .0509	34:16 NCR
Particulates from Sand, Gravel, or Crushed Stone Operations	15A NCAC 02D .0510*	34:16 NCR
Particulates from Lightweight Aggregate Processes	15A NCAC 02D .0511*	34:16 NCR
Particulates from Wood Products Finishing Plants	15A NCAC 02D .0512*	34:16 NCR
Particulates from Portland Cement Plants	15A NCAC 02D .0513*	34:16 NCR
Particulates from Ferrous Jobbing Foundries	15A NCAC 02D .0514	34:16 NCR
Particulates from Miscellaneous Industrial Processes	15A NCAC 02D .0515	34:16 NCR
Sulfur Dioxide Emissions from Combustion Sources	15A NCAC 02D .0516*	34:16 NCR
Emissions from Plants Producing Sulfuric Acid	15A NCAC 02D .0517	34:16 NCR
Control of Nitrogen Dioxide and Nitrogen Oxides	15A NCAC 02D .0519	34:16 NCR
Control of Visible Emissions	15A NCAC 02D .0521*	34:16 NCR
New Source Performance Standards	15A NCAC 02D .0524*	34:16 NCR
Emissions from Spodumene Ore Roasting	15A NCAC 02D .0527	34:16 NCR
Total Reduced Sulfur from Kraft Pulp Mills	15A NCAC 02D .0528*	34:16 NCR
Fluoride Emissions from Primary Aluminum Reduction Plants	15A NCAC 02D .0529*	34:16 NCR
Sources in Nonattainment Areas	15A NCAC 02D .0531*	34:16 NCR
Sources Contributing to an Ambient Violation	15A NCAC 02D .0532*	34:16 NCR
Stack Height	15A NCAC 02D .0533*	34:16 NCR
Flouride Emissions from Phosphate Fertilizer Industry	15A NCAC 02D .0534	34:16 NCR
Excess Emissions Reporting and Malfunctions	15A NCAC 02D .0535*	34:16 NCR

Particulate Emissions from Electric Utility Boilers	15A NCAC 02D .0536	34:16 NCR
Control of Mercury Emissions	15A NCAC 02D .0537*	34:16 NCR
Control of Ethylene Oxide Emissions	15A NCAC 02D .0538*	34:16 NCR
Odor Control of Feed Ingredient Manufacturing Plants	15A NCAC 02D .0539*	34:16 NCR
Control of Emissions from Abrasive Blasting	15A NCAC 02D .0541	34:16 NCR
Control of Particulate Emissions from Cotton Ginning Oper...	15A NCAC 02D .0542*	34:16 NCR
Best Available Retrofit Technology	15A NCAC 02D .0543*	34:16 NCR
Prevention of Significant Deterioration Requirements for ...	15A NCAC 02D .0544*	34:16 NCR
Control of Emissions from Log Fumigation	15A NCAC 02D .0546*	34:15 NCR
Delegation	15A NCAC 02D .0615	34:16 NCR
Definitions	15A NCAC 02D .0901*	34:16 NCR
Applicability	15A NCAC 02D .0902*	34:16 NCR
Recordkeeping: Reporting: Monitoring	15A NCAC 02D .0903*	34:16 NCR
Circumvention	15A NCAC 02D .0906*	34:16 NCR
Compliance Schedules for Sources In Ozone Nonattainment a...	15A NCAC 02D .0909*	34:16 NCR
General Provisions on Test Methods and Procedures	15A NCAC 02D .0912*	34:16 NCR
Can Coating	15A NCAC 02D .0918*	34:16 NCR
Coil Coating	15A NCAC 02D .0919*	34:16 NCR
Metal Furniture Coatings	15A NCAC 02D .0922*	34:16 NCR
Surface Coating of Large Appliance Parts	15A NCAC 02D .0923*	34:16 NCR
Magnet Wire Coating	15A NCAC 02D .0924*	34:16 NCR
Petroleum Liquid Storage in Fixed Roof Tanks	15A NCAC 02D .0925*	34:16 NCR
Bulk Gasoline Plants	15A NCAC 02D .0926*	34:16 NCR
Bulk Gasoline Terminals	15A NCAC 02D .0927*	34:16 NCR
Gasoline Service Stations Stage 1	15A NCAC 02D .0928*	34:16 NCR
Solvent Metal Cleaning	15A NCAC 02D .0930*	34:16 NCR
Cutback Asphalt	15A NCAC 02D .0931*	34:16 NCR
Petroleum Liquid Storage in External Floating Roof Tanks	15A NCAC 02D .0933*	34:16 NCR
Factory Surface Coating of Flat Wood Paneling	15A NCAC 02D .0935*	34:16 NCR
Manufacture of Pneumatic Rubber Tires	15A NCAC 02D .0937*	34:16 NCR
Synthetic Organic Chemical and Polymer Manufacturing	15A NCAC 02D .0943*	34:16 NCR
Manufacture of Polyethylene: Polypropylene and Polystyrene	15A NCAC 02D .0944*	34:16 NCR
Petroleum Dry Cleaning	15A NCAC 02D .0945*	34:16 NCR
Manufacture of Synthesized Pharmaceutical Products	15A NCAC 02D .0947*	34:16 NCR
VOC Emissions from Transfer Operations	15A NCAC 02D .0948*	34:16 NCR
Storage of Miscellaneous Volatile Organic Compounds	15A NCAC 02D .0949*	34:16 NCR
RACT for Sources of Volatile Organic Compounds	15A NCAC 02D .0951*	34:16 NCR
Petition for Alternative Controls for RACT	15A NCAC 02D .0952*	34:16 NCR
Thread Bonding Manufacturing	15A NCAC 02D .0955*	34:16 NCR
Glass Christmas Ornament Manufacturing	15A NCAC 02D .0956	34:16 NCR
Commercial Bakeries	15A NCAC 02D .0957*	34:16 NCR
Work Practices for Sources of Volatile Organic Compounds	15A NCAC 02D .0958*	34:16 NCR
Petition for Superior Alternative Controls	15A NCAC 02D .0959*	34:16 NCR
Offset Lithographic Printing and Letterpress Printing	15A NCAC 02D .0961*	34:16 NCR
Industrial Cleaning Solvents	15A NCAC 02D .0962*	34:16 NCR
Fiberglass Boat Manufacturing Materials	15A NCAC 02D .0963*	34:16 NCR
Miscellaneous Industrial Adhesives	15A NCAC 02D .0964*	34:16 NCR

Flexible Package Printing	15A NCAC 02D .0965*	34:16 NCR
Paper, Film and Foil Coatings	15A NCAC 02D .0966*	34:16 NCR
Miscellaneous Metal and Plastic Parts Coatings	15A NCAC 02D .0967*	34:16 NCR
Automobile and Light Duty Truck Assembly Coatings	15A NCAC 02D .0968*	34:16 NCR
Toxic Air Pollutant Guidelines	15A NCAC 02D .1104*	34:15 NCR
Purpose and Applicability for Construction and Demolition...	15A NCAC 13B .0531*	34:16 NCR
General Application Requirements and Processing for C&DLF...	15A NCAC 13B .0533*	34:16 NCR
Site Study for C&DLF Facilities	15A NCAC 13B .0536*	34:16 NCR
Facility Plan for C&DLFs	15A NCAC 13B .0537*	34:16 NCR
Geologic and Hydrogeologic Investigations for C&DLF Facil...	15A NCAC 13B .0538*	34:16 NCR
Engineering Plan for C&DLF Facilities	15A NCAC 13B .0539*	34:16 NCR
Construction Requirements for C&DLF Facilities	15A NCAC 13B .0540*	34:16 NCR
Construction Quality Assurance for C&DLF Facilities	15A NCAC 13B .0541*	34:16 NCR
Operation Plan and Requirements for C&DLF Facilities	15A NCAC 13B .0542*	34:16 NCR
Closure and Post-Closure Requirements for C&DLF Facilities	15A NCAC 13B .0543*	34:16 NCR
Monitoring Plans and Requirments for C&DLF Facilities	15A NCAC 13B .0544*	34:16 NCR
Assessment and Corrective Action Program for C&DLF Facili...	15A NCAC 13B .0545*	34:16 NCR
Existing C&DLF Units as of January 1, 2007	15A NCAC 13B .0547	34:16 NCR
Purpose and Applicability	15A NCAC 13B .1601*	34:16 NCR
Site Study for MSWLF Facilities	15A NCAC 13B .1618*	34:16 NCR
Facility Plan	15A NCAC 13B .1619*	34:16 NCR
Engineering Plan	15A NCAC 13B .1620*	34:16 NCR
Construction Quality Assurance Plan	15A NCAC 13B .1621*	34:16 NCR
Location Restrictions for MSWLF Facility Siting	15A NCAC 13B .1622*	34:16 NCR
Geologic and Hydrogeologic Investigations for MSWLF Facil...	15A NCAC 13B .1623*	34:16 NCR
Construction Requirements for SMWLF Facilities	15A NCAC 13B .1624*	34:16 NCR
Operation Plan for MSWLF Facilities	15A NCAC 13B .1625*	34:16 NCR
Closure and Post-Closure Requirements for MSWLF Facilities	15A NCAC 13B .1627*	34:16 NCR
Closure and Post-Closure Plan	15A NCAC 13B .1629*	34:16 NCR
Applicability of Groundwater Monitoring Requirements	15A NCAC 13B .1630*	34:16 NCR
GroundWater Sampling and Analysis Requirements	15A NCAC 13B .1632*	34:16 NCR
Detection Monitoring Program	15A NCAC 13B .1633*	34:16 NCR
Assessment Monitoring Program	15A NCAC 13B .1634*	34:16 NCR
Assessment of Corrective Measures	15A NCAC 13B .1635*	34:16 NCR
Selection of Remedy	15A NCAC 13B .1636*	34:16 NCR
Implementation of the Corrective Action Program	15A NCAC 13B .1637*	34:16 NCR
Leachate Storage Requirements	15A NCAC 13B .1680*	34:16 NCR
LOCAL GOVERNMENT COMMISSION		
Audit Contract	20 NCAC 03 .0502*	35:01 NCR
Audit Billings	20 NCAC 03 .0505*	35:01 NCR
Response to the Independent Auditor's Findings, Recommend...	20 NCAC 03 .0508*	35:01 NCR
FUNERAL SERVICE, BOARD OF		
Work Reports and Checklists	21 NCAC 34B .0110*	34:24 NCR
NURSING, BOARD OF		
Petitioning for Rulemaking	21 NCAC 36 .0121*	35:02 NCR

Petitions for Declaratory Rulings	21 NCAC	36	.0122*	35:02 NCR
Clinical Nurse Specialist Practice	21 NCAC	36	.0228	35:02 NCR
Records and Reports	21 NCAC	36	.0323	35:02 NCR
OPTICIANS, STATE BOARD OF				
Registration Optical Place of Business and Optician in Ch...	21 NCAC	40	.0202*	35:02 NCR
Professional Responsibility; Continuing Education	21 NCAC	40	.0206*	35:02 NCR
STATE HUMAN RESOURCES COMMISSION				
Purpose	25 NCAC	01E	.1601*	34:23 NCR
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The following rules are subject to Legislative Review.

ENVIRONMENTAL MANAGEMENT COMMISSION				
Definitions for C&DLF Facilities	15A NCAC	13B	.0532*	34:16 NCR
General Requirements for C&DLF Facilities and Units	15A NCAC	13B	.0534*	34:16 NCR
Application Requirements for C&DLF Facilities	15A NCAC	13B	.0535*	34:16 NCR
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General Application and Requirements and Processing	15A NCAC	13B	.1603*	34:16 NCR
General Requirements for MSWLF Facilities	15A NCAC	13B	.1604*	34:16 NCR
Application Requirements for MSWLF Facilities	15A NCAC	13B	.1617*	34:16 NCR
Operational Requirements for MSWLF Facilities	15A NCAC	13B	.1626*	34:16 NCR
Groundwater Monitoring Systems	15A NCAC	13B	.1631*	34:16 NCR

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 09 .0303 MEETINGS OF THE COMMISSION

14B NCAC 09 .0304 CONTESTED CASES

History Note: Authority G.S. 15B-3; 15B-6, 15B-12; 150B, Article 3; S.L. 1987, c. 819, s. 35;
Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;
ARRC Objection Eff. January 21, 1988;
Eff. April 1, 1988;
Transferred from 14A NCAC 11 .0504-.1505 Eff. June 1, 2013;
Repealed Eff. November 1, 2020.

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14B NCAC 15C .1301 DEFINITIONS

As used in G.S. 18B-1114.7 and in this Section:

(1) "Advertising specialties" means coasters, shot glasses, bottle or can openers, cork screws, ash trays, shopping bags, individual can coolers, hats, caps, visors, t-shirts (without collars or buttons), and key chains.

(2) "Charitable, nonprofit organization" means a nonprofit organization that is a charitable organization as defined in G.S. 1-539.11(1).

(3) "Consumer tasting event" means any time a single spirituous liquor special event permittee provides samples of spirituous liquor to a consumer in an ABC store pursuant to G.S. 18B-1114.7(c).

(4) "Local fund-raiser" means a special event sponsored or cosponsored by a local government, a local charitable, nonprofit organization, or a local political organization for the purpose of raising funds for a governmental, charitable, or political purpose.

(5) "Permit holder's authorized agent" means an individual authorized in writing by the spirituous liquor special event permittee to conduct a consumer tasting or consumer tasting event pursuant to the permittee's spirituous liquor special event permit. The individual shall be responsible for the management on the site of the consumer tasting or consumer tasting event, and the supervision of the permittee's or agent's employees or independent contractors

offering or pouring tasting samples at the consumer tasting or consumer tasting event.

(6) "Point-of-sale advertising materials" means advertising that is located where the spirituous liquor product is displayed or sampled. Advertising materials may include signs, posters, banners, and decorations that bear product advertising matter. Point-of-sale advertising materials as used in this Section shall not include items listed in 14B NCAC 15C .0711(c).

(7) "Special event" means either:

(a) an event the spirituous liquor special event permittee participates in that is a trade show, convention, street festival, holiday festival, agricultural festival, balloon race, local fund-raisers, or other similar events approved pursuant to Rule .1302 of this Section, that is for a limited duration of no more than 10 days and organized or sponsored by a person other than the spirituous liquor special event permittee; or

(b) an event of limited duration of no more than 60 days at a shopping mall that is organized and sponsored by the shopping mall or an association of shopping mall merchants as part of a promotion or sale for all merchants in the shopping mall.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7; Eff. April 1, 2019;
Amended Eff. November 1, 2020.

14B NCAC 15C .1303 TASTINGS HELD FOR CONSUMERS

(a) If a tasting is conducted pursuant to this Section at an event where the event sponsor holds an ABC permit for that event, the area for conducting the tasting shall be limited to the area of the event covered by the ABC permit. If the tasting is conducted pursuant to this Section at an event where the event sponsor does not hold an ABC permit, the area for conducting the tasting shall be limited to the area allocated or assigned by the event sponsor for the exclusive use of the permittee conducting the tasting.

(b) Each permittee conducting a tasting may give each consumer tasting samples up to the limits set forth in G.S. 18B-1114.7(b)(3) or (c)(4), as applicable.

(c) A spirituous liquor special event permittee shall ensure that any employee or agent of the permittee who will be conducting or supervising any tasting conducted pursuant to a spirituous liquor special event permit has completed training that includes:

(1) identification of potential underage consumers;

(2) recognition of fictitious identification;

(3) identification of consumers who are visibly intoxicated;

(4) service of correct sample sizes; and

(5) methods to ensure compliance with G.S. 18B-1114.7 in accordance with Rule .1304 of this Section.

(d) The permittee, the permittee's agent, or the permittee's employee shall not be in the area for conducting the tasting after consuming alcoholic beverages except under the following conditions:

(1) the permittee, agent, or employee is off duty for the remainder of that day or night during which the individual consumes any alcoholic beverage;

(2) the permittee, agent, or employee is out of uniform when uniforms are required to be worn while performing any on duty services; and

(3) the permittee, agent, or employee shall not perform any services related to the business of the permit while or after consuming alcoholic beverages.

(e) Spirituous liquor provided for tastings pursuant to a spirituous liquor special event permit shall not be mixed with any other alcoholic or non-alcoholic beverage. No non-alcoholic beverages, other than unflavored water, shall be made available or accessible to the consumer by the permittee in the area for conducting the tasting.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7; Eff. April 1, 2019;
Amended Eff. November 1, 2020.

14B NCAC 15C .1304 SPECIAL EVENT COMPLIANCE PROCEDURE

(a) Either the permittee to whom the spirituous liquor special event permit was issued, or the permit holder's authorized agent, must be present in the area where the tasting is conducted at the time the tasting occurs. A copy of the spirituous liquor special event permit shall be on display in the area where the tasting is conducted. A copy of the authority of the permit holder's authorized agent to act on behalf of the permittee shall be present at the tasting event. A copy of the spirituous liquor special event permit and a copy of the authority of the permit holder's authorized agent to act on behalf of the permittee shall be made available to law enforcement agents upon request.

(b) For other special events approved by the Commission pursuant to Rule .1302 of this Section, a copy of the Commission's approval shall be kept at the tasting for the duration of the tasting and made available to law enforcement agents upon request.

(c) A spirituous liquor special event permit holder shall maintain a written procedure establishing the method to be used by the permit holder and the permit holder's employees or agents to ensure compliance with the requirements of G.S. 18B-1114.7(b)(3), (4), and (5), and (c)(4). A copy of the written procedure shall be available at the tasting to the permit holder's employees and designated agents and shall be made available at the tasting to law enforcement agents upon request.

(d) A copy of the written procedure required pursuant to Paragraph (c) of this Rule shall be:

(1) maintained for one year following the tasting;

(2) included as part of the consumer tasting record maintained in accordance with G.S. 18B-1114.7(b)(10); and
(3) made available upon request to the Commission and law enforcement agents pursuant to G.S. 18B-502.

History Note: Authority G.S. 18B-100; 18B-201; 18B-1114.7; Eff. April 1, 2019;
Amended Eff. November 1, 2020.

14B NCAC 15C .1305 SPECIAL EVENT SALE OF BRANDED MERCHANDISE, POINT-OF-SALE ADVERTISING MATERIALS AND ADVERTISING SPECIALTIES

History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7; Eff. April 1, 2019;
Repealed Eff. November 1, 2020.

14B NCAC 15C .1307 ABC STORE SPIRITUOUS LIQUOR TASTINGS

(a) Local boards shall determine whether to allow tastings to be conducted in any of their ABC stores. The ABC store, date, and times for any tastings authorized by the local board shall be set by the local board. Tastings are not required to be conducted every week or in all ABC stores operated by the local board. The schedule set by the local board for tastings may vary from week to week.
(b) If a local board authorizes consumer tasting events to be held in a specific ABC store, written requests to conduct a consumer tasting event at that ABC store at a specific date and time established by the local board shall be processed on a first-come, first-served basis. A local board may require a permittee to include a signed agreement to comply with local board conditions as a part of a written request for permission to conduct a consumer tasting event pursuant to G.S. 18B-1114.7(c)(10).
(c) Notwithstanding Paragraph (b) of this Rule, once permission has been granted to conduct a consumer tasting event at a specific date and time, this permission shall be subject to the permission being withdrawn for that ABC store not later than 30 days prior to the scheduled time of the event, upon the receipt of a request from another permittee that has conducted fewer consumer tasting events in the ABC store within a previous 12-month period than the permittee originally granted permission. A superseding request for the same date and time must be received in writing by the local board before the close of business on the last business day prior to 35 days prior to the previously approved request date. Prior to accepting a request to preempt a previously approved request date and time, the local board shall provide to the superseding requestor a schedule of other available dates and times for consumer tasting events in lieu of the requested date. If the alternative dates and times are not acceptable to the superseding requestor, the original permission shall be withdrawn, and the date and time shall be assigned to the superseding requestor. A local board that withdraws permission to conduct a consumer tasting event shall provide the permittee originally granted permission with a written explanation of the reason for the withdrawal and the process for requesting a rescheduling of the consumer tasting event.
(d) The local board may deny a permittee the right to conduct future consumer tasting events for a period of up to one year from the date of the violation upon a determination by the local board that the permittee conducted a consumer tasting event in violation of G.S. 18B-1114.7(c)(10).
(e) In addition to the requirements set forth in G.S. 18B-1114.7(c)(7), a permit holder shall include with the notice a copy of the local board's written approval for the permit holder to conduct a consumer tasting event at a specific time and location. Written approval by the local board may be by email. For purposes of G.S. 18B-1114.7(c)(7)c., the list shall include the product codes of the specific spirituous liquor products available for tasting.
(f) Proof of purchase of spirituous liquor from any ABC store shall be by receipts issued by an ABC store. Permittees shall maintain receipts of purchases of spirituous liquor used in tastings for a period of six months from the date the spirituous liquor is first used for tastings pursuant to G.S. 18B-1114.7. Spirituous liquor purchased from an ABC store for use in tastings conducted in accordance with this Section may be used for multiple tastings at multiple locations.
(g) At the time of the completion of a tasting, the permittee shall submit to the local board in writing the name of the permittee that conducted the consumer tasting event, the names of all employees or agents of the permittee who were present at the tasting, and the name of each product available for tasting at the consumer tasting event. A local board that authorizes consumer tasting events shall maintain for a period of three years a list of all consumer tasting events conducted in each of its stores by date, name of the permittee that conducted the consumer tasting event, name of all employees or agents of the permittee who were present at the tasting, and name of each product available for tasting at the consumer tasting event.
(h) A local board that authorizes consumer tasting events shall maintain for a period of three years the following records by types of permittees:
(1) written requests for permission to conduct tastings;
(2) permissions granted to conduct tastings;
(3) denials of request for permission to conduct tastings; and
(4) withdrawal of permissions to conduct tastings.
A local board shall make these records available to the Commission upon request.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1114.7; Eff. November 1, 2020.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02D .0403 TOTAL SUSPENDED PARTICULATES

(a) The ambient air quality standards for total suspended particulate matter are:

(1) 75 micrograms per cubic meter annual geometric mean; and
(2) 150 micrograms per cubic meter maximum 24-hour concentration not to be exceeded more than once per year.

(b) Sampling and analysis shall be in accordance with procedures in 40 CFR Part 50, Appendix B or equivalent methods established pursuant to 40 CFR Part 53.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; July 1, 1984; October 15, 1981;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this Rule is to assure compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) All new sources shall be in compliance prior to beginning operations.

(c) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards pursuant to 15A NCAC 02D .0400 to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than those named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(d) The Bubble Concept. As provided in this Paragraph, a facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than those required by the rules in 15A NCAC 02D .0500 or .0900.

(1) In order for this mix of alternative controls to be permitted, the Director shall determine that the following conditions are met:
    (A) Sources pursuant to 15A NCAC 02D .0524, .0530, .0531, .1110 or .1111, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), regulations established pursuant to Section 111(d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, shall have emissions no larger than if there were not an alternative mix of controls;
    (B) The facility or facilities is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines with reasonable further progress toward attainment for those pollutants being considered;
    (C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and
    (D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required for the review and enforcement of other permits.
(2) The owners or operators of the facility or facilities shall demonstrate the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and
    (A) that the alternative mix approach does not interfere with the attainment and maintenance of the ambient air quality standards and does not interfere with the PSD program, which shall include modeled calculations of the amount, if any, of PSD increment consumed or created;
    (B) that the alternative mix approach conforms with reasonable further progress requirements as defined in Clean Air Act Section 171(1), in any nonattainment area;
    (C) that the emissions pursuant to the alternative mix approach are quantifiable, and trades among them are equivalent; and
    (D) that the pollutants controlled pursuant to the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as State Implementation Plan (SIP) demonstration of attainment for the area. A copy of the SIPs can be found on the DAQ website at

https://deq.nc.gov/about/divisions/air-quality/air-quality-planning/state-implementation-plans. If the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall take into account differences in the level of reliability of the control measures or other uncertainties.

(3) The emission rate limitations or control techniques of each source within the facility or facilities subjected to the alternative mix of controls shall be specified in the facility's permit or facilities' permits.

(4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.

(5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph (e) of this Rule supports any waiver or reduction of requirements. The Federal Register referenced in this Subparagraph is hereby incorporated by reference and does not include subsequent amendments or editions.

(e) In a permit application for an alternative mix of controls pursuant to Paragraph (d) of this Rule, the owner or operator of the facility shall demonstrate the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a request for public hearing following the procedures pursuant to 15A NCAC 02Q .0300 or .0500, as applicable.

(1) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0300, it shall become a part of the state implementation plan (SIP) as an appendix available for inspection at the Department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

(2) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0500 it shall be available for inspection at the Department's regional offices. Until the EPA approves the Title V permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

The revision shall be submitted for approval by the EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1979, pages 71780-71788, and subsequent rulings.

(f) If the owner or operator of any combustion and non-combustion source or control equipment subject to the requirements of this Section is required to demonstrate compliance with a rule in this Section, source testing procedures pursuant to 15A NCAC 02D .2600 shall be used.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. August 1, 1991; October 1, 1989;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Amended Eff. June 1, 2008; April 1, 2001; April 1, 1999; July 1, 1996; February 1, 1995; July 1, 1994;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0502 PURPOSE

The purpose of the emission control standards set out in this Section is to establish maximum limits on the rate of emission of air contaminants into the atmosphere.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. June 1, 1981;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0503 PARTICULATES FROM FUEL BURNING INDIRECT HEAT EXCHANGERS

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

(1) "Functionally dependent" means that structures, buildings, or equipment are interconnected through common process streams, supply lines, flues, or stacks.

(2) "Indirect heat exchanger" means any equipment used for the alteration of the temperature of one fluid by the use of another fluid in which the two fluids are separated by an impervious surface such that there is no mixing of the two fluids.

(3) "Plant site" means any single or collection of structures, buildings, facilities, equipment, installations, or operations that:

(A) are located on one or more adjacent properties;

(B) are in common legal control; and

(C) are functionally dependent in their operations.

(b) The definition contained in Subparagraph (a)(3) of this Rule does not affect the calculation of the allowable emission rate of any indirect heat exchanger permitted prior to April 1, 1999.

(c) The emissions of particulate matter from the combustion of a fuel that are discharged from any stack or chimney into the atmosphere shall not exceed:

Maximum Heat Input In Million Btu/Hour	Allowable Emission Limit For Particulate Matter In Lb/Million Btu
Up to and Including 10	0.60
100	0.33
1,000	0.18
10,000 and Greater	0.10

For a heat input between any two consecutive heat inputs stated in the table set forth in this Paragraph, the allowable emissions of particulate matter shall be calculated by the equation $E= 1.090*Q^{-0.2594}$. "E" equals the allowable emission limit for particulate matter in lb/million Btu. "Q" equals the maximum heat input in million Btu/hour.

(d) This Rule applies to installations in which fuel is burned for the purpose of producing heat or power by indirect heat transfer. Fuels include those such as coal, coke, lignite, peat, natural gas, and fuel oils, but exclude wood and refuse not burned as a fuel. When any refuse, products, or by-products of a manufacturing process are burned as a fuel rather than refuse, or in conjunction with any fuel, this allowable emission limit shall apply.

(e) For the purpose of this Rule, the maximum heat input shall be the total heat content of all fuels which are burned in a fuel burning indirect heat exchanger, of which the combustion products are emitted through a stack or stacks. The sum of maximum heat input of all fuel burning indirect heat exchangers at a plant site which are in operation, under construction, or permitted pursuant to 15A NCAC 02Q, shall be considered as the total heat input for the purpose of determining the allowable emission limit for particulate matter for each fuel burning indirect heat exchanger. Fuel burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been set. The removal of a fuel burning indirect heat exchanger shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been established. However, for any fuel burning indirect heat exchanger constructed after, or in conjunction with, the removal of another fuel burning indirect heat exchanger at the plant site, the maximum heat input of the removed fuel burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit of any fuel burning indirect heat exchanger constructed after or in conjunction with the removal. For the purposes of this Paragraph, refuse not burned as a fuel and wood shall not be considered a fuel. For residential facilities or institutions, such as military and educational, whose primary fuel burning capacity is for comfort heat, only those fuel burning indirect heat exchangers located in the same power plant or building or otherwise physically interconnected, such as common flues, steam, or power distribution line, shall be used to determine the total heat input.

(f) The emission limit for fuel burning equipment that burns both wood and other fuels in combination, or for wood and other fuel burning equipment that is operated such that emissions are measured on a combined basis, shall be calculated by the equation $Ec = [(EW)(Qw) + (Eo)(Qo)] /Qt$.

(1) Ec = the emission limit for combination or combined emission source(s) in lb/million Btu.
(2) Ew = plant site emission limit for wood only as determined pursuant to 15A NCAC 02D .0504 in lb/million Btu.
(3) Eo = the plant site emission limit for other fuels only as determined by Paragraphs (a), (b) and (c) of this Rule in lb/million Btu.
(4) Qw = the actual wood heat input to the combination or combined emission source(s) in Btu/hr.
(5) Qo = the actual other fuels heat input to the combination or combined emission source(s) in Btu/hr.
(6) Qt = Qw + Qo and is the actual total heat input to combination or combined emission source(s) in Btu/hr.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Amended Eff. April 1, 1999; July 1, 1994; August 1, 1991; June 1, 1985; February 1, 1983;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0504 PARTICULATES FROM WOOD BURNING INDIRECT HEAT EXCHANGERS

(a) This Rule applies to fuel burning equipment that burns 100 percent wood. All other fuel burning equipment that burns both wood and other fuels in combination shall be subject to 15A NCAC 02D .0503. For the purpose of this Rule, the following definitions shall apply:

(1) "Functionally dependent" means that structures, buildings or equipment are interconnected through common process streams, supply lines, flues, or stacks.
(2) "Indirect heat exchanger" means any equipment used for the alteration of the temperature of one fluid by the use of another fluid in which the two fluids are separated by an impervious

surface such that there is no mixing of the two fluids.

(3) "Plant site" means any single or collection of structures, buildings, facilities, equipment, installations, or operations that:

(A) are located on one or more adjacent properties;

(B) are under common legal control; and

(C) are functionally dependent in their operations.

(b) The definition contained in Subparagraph (a)(3) of this Rule does not affect the calculation of the allowable emission rate of any indirect heat exchanger permitted prior to April 1, 1999.

(c) Emissions of particulate matter from the combustion of wood shall not exceed:

Maximum Heat Input In Million Btu/Hour	Allowable Emission Limit For Particulate Matter In lb/Million Btu
Up to and Including 10	0.70
100	0.41
1,000	0.25
10,000 and Greater	0.15

For a heat input between any two consecutive heat inputs stated in the table set forth in this Paragraph, the allowable emissions of particulate matter shall be calculated by the equation $E=1.1698*Q^{-.2230}$. "E" equals the allowable emission limit for particulate matter in lb/million Btu. "Q" equals the Maximum heat input in million Btu/hour.

(d) This Rule applies to installations in which wood is burned for the primary purpose of producing heat or power by indirect heat transfer.

(e) For the purpose of this Rule, the heat content of wood shall be 8,000 Btu per pound (dry-weight basis). The sum of maximum heat inputs of all wood burning indirect heat exchangers at a plant site that are in operation, under construction, or permitted pursuant to 15A NCAC 02Q, shall be considered as the total heat input for the purpose of determining the allowable emission limit for particulate matter for each wood burning indirect heat exchanger. Wood burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any wood burning indirect heat exchanger whose allowable emission limit has previously been set. The removal of a wood burning indirect heat exchanger shall not change the allowable emission limit of any wood burning indirect heat exchanger subject to this Rule whose allowable emission limit has previously been established. However, for any wood burning indirect heat exchanger subject to this Rule constructed after, or in conjunction with, the removal of another wood burning indirect heat exchanger at the plant site, the maximum heat input of the removed wood burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit of any wood burning indirect heat exchanger subject to this Rule constructed after or in conjunction with the removal. For facilities or institutions, such as military and educational, whose primary wood burning capacity is for comfort heat, only those wood burning indirect heat exchangers subject to this Rule located in the same power plant or building or otherwise physically interconnected, such as common flues, steam, or power distribution line shall be used to determine the total heat input.

History Note: Authority G.S. 143-213; 143-215.3(a)(1); 143-215.107(a)(5); 143-215.107(h)(1);
Eff. February 1, 1976;
Amended Eff. August 1, 2002; April 1, 1999; June 1, 1985; February 1, 1983;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0506 PARTICULATES FROM HOT MIX ASPHALT PLANTS

(a) The allowable emission rate for particulate matter resulting from the operation of a hot mix asphalt plant that are discharged from any stack or chimney into the atmosphere shall not exceed the level calculated with the equation $E = 4.9445(P)^{0.4376}$ calculated to three significant figures, for process rates less than 300 tons per hour, where "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the process rate in tons per hour. The allowable emission rate shall be 60.0 pounds per hour for process rates equal to or greater than 300 tons per hour.

(b) Visible emissions from stacks or vents at a hot mix asphalt plant shall not exceed 20 percent opacity when averaged over a six-minute period.

(c) All hot mix asphalt batch plants shall be equipped with a scavenger process dust control system for the drying, conveying, classifying, and mixing equipment. The scavenger process dust control system shall exhaust through a stack or vent and shall be operated and maintained in such a manner as to comply with Paragraphs (a) and (b) of this Rule.

(d) Fugitive non-process dust emissions shall be controlled by 15A NCAC 02D .0540.

(e) Fugitive emissions for sources at a hot mix asphalt plant not covered by this Rule shall not exceed 20 percent opacity averaged over six minutes.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. August 1, 2004; July 1, 1998; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0507 PARTICULATES FROM CHEMICAL FERTILIZER MANUFACTURING PLANTS

The allowable emissions rate for particulate matter resulting from the manufacture, mixing, handling, or other operations in the production of chemical fertilizer materials that are discharged from any stack or chimney into the atmosphere shall not exceed the level calculated with the equation $E = 9.377(P)^{0.3067}$ calculated to three significant figures, where "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the process rate as the sum of the production rate and the recycle rate in tons per hour.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. April 1, 2003; July 1, 1998; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0508 PARTICULATES FROM PULP AND PAPER MILLS

(a) Emissions of particulate matter from the production of pulp and paper that are discharged from any stack or chimney into the atmosphere shall not exceed:

(1) 3.0 pounds per equivalent ton of air dried pulp from a recovery furnace stack;
(2) 0.6 pounds per equivalent ton of air dried pulp from a dissolving tank vent; and
(3) 0.5 pounds per equivalent ton of air dried pulp from a lime kiln stack.

(b) Emissions from any kraft pulp recovery boiler established after July 1, 1971, shall not exceed an opacity of 35 percent when averaged over a six-minute period. Six-minute averaging periods may exceed 35 percent opacity if:

(1) no six-minute period exceeds 89 percent opacity;
(2) no more than one six-minute period exceeds 35 percent opacity in any one hour; and
(3) no more than four six-minute periods exceed 35 percent opacity in any 24-hour period.

Where the presence of uncombined water vapor is the only reason for failure to meet this opacity limitation, the opacity limitation set forth in this Paragraph shall not apply.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. July 1, 1998; August 1, 1987; April 1, 1986; January 1, 1985; May 30, 1978;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0509 PARTICULATES FROM MICA OR FELDSPAR PROCESSING PLANTS

(a) The allowable emission rate for particulate matter resulting from the processing of mica or feldspar that are discharged from any chimney, stack, vent, or outlet into the atmosphere shall not exceed the level calculated with the equation $E = 4(P)^{0.677}$ calculated to three significant figures for process rates less than or equal to 30 tons per hour. For process rates greater than 30 tons per hour but less than 1,000 tons per hour, the allowable emission rate for particulate matter shall not exceed the level calculated with the equation $E = 20.421(P)^{0.1977}$ calculated to three significant figures. For process rates greater than or equal to 1,000 tons per hour but less than 3,000 tons per hour, the allowable emission rate for particulate matter shall not exceed the level calculated with the equation $E = 38.147(P)^{0.1072}$ calculated to three significant figures. The allowable emission rate shall be 90.0 pounds per hour for process weight rates equal to or greater than 3,000 tons per hour. For the purpose of these equations, "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the process weight rate in tons per hour.

(b) Fugitive non-process dust emissions shall meet the requirements of 15A NCAC 02D .0540.

(c) The owner or operator of any mica or feldspar plant shall control process-generated emissions:

(1) from crushers with wet suppression, and
(2) from conveyors, screens, and transfer points,

such that the applicable opacity standards in 15A NCAC 02D .0521 or .0524 are not exceeded.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. April 1, 2003; July 1, 1998; April 1, 1986; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0510 PARTICULATES FROM SAND, GRAVEL, OR CRUSHED STONE OPERATIONS

(a) The owner or operator of a sand, gravel, or crushed stone operation shall not cause, allow, or permit any material to be produced, handled, transported or stockpiled without taking measures, such as application of a dust or wet suppressant, soil stabilizers, covers, or add-on particulate control devices, to reduce to a minimum any particulate matter from becoming airborne to prevent exceeding the ambient air quality standards beyond the property line for particulate matter, both PM10 and total suspended particulates.

(b) Fugitive non-process dust emissions from sand, gravel, or crushed stone operations shall be controlled by 15A NCAC 02D .0540.

(c) The owner or operator of any sand, gravel, or crushed stone operation shall control process-generated emissions:

(1) from crushers with wet suppression; and
(2) from conveyors, screens, and transfer points,

such that the applicable opacity standards in 15A NCAC 02D .0521 or .0524 are not exceeded.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. July 1, 1998; January 1, 1985;
Readopted. Eff. November 1, 2020.

15A NCAC 02D .0511 PARTICULATES FROM LIGHTWEIGHT AGGREGATE PROCESSES

(a) The owner or operator of a lightweight aggregate process shall not cause, allow, or permit any material to be produced, handled,

transported or stockpiled without taking measures, such as wet suppression, to reduce to a minimum any particulate matter from becoming airborne to prevent the ambient air quality standards for particulate matter, both PM10 and total suspended particulates, from being exceeded beyond the property line.

(b) Fugitive non-process dust emissions from lightweight aggregate processes subject to this Rule shall meet the requirement of 15A NCAC 02D .0540.

(c) The owner or operator of any lightweight aggregate process shall control process-generated emissions:

(1) from crushers with wet suppression; and

(2) from conveyors, screens, and transfer points,

such that the applicable opacity standards in 15A NCAC 02D .0521 or .0524 are not exceeded.

(d) Particulate matter from any stack serving any lightweight aggregate kiln or lightweight aggregate dryer shall be reduced by at least 95 percent by weight before being discharged to the atmosphere.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. July 1, 1998; October 1, 1989; January 1, 1985; April 1, 1977;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0512 PARTICULATES FROM WOOD PRODUCTS FINISHING PLANTS

A person shall not cause, allow, or permit particulate matter caused by the working, sanding, or finishing of wood to be discharged from any stack, vent, or building into the atmosphere without providing, as a minimum for its collection, duct work and collectors that are properly designed and adequate to collect particulate to the maximum extent practicable, or such other devices as approved by the Commission. Commission approval of other devices proposed to meet the requirements of this Rule shall occur on a case-by-case basis. In no case shall the ambient air quality standards be exceeded beyond the property line. Collection efficiency shall be determined on the basis of weight.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0513 PARTICULATES FROM PORTLAND CEMENT PLANTS

(a) Particulate matter from any Portland cement kiln shall:

(1) be reduced by at least 99.7 percent by weight before being discharged to the atmosphere; and

(2) not exceed 0.327 pounds per barrel.

(b) The emissions of particulate matter from any stacks, vent, or outlets from all processes except Portland cement kilns shall be controlled pursuant to 15A NCAC 02D .0515.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. July 1, 1998; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0514 PARTICULATES FROM FERROUS JOBBING FOUNDRIES

Particulate emissions from any ferrous jobbing foundry cupola existing before January 2, 1972 shall not exceed:

Process Weight In lb/hr	Maximum Allowable Emission Rate For Particulate In lb/hr
1,000	3.05
2,000	4.70
3,000	6.35
4,000	8.00
5,000	9.65
6,000	11.30
7,000	12.90
8,000	14.30
9,000	15.50
10,000	16.65
12,000	18.70
16,000	21.60
18,000	23.40
20,000	25.10

Any foundry existing before January 2, 1972, having a capacity greater than shown in the table and any new foundry, regardless of size, shall comply with the particulate emission limits pursuant to 15A NCAC 02D .0515(a).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. July 1, 1998; April 1, 1986; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0515 PARTICULATES FROM MISCELLANEOUS INDUSTRIAL PROCESSES

(a) The allowable emission rates for particulate matter from any stack, vent, or outlet, resulting from any industrial process for which no other emission control standards are applicable, shall not exceed the level calculated with the equation $E = 4.10(P)^{0.67}$ calculated to three significant figures for process rates less than or equal to 30 tons per hour. For process rates greater than 30 tons per hour, the allowable emission rates for particulate matter shall not exceed the level calculated with the equation $E = 55.0(P)^{0.11}$-40 calculated to three significant figures. For the purpose of these equations "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the process rate in tons per hour.

(b) Process rate means the total weight of all materials introduced into any specific process that may cause any emission of particulate matter. Solid fuels charged are considered as part of the process weight, but liquid and gaseous fuels and combustion air are not. For a cyclical or batch operation, the process rate is derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process rate is derived by dividing the process weight for a typical period of time by the number of hours in that typical period of time.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. April 1, 2003; July 1, 1998; January 1, 1985; December 1, 1976;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0516 SULFUR DIOXIDE EMISSIONS FROM COMBUSTION SOURCES

(a) Emission of sulfur dioxide from any source of combustion discharged from any vent, stack, or chimney shall not exceed 2.3 pounds of sulfur dioxide per million BTU input. Sulfur dioxide formed by the combustion of sulfur in fuels, wastes, ores, and other substances shall be included when determining compliance with this standard. Sulfur dioxide formed or reduced as a result of treating flue gases with sulfur trioxide or other materials shall also be accounted for when determining compliance with this standard.

(b) The standard set forth in Paragraph (a) of this Rule shall not apply to sulfur dioxide emission sources already subject to an emission standard for sulfur dioxide in 15A NCAC 02D .0524, .0527, .1110, .1111, .1206, or .1210.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. July 1, 2007; April 1, 2003; July 1, 1996; February 1, 1995; October 1, 1989; January 1, 1985; April 1, 1977;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0517 EMISSIONS FROM PLANTS PRODUCING SULFURIC ACID

Emissions of sulfur dioxide or sulfuric acid mist from the manufacture of sulfuric acid shall not exceed:

(1) 27 pounds of sulfur dioxide per ton of sulfuric acid produced; and
(2) 0.5 pounds of acid mist, expressed as sulfuric acid, per ton of sulfuric acid produced.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0519 CONTROL OF NITROGEN DIOXIDE AND NITROGEN OXIDES EMISSIONS

(a) The emissions of nitrogen dioxide shall not exceed 5.8 pounds per ton of acid produced from any nitric acid manufacturing plant.

(b) The emissions of nitrogen oxides shall not exceed:

(1) 0.8 pounds per million BTU of heat input from any oil or gas-fired boiler with a capacity of 250 million BTU per hour or more; or
(2) 1.8 pounds per million BTU of heat input from any coal-fired boiler with a capacity of 250 million BTU per hour or more.

(c) The emission limit for a boiler burning coal, oil, or gas in combination shall be calculated by the equation:

$$E = \frac{(E_c * Q_c) + (E_o * Q_o)}{Q_t}$$

(1) E = the emission limit for combination in pounds per million BTU.
(2) Ec = emission limit for coal only as determined by Paragraph (b) of this Rule in pounds per million BTU.
(3) Eo = emission limit for oil or gas as determined by Paragraph (b) of this Rule in pounds per million BTU.
(4) Qc = the actual coal heat input to the combination in BTU per hour.
(5) Qo = the actual oil and gas heat input to the combination in BTU per hour.
(6) Qt = Qc + Qo and is the actual total heat input to the combination in BTU per hour.

(d) If a boiler is subject to an emission standard for nitrogen oxides pursuant to 15A NCAC 02D .0524 or 15A NCAC 02D .1418, then the boiler shall meet the standard in that particular rule instead of the standard in Paragraph (b) of this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. July 1, 2007; January 1, 2005; July 1, 1996; October 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0521 CONTROL OF VISIBLE EMISSIONS

(a) Purpose. The intent of this Rule is to prevent, abate, and control emissions generated from fuel burning operations and industrial processes where an emission can be expected to occur, except during startups, shutdowns, and malfunctions approved according to procedures in 15A NCAC 02D .0535.

(b) Scope. This Rule shall apply to all fuel burning sources and to other industrial processes having a visible emission. Sources subject to a specific visible emission standard in 15A NCAC 02D .0506, .0508, .0524, .1110, .1111, .1206, or .1210 shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible, but it does apply to the testing of peak shaving and emergency generators. In deciding if controls are infeasible, the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost, and environmental and health impacts.

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 40 percent opacity if:

(1) no six-minute period exceeds 90 percent opacity;

(2) no more than one six-minute period exceeds 40 percent opacity in any hour; and

(3) no more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. Except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 20 percent opacity if:

(1) no six-minute period exceeds 87 percent opacity;

(2) no more than one six-minute period exceeds 20 percent opacity in any hour; and

(3) no more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water contributes solely to the failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule shall be allowed to comply with Paragraph (c) of this Rule if:

(1) the owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and

(2) the owner or operator of the source submits data to show that emissions up to those allowed by Paragraph (c) of this Rule shall not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in accordance with this Paragraph. The owner or operator of a source seeking an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under 15A NCAC 02D .0535:

(1) no more than four six-minute periods shall exceed the opacity standard in any one day; and

(2) the percent of excess emissions, defined as the percentage of monitored operating time in a calendar quarter above the opacity limit, shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately prior to this quarter until 500 operational hours are obtained.

In no instance shall excess emissions exempted pursuant to this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR Part 60, 61, or 63 or any ambient air quality standard in 15A NCAC 02D .0400 or 40 CFR Part 50.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. January 1, 2009; July 1, 2007; January 1, 2005; June 1, 2004; April 1, 2003; April 1, 2001; July 1, 1998; July 1, 1996; December 1, 1992; August 1, 1987; January 1, 1985; May 30, 1978;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0524 NEW SOURCE PERFORMANCE STANDARDS

(a) With the exception of Paragraph (b) and (c) of this Rule, sources subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in this Section that would be in conflict therewith.

(b) The following are not included pursuant to this Rule:

(1) 40 CFR Part 60, Subpart AAA;

(2) 40 CFR Part 60, Subpart B;

(3) 40 CFR Part 60, Subpart C;
(4) 40 CFR Part 60, Subpart Cb;
(5) 40 CFR Part 60, Subpart Cc;
(6) 40 CFR Part 60, Subpart Cd;
(7) 40 CFR Part 60, Subpart Ce;
(8) 40 CFR Part 60, Subpart BBBB;
(9) 40 CFR Part 60, Subpart DDDD;
(10) 40 CFR Part 60, Subpart FFFF; or
(11) 40 CFR Part 60, Subpart HHHH.

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the new source performance standards promulgated under 40 CFR Part 60, or part thereof, shall be enforced. If the Environmental Management Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 60 are not excluded by this Rule, as well as with any applicable requirements in 15A NCAC 02D .0900.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director rather than to the Environmental Protection Agency.

(f) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those in 15A NCAC 02D .0100.

(g) With the exceptions allowed in 15A NCAC 02Q .0102, Activities Exempted from Permit Requirements, the owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. June 18, 1976;
Temporary Amendment Eff. January 3, 1988, for a period of 180 days to expire on June 30, 1988;
Amended Eff. December 1, 1992; July 1, 1992;
Temporary Amendment Eff. March 8, 1994, for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Amended Eff. July 1, 2007; January 1, 2007; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1994;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0527 EMISSIONS FROM SPODUMENE ORE ROASTING

Emission of sulfur dioxide and sulfuric acid mist from any one kiln used for the roasting of spodumene ore shall not exceed:

(1) 9.7 pounds of sulfur dioxide per ton of ore roasted; and
(2) 1.0 pound of sulfuric acid mist, expressed as H_2SO_4, per ton of ore roasted.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. March 15, 1978;
Amended Eff. January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0528 TOTAL REDUCED SULFUR FROM KRAFT PULP MILLS

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

(1) "Black liquor solids" means the dry weight of the solids that enter the recovery furnace in the black liquor.
(2) "Condensate stripper system" means a column, and associated condensers, used to strip, with air or steam, total reduced sulfur compounds from condensate streams from various processes within a kraft pulp mill.
(3) "Cross recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor which on a quarterly basis contains more than seven percent by weight of the total pulp solids from the neutral sulfite semichemical process and has a green liquor sulfidity of more than 28 percent.
(4) "Digester system" means each continuous digester or each batch digester used for the cooking of wood in white liquor and associated flash tanks, blow tanks, chip steamers, and condensers.
(5) "Green liquor sulfidity" means the sulfidity of the liquor that leaves the smelt dissolving tank.
(6) "Kraft pulp mill" means any facility that produces pulp from wood by "cooking", industry term for digesting, wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at high temperature and pressure. Regeneration of cooking chemicals through a recovery process is also considered part of the kraft pulp mill.
(7) "Lime kiln" means a unit used to calcine lime mud that consists primarily of calcium carbonate, into quicklime, which is calcium oxide.
(8) "Multiple-effect evaporator system" means the multiple-effect evaporators and associated condensers and hot wells used to concentrate the spent cooking liquid that is separated from the pulp, known in the industry as "black liquor".
(9) "Neutral sulfite semichemical pulping operation" means any operation in which pulp is produced from wood by "cooking", industry term for digesting, wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating, also called grinding the wood pulp, to separate into its fibrous constituents.

(10) "New design recovery furnace" means a straight kraft recovery furnace that has both membrane wall or welded wall construction and emission control designed air systems.
(11) "Old design recovery furnace" means a straight kraft recovery furnace that does not have membrane wall or welded wall construction or emission control designed air systems.
(12) "Recovery furnace" means either a straight kraft recovery furnace or a cross recovery furnace and includes the direct-contact evaporator for a direct-contact furnace.
(13) "Smelt dissolving tank" means a vessel used for dissolving the smelt collected from the recovery furnace.
(14) "Straight kraft recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor which on a quarterly basis contains seven percent by weight or less of the total pulp solids from the neutral sulfite semichemical process or has green liquor sulfidity of 28 percent or less.
(15) "Total reduced sulfur (TRS)" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptain, dimethyl sulfide, and dimethyl disulfide, that are released during the kraft pulping operation.

(b) This Rule shall apply to recovery furnaces, digester systems, multiple-effect evaporator systems, lime kilns, smelt dissolving tanks, and condensate stripping systems of kraft pulp mills not subject to 15A NCAC 02D .0524.
(c) Emissions of total reduced sulfur from any kraft pulp mill subject to this Rule shall not exceed:

(1) 20 parts per million from any old design recovery furnace;
(2) five parts per million from any new design recovery furnace;
(3) 25 parts per million from any cross recovery furnace;
(4) five parts per million from any digester system;
(5) five parts per million from any multiple-effect evaporator system;
(6) 20 parts per million from any lime kiln;
(7) five parts per million from any condensate stripping system; and
(8) 0.032 pounds per ton of black liquor solids (dry weight) from any smelt dissolving tank.

(d) The emission limitations given in Subparagraphs (c)(1) through (c)(7) of this Rule are measured as hydrogen sulfide on a dry gas basis and are averages of discrete contiguous 12-hour time periods. The emission limitations given in Subparagraphs (c)(1) through (c)(3) of this Rule are corrected to eight percent oxygen by volume. The emission limitations given in Subparagraph (c)(6) of this Rule is corrected to 10 percent oxygen by volume.
(e) One percent of all 12-hour total reduced sulfur averages per quarter year in excess of the limitations given in Subparagraphs (c)(1) through (c)(3) of this Rule, in the absence of start-ups, shut-downs and malfunctions, shall not be considered in violation. Two percent of all 12-hour total reduced sulfur averages per quarter year in excess of the limitation given in Subparagraph (c)(6) of this Rule, in the absence of start-ups, shut-downs, and malfunctions, shall not be considered in violation.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. June 1, 1980;
Amended Eff. July 1, 1988; July 1, 1987; January 1, 1985; November 1, 1982;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0529 FLUORIDE EMISSIONS FROM PRIMARY ALUMINUM REDUCTION PLANTS

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

(1) "Fluoride" means elemental fluorine and all fluoride compounds as measured by the methods specified in 15A NCAC 02D .2616 or by other methods demonstrated to be equivalent to those set forth in Rule 15A NCAC 02D .2616 approved by the Director on a case-by-case basis.
(2) "Prebake cell" is an aluminum reduction pot using carbon anodes formed, pressed, and baked prior to their placement in the pot.
(3) "Primary aluminum reduction plant" means any facility manufacturing aluminum by electrolytic reduction.

(b) This Rule shall apply to prebake cells at all primary aluminum reduction plants not subject to 15A NCAC 02D .0524.
(c) An owner or operator of a primary aluminum reduction plant subject to this Rule shall not cause, allow, or permit the use of the prebake cells unless:

(1) 95 percent of the fluoride emissions are captured; and
(2) 98.5 percent of the captured fluoride emissions are removed before the exhaust gas is discharged into the atmosphere.

(d) The owner or operator of a primary aluminum reduction plant subject to this Rule shall:

(1) ensure hood covers are in good repair and positioned over the prebake cells;
(2) minimize the amount of time hood covers are removed during pot working operations;
(3) if the hooding system is equipped with a dual low and high hood exhaust rate, use the high rate whenever hood covers are removed and return to the normal exhaust rate when the hood covers are replaced;
(4) minimize the occurrence of fuming pots and correct the cause of a fuming pot as soon as practical; and
(5) if the tapping crucibles are equipped with hoses that return aspirator air under the hood, ensure the hoses are in good repair and the air return system is functioning by ensuring operation in accordance with the manufacturer's specifications.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. June 1, 1981;
Amended Eff. June 1, 2008; July 1, 1988; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS

(a) The purpose of this Rule is to implement a program for new source review in nonattainment areas as required by 40 CFR 51.165. The definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply, except for the following:

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph as follows:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;

(iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under Part 63 in Title 40 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant; and

(vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;

(B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

(C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;

(b) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) is seven years.

(c) PM2.5 significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by reference except as otherwise provided in this Rule. Sulfur dioxide (SO_2) and nitrogen oxides (NO_x) are precursors to PM2.5 in all nonattainment areas. Volatile organic compounds and ammonia are not significant precursors to PM2.5.

(d) In 40 CFR 51.165(a)(1)(xxxvii)(D), starting January 1, 2011, in addition to PM10 and PM2.5, for particulate matter (PM), condensable particulate matter shall be accounted for in applicability determinations and in establishing emission limitations for each of these regulated NSR pollutants in nonattainment major NSR permits.

(e) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(f) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.

(g) This Rule is not applicable to:

(1) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone;

(2) emission of pollutants for which the source or modification is not major;

(3) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or

(4) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.

(h) 15A NCAC 02Q .0102 is not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(i) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

(1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;

(2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;

(3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and any associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and

(4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(j) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install lowest achievable emission rate technology for NO_X and SO_2, regardless of the applicability of the rest of this Rule.

(k) For the purposes of this Rule, 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) reads: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(l) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a

relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(m) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in accordance with Section 173(a)(5) of the Clean Air Act and in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(n) For the purposes of this Rule, the provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director."

(o) Approval of an application regarding the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Chapter and any other requirements in local, State, or federal law.

(p) Except as provided in 40 CFR 52.28(c)(6), for a source or modification subject to this Rule the following procedures shall be followed:

(1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;

(2) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;

(3) When a source or modification may affect the visibility of a Class I area, the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be given at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application, including an analysis provided by the source of the potential impact of the proposed source on visibility;

(4) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to the Director's satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall follow the public hearing process described in 40 CFR 51.307(a)(3) on the application and include an explanation of the Director's decision or notice where the explanation can be obtained;

(5) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress, as defined in Section 169A of the Clean Air Act, toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and

(6) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph do not apply to nonprofit health or nonprofit educational institutions.

(q) In lieu of the requirements in 40 CFR 51.165(a)(6) and (7), this Paragraph shall apply. If the owner or operator of a source is using projected actual emissions to determine applicability with nonattainment new source review requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

(1) a description of the project;

(2) identification of sources whose emissions could be affected by the project;

(3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3);

(4) the calculated baseline actual emissions in Subparagraph (a)(1) of this Rule and an explanation of how the baseline actual emissions were calculated; and

(5) any netting calculations, if applicable.

If upon reviewing the notification, the Director finds that the project will require a nonattainment new source review evaluation, the Director shall notify the owner or operator of his or her findings and the owner or operator shall not make the modification until a nonattainment new source review permit has been issued pursuant to this Rule. If the Director finds that the project will not require a nonattainment new source review evaluation and the projected actual emissions, calculated pursuant to 40 CFR 51.165(a)(1)(xxviii)(B)(1) and (2) minus the baseline actual emissions is 50 percent or greater of the amount that is a significant emissions increase, without reference to the amount that is a significant net emissions increase, for the regulated NSR

pollutant, then, the Director shall require a permit application to include a permit condition for the monitoring, recordkeeping, and reporting of the annual emissions related to the project in tons per years, for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit for the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through (C). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director and the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii). The monitoring, recordkeeping, and reporting requirements in this Paragraph shall not apply if the projected actual emissions calculated pursuant to 40 CFR 51.165(a)(1)(xxviii)(B)(1) and (2), minus the baseline actual emissions, is less than 50 percent of the amount that is a significant emissions increase, without reference to the amount that is a significant net emissions increase, for the regulated NSR pollutant.

(r) Portions of the regulations in the Code of Federal Regulations (CFR) that are referred to in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule, with respect to 40 CFR 51.165, is that as of July 1, 2019, at https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol2/pdf/CFR-2019-title40-vol2-sec51-165.pdf and does not include any subsequent amendments or editions. Federal regulations referenced in 40 CFR 51.165 shall include subsequent amendments and editions. The publication may be accessed free of charge.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b);
Eff. June 1, 1981;
Amended Eff. December 1, 1993; December 1, 1992; August 1, 1991; December 1, 1989; October 1, 1989; July 1, 1988; October 1, 1987; June 1, 1985; January 1, 1985; February 1, 1983;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Amended Eff. September 1, 2013; January 2, 2011; September 1, 2010; May 1, 2008; May 1, 2005; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(a) This Rule applies to new major stationary sources and major modifications to which 15A NCAC 02D .0531 does not apply and which would contribute to a violation of a national ambient air quality standard but which would not cause a new violation.

(b) For the purpose of this Rule the definitions contained in Section II.A. of Appendix S of 40 CFR Part 51 shall apply.

(c) The Rule is not applicable to:

(1) emission of pollutants for which the area in which the new or modified source is located is designated as nonattainment;

(2) emission of pollutants for which the source or modification is not major;

(3) emission of pollutants other than sulfur dioxide, nitrogen oxides, and carbon monoxide;

(4) a new or modified source whose impact will not increase more than:

(A) 1.0 $\mu g/m^3$ of SO_2 on an annual basis;

(B) 5 $\mu g/m^3$ of SO_2 on a 24-hour basis;

(C) 25 $\mu g/m^3$ of SO_2 on a 3-hour basis;

(D) 0.3 $\mu g/m^3$ of PM2.5 on an annual basis;

(E) 1.2 $\mu g/m^3$ of PM2.5 on a 24-hour basis;

(F) 1.0 $\mu g/m^3$ of NO_2 on an annual basis;

(G) 0.5 mg/m^3 of carbon monoxide on an 8-hour basis;

(H) 2 mg/m^3 of carbon monoxide on a one-hour basis;

(I) 1.0 $\mu g/m^3$ of PM10 on an annual basis; or

(J) 5 $\mu g/m^3$ of PM10 on a 24-hour basis

at any locality that does not meet a national ambient air quality standard;

(5) sources which are not major unless secondary emissions are included in calculating the potential to emit;

(6) sources which are exempted by the provision in Section II.F. of Appendix S of 40 CFR Part 51;

(7) temporary emission sources which will be relocated within two years; and

(8) emissions resulting from the construction phase of the source.

(d) 15A NCAC 02Q .0102 is not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(e) To issue a permit to a new or modified source to which this Rule applies, the Director shall determine that the source will meet the following conditions:

(1) The sources will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;

(2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality; and

(3) The source will satisfy one of the following conditions:

(A) The source will comply with 15A NCAC 02D .0531(i) when the source is evaluated as if it were in the nonattainment area; or

(B) The source will have an air quality offset, i.e., the applicant will have caused an air quality improvement in the locality where the national ambient air quality standard is not met by causing reductions in impacts of other sources greater than any additional impact caused by the source for which the application is being made. The emissions reductions creating the air quality offset shall be placed as a condition in the permit for the source reducing emissions. The requirements of this Part may be partially waived if the source is a resource recovery facility burning municipal solid waste, the source must switch fuels due to lack of adequate fuel supplies, or the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and if:

(i) the permit applicant demonstrates that it made its best efforts to obtain sufficient air quality offsets to comply with this Part;

(ii) the applicant has secured all available air quality offsets; and

(iii) the applicant will continue to seek the necessary air quality offsets and apply them when they become available.

(f) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) The version of the Code of Federal Regulations incorporated in this Rule is that as of July 1, 2019, at https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol2/pdf/CFR-2019-title40-vol2-part51-appS.pdf and does not include any subsequent amendments or editions to the referenced material. The publication may be accessed free of charge.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6;
Eff. June 1, 1981;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. July 1, 1994; December 1, 1993; December 1, 1992; October 1, 1989;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0533 STACK HEIGHT

(a) For the purpose of this Rule, the following definition shall apply:

(1) "A stack in existence" means that the owner or operator had:

(A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

(B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in the time that is normally required to construct such a stack.

(2) "Dispersion technique":

(A) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) using that portion of a stack that exceeds good engineering practice stack height;

(ii) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(B) "Dispersion technique" does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the using of smoke management in agricultural or silvicultural prescribed burning programs;

(iii) the merging of exhaust gas streams where:

(I) the facility owner or operator demonstrates that the source was originally designed and constructed with such merged gas streams;

(II) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(III) before July 8, 1985, such merging was part of a change in operation at the source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iv) episodic restrictions on residential woodburning and open burning; or

(v) techniques pursuant to Subpart (A)(iii) of this Subparagraph which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(3) "Emission limitation" means a requirement established by this Subchapter or a local air quality program certified by the Commission that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(4) "Excessive concentrations" means, for the purpose of determining good engineering practice stack height in Part (5)(D) of this Paragraph:

(A) for sources seeking credit for stack height exceeding that established in Part (5)(B) or (C) of this Paragraph, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions

from all sources that is greater than an ambient air quality standard. For sources subject to 15A NCAC 02D .0530, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations in this Part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(B) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established in 15A NCAC 02D .0533(a)(5)(B) or (C);

(i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in Part (A) of this Subparagraph, except that the emission rate specified by any applicable Rule in this Subchapter (or, in the absence of such a limit, the actual emission rate) shall be used; or

(ii) the actual presence of a local nuisance (odor, visibility impairment, or pollutant concentration) caused by the existing stack, as determined by the Director; and

(C) for sources seeking credit after January 12, 1979, for a stack height determined by 15A NCAC 02D .0533(a)(5)(B) or (C) where the Director requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by 15A NCAC 02D .0533(a)(5)(B) or (C), a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(5) "Good engineering practice (GEP) stack height" means the greater of:

(A) 65 meters measured from the ground-level elevation at the base of the stack;

(B) 2.5 times the height of nearby structure(s) measured from the ground-level elevation at the base of the stack for stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable permit or approvals required pursuant to 15A NCAC 02Q and 40 CFR Parts 51 and 52, provided the owner or operator produces evidence that this equation was relied on in establishing an emission limitation;

(C) for stacks not covered by Part (B) of this Subparagraph, the height of nearby structures measured from the ground-level elevation at the base of the stack plus 1.5 times the lesser dimension (height or projected width) of nearby structure(s) provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(D) the height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(6) "Nearby" means, for a specific structure or terrain feature:

(A) in Parts (5)(B) and (C) of this Subparagraph, that distance up to five times the lesser of the height or the width dimension of a structure but not greater than one-half mile. The height of the structure is measured from the

ground-level elevation at the base of the Stack; and

(B) in Part (5)(D) of this Subparagraph, not greater than one-half mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height [ht] of the feature, not to exceed two miles if such feature achieves a height [ht] one-half mile from the stack that is at least 40 percent of the GEP stack height determined by Part (5)(C) of this Subparagraph or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(7) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(b) With the exception stated in Paragraphs (c) and (d) of this Rule, the degree of emission limitations required by any rule in this Subchapter shall not be affected by:

(1) that amount of a stack height that exceeds good engineering practice; or

(2) any other dispersion technique.

(c) Paragraph (b) shall not apply to:

(1) stack heights in existence or dispersion techniques implemented before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in 15A NCAC 02D .0530(b) and .0531(b) were carried out after December 31, 1970; or

(2) coal-fired steam electric generating units, subject to provisions of Section 118 of the federal Clean Air Act, which began operation before July 1, 1957, and whose stacks were constructed by a construction contract awarded before February 8, 1974.

However, these exemptions shall not apply to a new stack that replaces a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph. These exemptions shall not apply to a new source using a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph.

(d) This Rule shall not restrict the actual stack height of any source.

History Note: Authority G.S. 143-215.3(a)(1);
Eff. November 1, 1982;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. July 1, 1994; July 1, 1987; April 1, 1986;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0534 FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER INDUSTRY

(a) Emissions of total fluorides shall not exceed:

(1) 0.020 pounds per ton of phosphorus-bearing material fed to any wet-process phosphoric acid plant;

(2) 0.010 pounds per ton of phosphorus-bearing material fed to any superphosphoric acid plant;

(3) 0.40 pounds per ton of phosphorus-bearing material fed to any granular diammonium phosphate plant;

(4) 0.20 pounds per ton of phosphorus-bearing material fed to any run-of-pile triple superphosphate plant including curing and storing process;

(5) 0.20 pounds per ton of phosphorus-bearing material fed to any granular triple superphosphate plant that began operating after December 31, 1969;

(6) 0.40 pounds per ton of phosphorus-bearing material fed to any granular triple superphosphate plant that began operating before January 1, 1970; and

(7) 0.00050 pounds per hour per ton of phosphorus-bearing material cured or stored at any curing or storage facility associated with a granular triple superphosphate plant.

(b) The phosphorus-bearing material mentioned in Paragraph (a) of this Rule shall be expressed as phosphorus pentoxide.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. November 1, 1982;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0535 EXCESS EMISSIONS REPORTING AND MALFUNCTIONS

(a) For this Rule the following definitions apply:

(1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in 15A NCAC 02D .0500, .0900, .1200, or 1400; or by a permit condition; or that exceeds an emission limit established in a permit issued pursuant to 15A NCAC 02Q .0700.

(2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment are not considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the

emission source are not considered a malfunction.

(3) "Start-up" means the commencement of operation of any source that has shut-down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess emission.

(4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Rule does not apply to sources to which 15A NCAC 02D .0524, .1110, or .1111 applies unless excess emissions exceed an emission limit established in a permit issued under 15A NCAC 02Q .0700 that is more stringent than the emission limit set by 15A NCAC 02D .0524, .1110 or .1111.

(c) Any excess emissions that do not occur during start-up or shut-down are considered a violation of the appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:

(1) the air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;

(2) repairs have been made expeditiously when the emission limits have been exceeded;

(3) the amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;

(4) all practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;

(5) the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(6) the requirements of Paragraph (f) of this Rule have been met; and

(7) if the source is required to have a malfunction abatement plan, it has followed that plan. All malfunctions shall be repaired as expeditiously as practicable. However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. The owner or operator of a facility shall maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain:

(1) a complete preventive maintenance program including:

(A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;

(B) a description of the items or conditions that will be inspected and maintained;

(C) the frequency of the inspection, maintenance services, and repairs; and

(D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;

(2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and

(3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule shall be established by the Director with the source. The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs are subject to inspection by the Director or his designee upon request during business hours.

(e) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan carries out the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state his reasons for his disapproval. The person who submits the plan shall

submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment or any other abnormal conditions, shall:

(1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Division's next business day of becoming aware of the occurrence and describe:
  (A) name and location of the facility,
  (B) the nature and cause of the malfunction or breakdown;
  (C) the time when the malfunction or breakdown is first observed;
  (D) the expected duration; and
  (E) an estimated rate of emissions.

(2) notify the Director or his designee after the corrective measures have been accomplished;

(3) submit to the Director within 15 days after the request a written report that includes:
  (A) name and location of the facility,
  (B) identification or description of the processes and control devices involved in the malfunction or breakdown;
  (C) the cause and nature of the event;
  (D) time and duration of the violation or the expected duration of the excess emission if the malfunction or breakdown has not been fixed;
  (E) estimated quantity of pollutant emitted;
  (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken; and
  (G) any other pertinent information requested by the Director. After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with 15A NCAC 02D .2600 to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down are considered a violation of the applicable rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during startup or shutdown the Director shall consider the items listed in Subparagraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut down if necessary to limit excess emissions and protect the NAAQS. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5);
Eff. March 1, 1983;
Amended Eff. June 1, 2008; April 1, 2001; July 1, 1998; July 1, 1996; October 1, 1991; May 1, 1990; April 1, 1986; July 1, 1984;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0536 PARTICULATE EMISSIONS FROM ELECTRIC UTILITY BOILERS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. March 1, 1983;
Amended Eff. June 1, 2008; April 1, 2001; August 1, 1991; August 1, 1987; February 1, 1986;
Repealed Eff. November 1, 2020.

15A NCAC 02D .0537 CONTROL OF MERCURY EMISSIONS

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

(1) "Mercury" means the element mercury, excluding any associated elements, and includes mercury in particulates, vapors, aerosols, and compounds.

(2) "Stationary source" means the total plant site. This includes all emissions, such as stacks, ducts, vents, openings, and fugitives to the atmosphere within the property boundary.

(b) This Rule shall apply to all new and existing stationary sources engaged in the handling or processing of mercury and not subject to standards on emissions for mercury in 15A NCAC 02D .0530, .1110, or .1111.

(c) An owner or operator of a stationary source engaged in the handling or processing of mercury shall not cause, allow, or permit particulate or gaseous mercury emissions of more than 2300 grams per day into the atmosphere.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. June 1, 1985;
Amended Eff. July 1, 1996;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0538 CONTROL OF ETHYLENE OXIDE EMISSIONS

(a) For purposes of this Rule, "medical devices" means instruments, apparatus, implements, machines, implants, in vitro reagents, or other similar or related articles including their

components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or intended to affect the structure or any function of the body of man or other animals.

(b) This Rule applies to emissions at facilities for which construction began after August 31, 1992 of ethylene oxide resulting from use as a sterilant in:

(1) the production and subsequent storage of medical devices; or

(2) the packaging and subsequent storage of medical devices for sale;

(c) This Rule does not apply to hospital or medical facilities.

(d) Facilities subject to this Rule shall comply with the following standards:

(1) for sterilization chamber evacuation, a closed loop liquid ring vacuum pump, or equipment demonstrated to be as effective at reducing emissions of ethylene oxide shall be used;

(2) for sterilizer exhaust, a reduction in the weight of uncontrolled emissions of ethylene oxide of at least 99.8 percent by weight shall be achieved;

(3) for sterilizer unload and backdraft valve exhaust:

(A) a reduction in uncontrolled emissions of ethylene oxide of at least 99 percent by weight shall be achieved; or

(B) a concentration of no more than one part per million by volume of ethylene oxide shall be achieved;

(4) sterilized product ethylene oxide residual emissions shall be reduced by:

(A) a heated degassing room to aerate the products after removal from the sterilization chamber. The temperature of the degassing room shall be maintained at a minimum of 95 degrees Fahrenheit during the degassing cycle and product hold time in the aeration room shall be at least 24 hours; or

(B) a process demonstrated to be as effective as Part (d)(4)(A) of this Rule.

(5) emissions of ethylene oxide from the degassing area or equivalent process shall be vented to a control device capable of reducing uncontrolled ethylene oxide emissions by at least 99 percent by weight or to no more than one part per million by volume of ethylene oxide. The product aeration room and the product transfer area shall be maintained under a negative pressure.

(e) Before installation of the controls required by Paragraph (d) of this Rule, and annually thereafter, a written description of waste reduction, elimination, or recycling plan shall be submitted to the Director to determine if ethylene oxide use can be reduced or eliminated through alternative sterilization methods or process modifications.

(f) The owner or operator of the facility shall conduct a performance test to verify initial efficiency of the control devices. The owner or operator shall maintain temperature records to demonstrate proper operation of the degassing room. For the purposes of this Paragraph, "proper operation" means in accordance with the manufacturer's specifications. Such records shall be retained for a period of at least two calendar years and shall be made available for inspection by Division personnel.

(g) If the owner or operator of a facility subject to the Rule demonstrates, using the procedures in 15A NCAC 02D .1106, that the emissions of ethylene oxide from all sources at the facility do not cause the acceptable ambient level of ethylene oxide in 15A NCAC 02D .1104 to be exceeded, then the requirements of Paragraphs (d) through (e) of this Rule shall not apply. This demonstration shall be at the option of the owner or operator of the facility. If this option is chosen, the Director shall write the facility's permit to satisfy the requirements of 15A NCAC 02D .1104(a).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5); 143-215.108(c);
Eff. September 1, 1992;
Amended Eff. June 1, 2004; August 1, 2002;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0539 ODOR CONTROL OF FEED INGREDIENT MANUFACTURING PLANTS

(a) Applicability. The requirements of this Rule apply to any facility that produces feed-grade animal proteins or feed-grade animal fats and oils, but do not apply to any portions of such facilities engaged exclusively in the processing of food for human consumption.

(b) This Rule does not apply to those facilities solely engaged in the processing of marine byproducts. Those facilities shall control their odorous emissions pursuant to 15A NCAC 02D .1806.

(c) A person shall not allow, cause, or permit the operation or use of any device, machine, equipment, or other contrivance to process material to be used in the production of feed-grade animal proteins or feed-grade animal fats and oils unless all gases, vapors, and gas-entrained effluents from these processes are passed through condensers to remove all steam and other condensible materials. All noncondensibles passing through the condensers shall then be incinerated at 1200 degrees Fahrenheit for a period of not less than 0.3 seconds, or treated in an equally effective manner.

(d) Measurement and Recording Requirements. Any person processing or incinerating gases, vapors, or gas-entrained matter as required by Paragraph (c) of this Rule shall install, operate, and maintain in good working order and calibration continuous measuring and recording devices for equipment operational parameters to document equipment operation in accordance with this Rule. In addition, the owner or operator of the facility shall:

(1) demonstrate the measuring and recording devices are capable of verifying the compliance status of the equipment on a continuous basis;

(2) describe the parameters to be used to determine the compliance status and how these parameters:

(A) are to be measured;

(B) are to be used to determine compliance status; and

(3) provide a quality assurance program approved by the Director for all monitoring devices and systems that includes:

(A) procedures and frequencies for calibration;

(B) standards traceability;

(C) operational checks;

(D) maintenance schedules and procedures;

(E) auditing schedules and procedures;

(F) data validation; and

(G) schedule for implementing the quality assurance program.

These data shall be available to the Director upon request.

(e) A person shall not allow, cause, or permit the installation or operation of expeller units unless they are properly hooded to ensure that all exhaust gases are collected or ducted to odor control equipment.

(f) A person subject to this Rule shall not cause or permit any raw material to be handled, transported, or stored, or to undertake the preparation of any raw material without taking reasonable precautions to prevent odors from being discharged. For the purpose of this Rule, such raw material is in "storage" after it has been unloaded at a facility or after it has been located at the facility for at least 36 hours. Reasonable precautions shall include the following:

(1) storage of all raw material before or in the process of preparation, in properly enclosed and vented equipment or areas, together with the use of effective devices and methods to prevent the discharge of odor bearing gases;

(2) use of covered vehicles or containers of watertight construction for the handling and transporting of any raw material; and

(3) use of hoods and fans to enclose and vent the storage, handling, preparation, and conveying of any odorous materials together with effective devices or methods, or both, to prevent emissions of odors or odor bearing gases.

(g) A vehicle or container holding raw material, which has not been unloaded inside or parked inside an odor controlled area within the facility, shall be unloaded for processing of the raw material prior to the expiration of the following time limits:

(1) for feathers with only trace amounts of blood, such as those obtained from slaughtering houses that separate blood from offal and feathers, no later than 48 hours after being weighed upon arrival at the facility; and

(2) for used cooking oil in sealed tankers, no later than 96 hours after being weighed upon arrival at the facility.

(h) The owner or operator shall notify the regional supervisor of the appropriate regional office within two business days after the provisions of Paragraph (g) of this Rule are not met and the conditions that are encountered that cause or may cause release of excessive and malodorous gases or vapors.

(i) The owner or operator of a facility shall be in compliance with this Rule before beginning operation.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5);
Eff. July 1, 1996;
Amended Eff. June 1, 2018; April 1, 2001;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0541 CONTROL OF EMISSIONS FROM ABRASIVE BLASTING

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

(1) "Abrasives" means any material used in abrasive blasting operations.

(2) "Abrasive blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface. Sandblasting is one form of abrasive blasting.

(3) "Abrasive blasting equipment" means any equipment used in abrasive blasting operations.

(4) "Building" means a structure with four or more sides and a roof used, in whole or in part, to house or contain abrasive blasting.

(5) "Fugitive dust emissions" means emissions of particulate matter into the outdoor atmosphere that is not vented or captured by a stack or chimney.

(b) The owner or operator shall ensure that any abrasive blasting operation conducted outside a building or conducted indoors and vented to the atmosphere is performed in accordance with the requirements set forth in 15A NCAC 02D .0521, Control of Visible Emissions. For the purposes of this Rule, the visible emissions reading for abrasive blasting performed outside a building shall be taken at a spot approximately one meter above the point of abrasive blasting with a viewing distance of approximately five meters.

(c) Except as provided in Paragraph (d) of this Rule, all abrasive blasting operations shall be conducted within a building.

(d) An abrasive blasting operation conducted under one or more of the following conditions is not required to be conducted within a building:

(1) when the item to be blasted exceeds eight feet in any dimension;

(2) when the surface being blasted is situated at its permanent location or not further away from its permanent location than is necessary to allow the surface to be blasted; or

(3) when the abrasive blasting operation is conducted at a private residence or farm and the visible emissions created by this abrasive blasting operation do not migrate beyond the property boundary of the private residence or farm on which the abrasive blasting operation is being conducted.

(e) The owner or operator of any abrasive blasting operation conducted in accordance with Subparagraphs (d)(1) and (d)(2) of this Rule, outside a building, shall take appropriate measures to ensure that the fugitive dust emissions created by the abrasive

blasting operation do not migrate beyond the property boundaries in which the abrasive blasting operation is being conducted. Appropriate measures include the following:

(1) the addition of a suppressant to the abrasive blasting material;
(2) wet abrasive blasting;
(3) hydroblasting;
(4) vacuum blasting;
(5) shrouded blasting; or
(6) shrouded hydroblasting.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108(c)(7); 143-215.108(d)(1);
Eff. July 1, 2000;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0542 CONTROL OF PARTICULATE EMISSIONS FROM COTTON GINNING OPERATIONS

(a) Purpose. The purpose of this Rule is to establish control requirements for particulate emissions from cotton ginning operations.

(b) Definitions. For the purposes of this Rule, the following definitions apply:

(1) "1D-3D cyclone" means any cyclone-type collector of the 1D-3D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 1D-3D cyclone has a cylinder length of 1xD and a cone length of 3xD.
(2) "2D-2D cyclone" means any cyclone-type collector of the 2D-2D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 2D-2D cyclone has a cylinder length of 2xD and a cone length of 2xD.
(3) "Bale" means a compressed and bound package of cotton lint, approximately weighing 500 pounds.
(4) "Existing facility" means a cotton ginning operation site operating prior to July 1, 2002.
(5) "Ginning operation" means any facility or plant removing seed, lint, trash, or any combination of these from raw cotton or bales of lint cotton.
(6) "Ginning season" means the period of time during which the gin is in operation, which is generally from September of the current year through January of the following year.
(7) "High pressure exhausts" means the exhaust air systems at a cotton gin not defined as "low pressure exhausts."
(8) "Low pressure exhausts" means the exhaust cotton handling systems located at a cotton gin that handle air from the cotton lint handling system and battery condenser.

(c) Applicability. This rule applies to all new, existing, and modified cotton ginning operations. Existing facilities with a maximum rated capacity of less than 20 bales per hour that do not have cyclones on lint cleaners and
battery condensers as of July 1, 2002 are not required to add:

(1) the emission control devices in Subparagraph (d)(1) of this Rule to lint cleaning exhausts if emissions from the lint cleaning are controlled by fine mesh screens; and
(2) the emission control devices in Subparagraph (d)(2) of this Rule to battery condenser exhausts if the emissions from the battery condenser are controlled by fine mesh screens.

(d) Emission Control Requirements. The owner or operator of each cotton ginning operation shall control particulate emissions from the facility by controlling:

(1) all high pressure exhausts and lint cleaning exhausts with an emission control system including:
  (A) one or more 1D-3D or 2D-2D cyclones to achieve 95 percent efficiency; or
  (B) a device with a minimum of 95 percent efficiency.
(2) low pressure exhausts, except lint cleaning exhausts, by an emission control system including:
  (A) one or more 1D-3D or 2D-2D cyclones to achieve 90 percent efficiency; or
  (B) a device with at least a 90 percent efficiency.

Efficiency is based on the removal of particulate matter between the cyclone's inlet and outlet; it is measured using test methods in 15A NCAC 02D .2600.

(e) Exhaust Rain Caps. Exhausts from emission points or control devices shall not be equipped with exhaust rain caps or other devices that deflect the emissions downward or outward.

(f) Operation and Maintenance. To ensure optimum control efficiency is maintained, the owner or operator shall establish, based on manufacturers recommendations, an inspection and maintenance schedule for the control devices, other emission processing equipment, and monitoring devices used pursuant to this Rule. The inspection and maintenance schedule shall be followed throughout the ginning season. The results of the inspections and any maintenance performed on the control equipment, emission processing equipment, or monitoring devices shall be recorded in the log book required in Paragraph (k) of this Rule.

(g) Fugitive Emissions. The owner or operator shall minimize fugitive emissions from cotton ginning operations in accordance with this Paragraph:

(1) The owner or operator of a
  (A) trash stacker shall:
    (i) install, maintain, and operate a three-sided enclosure with a roof whose sides are high enough above the opening of the dumping device to prevent wind from dispersing dust or debris; or

(ii) install, maintain, and operate a device to provide wet suppression at the dump area of the trash cyclone and minimize free fall distance of waste material exiting the trash cyclone.

(B) trash stacker and composting system shall: install, maintain, and operate a wet suppression system providing dust suppression in the auger box assembly and at the dump area of the trash stacker system. The owner or operator shall keep the trash material wet and compost it in place until the material is removed from the dump area for additional composting or disposal.

(2) Gin Yard. The owner or operator shall clean and dispose of accumulations of trash or lint on the non-storage areas of the gin yard daily.

(3) Traffic areas. The owner or operator shall clean paved roadways, parking, and other traffic areas at the facility as necessary to prevent re-entrainment of dust or debris. The owner or operator shall treat unpaved roadways, parking, and other traffic areas at the facility with wet or chemical dust suppressant as necessary to prevent dust from leaving the facility's property and shall install and maintain signs limiting vehicle speed to 10 miles per hour where chemical suppression is used and to 15 miles per hour where wet suppression is used.

(4) Transport of Trash Material. The owner or operator shall ensure all trucks transporting gin trash material are covered and the trucks are cleaned of over-spill material before trucks leave the trash hopper dump area. The dump area shall be cleaned daily.

(h) Alternative Control Measures. The owner or operator of a ginning operation may petition for use of alternative control measures to those specified in this Rule. The petition shall include:

(1) the name and address of the petitioner;

(2) the location and description of the ginning operation;

(3) a description of the alternative control measure; and

(4) a demonstration the alternative control measure's effectiveness is equal to or greater than the control device or method specified in this Rule.

(i) Approval of Alternative Control Measure. The Director shall approve the alternative control measure if he or she finds:

(1) all the information required by Paragraph (h) of this Rule has been submitted; and

(2) the alternative control measure's effectiveness is equal to or greater than the control device or method specified in this Rule.

(j) Monitoring.

(1) The owner or operator of each ginning operation shall install, maintain, and calibrate monitoring devices measuring pressures, rates of flow, and other operating conditions necessary to determine if the control devices function in accordance with the engineering specifications set forth in the permit.

(2) Before or during the first week of operation of the 2002-2003 ginning season, the owner or operator of each gin shall conduct a baseline study of the entire dust collection system, without cotton being processed, to ensure air flows stay within the design range for each collection device. For 2D-2D cyclones the air flow design range is 2600 to 3600 feet per minute. For 1D-3D cyclones the design range is 2800 to 3600 feet per minute. For other control devices the air flow design range is that found in the manufacturer's specifications. Gins constructed after the 2002-2003 ginning season shall conduct the baseline study before or during the first week of operation of the first ginning season following construction. During the baseline study the owner or operator shall measure or determine according to the methods specified in this Paragraph and record in a logbook:

(A) the calculated inlet velocity for each control device; and

(B) the pressure drop across each control device.

The owner or operator shall use Method 1 and Method 2 of 40 CFR Part 60 Appendix A to measure flow and static pressure and determine inlet velocity or the USDA method for determining duct velocity and static pressure in Agricultural Handbook Number 503, Cotton Ginners Handbook, dated December 1994. The Cotton Ginners Handbook method shall only be used where test holes are located a minimum of eight and one-half pipe diameters downstream and one and one-half pipe diameters upstream from elbows, valves, dampers, changes in duct diameter or any other flow disturbances. Where Method 2 is used a standard pitot tube may be used in lieu of the s-pitot specified in Method 2 subject to the conditions specified in Paragraph 2.1 of Method 2.

(3) On a monthly basis following the baseline study, the owner or operator shall measure and record in the logbook the static pressure at each port where the static pressure was measured in the baseline study. Measurements shall be made using a manometer, a Magnahelic® gauge, or other device the Director approves as being equivalent to a manometer. If the owner or operator measures a change in static pressure of 20 percent or more from that measured in the baseline study, the owner or operator shall

initiate corrective action. Corrective action shall be recorded in the logbook. If corrective action will take more than 48 hours to complete, the owner or operator shall notify the regional supervisor of the region in which the ginning operation is located as soon as possible, but by no later than the end of the day such static pressure is measured.

(4) When any design changes to the dust control system are made, the owner or operator shall conduct a new baseline study for that portion of the system and shall record the new values in the logbook required in Paragraph (k) of this Rule. Thereafter monthly static pressure readings for that portion of the system shall be compared to the new values.

(5) During the ginning season, the owner or operator shall daily inspect for structural integrity of the control devices and other emissions processing systems and shall ensure that the control devices and emission processing systems conform to normal and proper operation of the gin. If a problem is found, corrective action shall be taken and recorded in the logbook required in Paragraph (k) of this Rule.

(6) At the conclusion of the ginning season, the owner or operator shall conduct an inspection of the facility to identify all scheduled maintenance activities and repairs needed relating to the maintenance and proper operation of the air pollution control devices for the next season. Any deficiencies identified through the inspection shall be corrected before beginning operation of the gin for the next season.

(k) Recordkeeping. The owner operator shall establish and maintain on-site a logbook documenting the following items:

(1) results of the baseline study as specified in Subparagraph (j)(2) of this Rule;

(2) results of new baseline studies as specified in Subparagraph (j)(4) of this Rule;

(3) results of monthly static pressure checks and any corrective action taken as specified in Subparagraph (j)(3) of this Rule;

(4) observations from daily inspections of the facility and any resulting corrective actions taken as required in Subparagraph (j)(5) of this Rule; and

(5) a copy of the manufacturer's specifications for each type of control device installed.

The logbook shall be maintained on site and made available to Division representatives upon request.

(l) Reporting. The owner or operator shall submit by March 1 of each year a report containing the following:

(1) the name and location of the cotton gin;

(2) the number of bales of cotton produced during the previous ginning season;

(3) a maintenance and repair schedule based on inspection of the facility at the conclusion of the previous cotton ginning season required in Subparagraph (j)(6) of this Rule; and

(4) signature of the responsible official as identified in 15A NCAC 02Q .0303.

(m) Compliance Schedule. Existing sources shall comply as specified in Paragraph (d) of this Rule. New and modified sources shall be in compliance upon start-up.

(n) Record retention. The owner or operator shall retain all records required to be kept by this Rule for three years from the date of recording.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. August 1, 2002;
Amended Eff. June 1, 2008;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0543 BEST AVAILABLE RETROFIT TECHNOLOGY

(a) For the purposes of this Rule, the definitions at 40 CFR 51.301 shall apply.

(b) Mandatory Class I Federal areas are identified in 40 CFR Part 81, Subpart D.

(c) The Director shall have the maximum flexibility allowed pursuant to 40 CFR 51.308 or 40 CFR Part 51, Appendix Y.

(d) This Rule applies to BART-eligible sources meeting the requirements of 40 CFR Part 51, Appendix Y causing or contributing to any visibility impairment in a mandatory Class I Federal area as determined using 40 CFR Part 51, Subpart P.

(e) Unless exempted pursuant to 40 CFR 51.303, the owner or operator of a BART-eligible emission unit subject to this Rule shall perform a best available retrofit technology (BART) evaluation. Pursuant to 40 CFR 51.308, the evaluation shall include:

(1) the technology available;

(2) the cost of compliance;

(3) the energy and non-air quality environmental impacts of compliance;

(4) any pollution control equipment in use at the source;

(5) the remaining useful life of the source; and

(6) the degree of improvement in visibility reasonably anticipated to result from the use of such technology.

(f) The owner or operator of a BART-subject emission unit shall install, operate, and maintain BART as approved by the Director after considering the factors listed in Paragraph (e) of this Rule and incorporated in the unit's permit issued pursuant to 15A NCAC 02Q.

(g) BART shall be determined using "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" (1980), 40 CFR 51.308(e)(1)(ii), and 40 CFR Part 51, Appendix Y.

(h) "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" is incorporated by reference, exclusive of appendix E, and shall include any later amendments or editions.

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History Note: Authority G.S.143-215.3(a)(1); 143-215.107(a)(5),(10);
Eff. September 1, 2006;
Amended Eff. May 1, 2007;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR GREENHOUSE GASES

(a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality for greenhouse gases as required by 40 CFR 51.166. The minimum requirements described in the portions of 40 CFR 51.166 are hereby adopted as requirements under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 adopted in this Rule speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 adopted in this Rule provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of non-applicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2). For purposes of greenhouse gases, the provisions of this Rule shall apply rather than the provisions in 15A NCAC 02D .0530. For all other regulated new source review (NSR) pollutants, the provisions in 15A NCAC 02D .0530 shall apply. A major stationary source or major modification shall not be required to obtain a prevention of significant deterioration (PSD) permit on the sole basis of its greenhouse gases emissions.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions." "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with Subparagraphs (1) through (3) of this Paragraph:

(1) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;

(C) For an existing emission unit, other than an electric utility steam generating unit, the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source shall currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and

(F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this

amount if required by Parts (B) and (C) of this Subparagraph;

(2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

(3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.

(c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.

(d) In the definition of "subject to regulation", a greenhouse gas's global warming potential is the global warming potential published at Table A-1 of Subpart A of 40 CFR Part 98 and shall include subsequent amendments and editions.

(e) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(f) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (r) and (w).

(g) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(h) 15A NCAC 02Q .0102 is not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(k) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(l) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(m) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Subchapter or 15A NCAC 02Q and any other requirements under local, State, or federal law.

(n) In lieu of the requirements in 40 CFR 51.166(r)(6) and (7), this Paragraph shall apply. If the owner or operator of a source is using projected actual emissions to determine applicability with prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

(1) a description of the project;

(2) identification of sources whose emissions could be affected by the project;

(3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);

(4) the calculated baseline actual emissions in Subparagraph (b)(1) of this Rule an explanation of how the baseline actual emissions were calculated; and

(5) any netting calculations, if applicable.

If upon reviewing the notification, the Director finds that the project will require a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his or her findings and the owner or operator shall not make the modification until a prevention of significant deterioration permit has been issued pursuant to this Rule. If the Director finds that the project will not require a prevention of significant deterioration evaluation and the projected actual emissions, calculated pursuant to 40 CFR 51.166(b)(40)(ii)(a) and (b), minus the baseline actual emissions, is 50 percent or greater of the amount that is a significant emissions increase, without reference to the amount that is a significant net emissions increase, for the regulated NSR pollutant, then, the Director shall require a permit application to include a permit condition for the monitoring, recordkeeping, and reporting of the annual emissions related to the project in tons per year, for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit for the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii). The monitoring, recordkeeping, and reporting requirements in this Paragraph shall not apply if the projected actual emissions, calculated pursuant to 40 CFR 51.166(b)(40)(ii)(a) and (b), minus the baseline actual emissions, is less than 50 percent of the amount that is a significant emissions increase, without reference to the amount

that is a significant net emissions increase, for the regulated NSR pollutant.

(o) Portions of the regulations in the Code of Federal Regulations (CFR) that are referred to in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule, with respect to 40 CFR 51.166, is that as of July 1, 2019 at https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol2/pdf/CFR-2019-title40-vol2-sec51-166.pdf and does not include any subsequent amendments or editions. Federal regulations referenced in 40 CFR 51.166 shall include subsequent amendments and editions. This Rule is applicable in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v). The publication may be accessed free of charge.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;
Eff. January 28, 2011 pursuant to E.O. 81, Beverly E. Perdue;
Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule;
Temporary Amendment Eff. December 23, 2011;
Amended Eff. July 1, 2012;
Temporary Amendment Eff. December 2, 2014;
Amended Eff. September 1, 2015;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0546 CONTROL OF EMISSIONS FROM LOG FUMIGATION OPERATIONS

(a) Purpose. The purpose of this Rule is to establish emission control requirements for hazardous air pollutants and toxic air pollutants from log fumigation operations.

(b) Definitions. For the purpose of this Rule, the following definitions and definitions in this Subchapter or 15A NCAC 02Q apply:

(1) "Bulk or tarpaulin log fumigation" means the fumigation of logs that are placed in piles on an impermeable surface and covered with a weighted-down tarpaulin.

(2) "Chamber log fumigation" means the fumigation of logs inside a sealed building or structure that is specifically used for fumigation. Chambers used for fumigation may be either atmospheric or vacuum type.

(3) "Container log fumigation" means the fumigation of logs inside a container where the doors of the container are closed and sealed.

(4) "Fumigant" means the hazardous air pollutant or toxic air pollutant that is used to eliminate the pests within the logs.

(5) "Fumigation operation" means the period of time that the fumigant is injected and retained in the container, chamber, or bulk piles for the purposes of treating the logs for insects and other pests to prevent the transfer of exotic organisms.

(6) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act in 42 U.S.C. 7412(b).

(7) "Public right-of-way" means an access area where people can reasonably be expected to be present for any or all parts of a 24-hour period.

(8) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.

(c) Applicability. This Rule applies to new, existing, and modified bulk, chamber, and container log fumigation operations that use a hazardous air pollutant or toxic air pollutant as a fumigant.

(d) Emission Control Requirements. The owner or operator of a log fumigation operation shall comply with the Toxic Air Pollutant Guidelines specified in 15A NCAC 02D .1104 and follow the procedures specified in 15A NCAC 02D .1106, 15A NCAC 02Q .0709, and .0710.

(e) The owner or operator shall post signs notifying the public of fumigation operations. The signs shall be visible and legible to the public at the fence or property line closest to any public right-of-way. The signs shall remain in place at all times and shall conform to the format for placards mandated by the federally approved fumigant label.

(f) Monitoring, Recordkeeping and Reporting. The owner or operator of a bulk, chamber, or container log fumigation operation shall comply with the requirements pursuant to 15A NCAC 02D .0600:

(1) The owner or operator shall send an initial notification of commencement of operations to the appropriate Division of Air Quality regional office within 15 days of initial fumigation start-up.

(2) The owner or operator shall submit a quarterly summary report, with the original signature of the permittee or the authorized responsible official, of the monitoring and recordkeeping activities postmarked no later than 30 days after the end of each calendar year quarter. The report shall contain the following:

(A) the company name, address, and facility ID number;

(B) the calendar year quarter represented by the report;

(C) the daily and total fumigant usage in pounds for each quarter;

(D) a summary of the monitoring data required by the permit that was collected during the quarter; and

(E) a summary of exceedances from the levels established in the permit that occurred during the quarter of any monitoring parameters.

(g) Compliance Schedule. The owner or operator of an existing log fumigation operation subject to this Rule shall achieve compliance within 60 days after the Rule is effective or in accordance with an alternate compliance schedule approved by the Director. In establishing an alternate compliance schedule, the Director shall consider whether the compliance approach chosen by the facility involves the purchase and installation of a control

device. New and modified facilities shall achieve compliance with this Rule upon start-up.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5);
Eff. November 1, 2020.

15A NCAC 02D .0615 DELEGATION

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);
Eff. April 1, 1999;
Repealed Eff. November 1, 2020.

15A NCAC 02D .0901 DEFINITIONS

For the purpose of this Section, the following definitions shall apply:

(1) "Coating" means a functional, protective, or decorative film applied in a thin layer to a surface.

(2) "Coating applicator" means an apparatus used to apply a surface coating.

(3) "Coating line" means one or more apparatus or operations in a single line at which point a surface coating is applied, dried, or cured and that include a coating applicator and flashoff area and may include an oven or associated control devices.

(4) "Continuous vapor control system" means a vapor control system that treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.

(5) "Delivered to the applicator" means the condition of coating after dilution by the user just before application to the substrate.

(6) "Flashoff area" means the space between the application area and the oven.

(7) "High solids coating" means a coating that contains a higher percentage of solids and a lower percentage of volatile organic compounds and water than conventional organic solvent borne coatings.

(8) "Hydrocarbon" means any organic compound of carbon and hydrogen only.

(9) "Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

(10) "Intermittent vapor control system" means a vapor control system that employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device shall treat the accumulated vapors only during automatically controlled cycles.

(11) "Loading rack" means an aggregation or combination of loading equipment arranged so that all loading outlets in the equipment can be connected to a cargo tank parked in a specified loading space.

(12) "Low solvent coating" means a coating that contains a substantially lower amount of volatile organic compounds than conventional organic solvent borne coatings; it typically falls into one of three major groups of high solids, waterborne, or powder coatings.

(13) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(14) "Oven" means a chamber used to bake, cure, polymerize, or dry a surface coating using heat.

(15) "Potential emissions" means the quantity of a pollutant that would be emitted at the maximum capacity of a stationary source to emit the pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is described or contained as a condition in the federally enforceable permit. Secondary emissions do not count in determining potential emissions of a stationary source. Fugitive emissions count, to the extent quantifiable, in determining the potential emissions only in these cases:
   (a) petroleum refineries;
   (b) chemical process plants; and
   (c) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(16) "Prime coat" means the first film of coating applied to a surface to protect it or to prepare it to receive subsequent coatings.

(17) "Reasonably available control technology" also denoted as "RACT," means the lowest emission limit a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. It may require technology that has been applied to similar source categories.

(18) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquefied petroleum gases as determined by American Society for Testing and Materials test method D323-15A.

(19) "Shutdown" means the cessation of operation of a source or a part thereof or emission control equipment.

(20) "Solvent" means organic materials that are liquid at standard conditions and used as dissolvers, viscosity reducers, or cleaning agents.

(21) "Standard conditions" means a temperature of 68 degrees Fahrenheit and pressure of 29.92 inches of mercury.

(22) "Stage I" means vapor control systems that minimize, collect, and transfer vapors in a gasoline storage tank that have been displaced by the incoming gasoline. The vapors are routed through pipes and hoses back into the cargo tank to be transported to where the tank is loaded and the vapors are recovered or destroyed. Vent lines on storage tanks with vapor control systems shall use pressure release valves or flow restrictors to minimize releases to the atmosphere.

(23) "Startup" means the setting in operation of a source or emission control equipment.

(24) "Substrate" means the surface to which a coating is applied.

(25) "Topcoat" means the final films of coating applied in a multiple or single coat operation.

(26) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Manual of Petroleum Measurement Standards, Chapter 19.2, Evaporative Loss From Floating-Roof Tanks. This American Petroleum Institute document is incorporated by reference and shall include any subsequent amendments or editions. This document may be obtained at https://www.apiwebstore.org/publications/item.cgi?43bface1-2adf-4234-90a8-ee6089c04f9a at a cost of two hundred ten dollars ($210.00).

(27) "Vapor collection system" means a vapor transport system that uses direct displacement by the liquid loaded into the tank to force vapors from the tank into a vapor control system.

(28) "Vapor control system" means a system that prevents release to the atmosphere of 90 percent or more by weight of organic compounds in the vapors displaced from a tank during the transfer of gasoline.

(29) "Volatile organic compound" also denoted as "VOC," means any compound of carbon whose volatile content can be determined by the procedure described in 15A NCAC 02D .2600, excluding any compound that is listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. January 1, 2009; June 1, 2008; July 1, 1996; December 1, 1993; July 1, 1991; March 1, 1991; December 1, 1989;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0902 APPLICABILITY

(a) The rules in this Section shall not apply except as specifically set out in this Rule.

(b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per day unless specified otherwise in this Section.

(c) Rules 15A NCAC 02D .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 apply regardless of the level of emissions of volatile organic compounds unless the provisions specified in Paragraph (d) of this Rule are applied.

(d) This Section does not apply to:

(1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:

(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;

(B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;

(C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or

(D) research and development laboratory activities, provided the activity produces no commercial product or feedstock material; or

(2) emissions of volatile organic compounds during startup or shutdown operations from sources that use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(e) The following rules of this Section apply to facilities located statewide:

(1) 15A NCAC 02D .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;

(2) 15A NCAC 02D .0926, Bulk Gasoline Plants;

(3) 15A NCAC 02D .0927, Bulk Gasoline Terminals;

(4) 15A NCAC 02D .0928, Gasoline Service Stations Stage I;
(5) 15A NCAC 02D .0932, Gasoline Cargo Tanks and Vapor Collection Systems;
(6) 15A NCAC 02D .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
(7) 15A NCAC 02D .0948, VOC Emissions from Transfer Operations; and
(8) 15A NCAC 02D .0949, Storage of Miscellaneous Volatile Organic Compounds.

(f) Except as provided in Paragraphs (c) and (e) of this Rule, the rules in this Section apply to facilities subject to Section 182(b)(2) of the Clean Air Act with potential to emit 100 or more tons per year of VOC and to facilities with potential to emit less than 100 tons per year of volatile organic compounds in categories for which the United States Environmental Protection Agency has issued Control Technique Guidelines that are located in the following moderate nonattainment areas for the 1997 8-hour ambient air quality standard for ozone as designated in 40 CFR 81.334 prior to January 2, 2014:

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

These facilities are subject to reasonably available control technology requirements under this Section and shall comply with the requirements in 15A NCAC 02D .0909 through .0951 and with 15A NCAC 02D .0958.

(g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as attainment and becomes a maintenance area for the 1997 8-hour ambient air quality standard for ozone, all sources in that county or part of county subject to Paragraph (f) of this Rule that achieved compliance in accordance with 15A NCAC 02D .0909 shall continue to comply with this Section. Facilities with potential to emit less than 100 tons of volatile organic compounds per year, where the compliance date in 15A NCAC 02D .0909 has not passed before redesignation of the area to attainment for the 1997 ozone standard, shall comply in accordance with Paragraph (h) of this Rule.

(h) If a violation of the 1997 ambient air quality standard for ozone occurs when the areas listed in Paragraph (f) of this Rule become ozone maintenance area, no later than 10 days after the violation occurs, the Director shall initiate technical analyses to determine the control measures needed to attain and maintain the 1997 8-hour ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the 1997 8-hour ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analyses by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the Rules implemented are to apply in the areas listed in Paragraph (f) of this Rule. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the counties in which the rules of this Section are being implemented notifying them that they are or may be subject to the requirements defined in 15A NCAC 02D .0909.

For the purpose of notifying permitted facilities in Mecklenburg County, "Director" means the Director of the Mecklenburg County local air pollution control program.

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in 15A NCAC 02D .0524, .1110, and .1111.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.107(a)(7)
Eff. July 1, 1979;
Amended Eff. November 1, 2016; May 1, 2013; September 1, 2010; January 1, 2009; July 1, 2007; March 1, 2007; August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1, 1994;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0903 RECORDKEEPING: REPORTING: MONITORING

(a) The owner or operator of any volatile organic compound emission source or control equipment shall:

(1) install, operate, and maintain process and control equipment monitoring instruments or procedures as necessary to comply with the requirements of this Section; and
(2) maintain written data and reports relating to monitoring instruments or procedures that document the compliance status of the volatile organic compound emission source or control equipment. Such data and reports shall be maintained daily unless otherwise specified in this Section.

(b) The owner or operator of any volatile organic compound emission source or control equipment subject to the requirements of this Section shall comply with the monitoring, recordkeeping, and reporting requirements in 15A NCAC 02D .0600.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. May 1, 2013; April 1, 1999; July 1, 1993; July 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0906 CIRCUMVENTION

(a) An owner or operator subject to this Section shall not build, erect, install, or use any article, machine, equipment, process, or method that conceals an emission that would otherwise constitute a violation of an applicable rule in this Section.

(b) Paragraph (a) of this Rule includes the use of gaseous dilutants to achieve compliance and the piecemeal carrying out of an operation to avoid coverage by a rule that applies only to operations larger than a specified size.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0909 COMPLIANCE SCHEDULES FOR SOURCES IN OZONE NONATTAINMENT AND MAINTENANCE AREAS

(a) Applicability. This Rule applies to sources located at any facility covered by Paragraphs (f) and (h) of 15A NCAC 02D .0902.

(b) Exceptions. This Rule does not apply to facilities subject to 15A NCAC 02D .0902(e). Facilities subject to 15A NCAC 02D .0902(e) shall comply with the provisions of those Rules rather than the schedule in Paragraphs (c) and (d) of this Rule.

(c) Maintenance area contingency plan. The owner or operator of any source subject to this Rule shall adhere to the following increments of progress and schedules:

(1) If compliance with applicable rules in this Section is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
  (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
  (B) The compliance schedule shall contain the following increments of progress:
    (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
    (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
    (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
  (C) Final compliance with applicable rules in this Section shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
(2) If compliance with applicable rules in this Section is to be achieved by using low solvent coating technology:
  (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
  (B) The compliance schedule shall contain the following increments of progress:
    (i) a date by which purchase orders shall be issued for low solvent coatings and process modifications;
    (ii) a date by which process modifications shall be initiated; and
    (iii) a date by which process modifications shall be completed and use of low solvent coatings shall begin; and
  (C) Final compliance with applicable rules in this Section shall be achieved within two years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
(3) The owner or operator shall certify to the Director within five days after each increment deadline of progress defined in this Paragraph, whether the required increment of progress has been met.

(d) Moderate nonattainment areas. The owner or operator of any source subject to this Rule shall adhere to the following increments of progress and schedules:

(1) If compliance with applicable rules in this Section is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
  (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;
  (B) The compliance schedule shall contain the following increments of progress:
    (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
    (ii) a date by which on-site construction or installation of

the emission control and process equipment shall begin; and

(iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and

(C) For facilities with potential to emit 100 tons or more of volatile organic compounds per year, final compliance with applicable rules in this Section shall be achieved no later than April 1, 2009.

(D) For facilities with potential to emit less than 100 tons of volatile organic compounds per year, final compliance with applicable rules in this Section shall be achieved no later than May 1, 2016.

(2) If compliance with applicable rules in this Section is to be achieved by using low solvent coating technology:

(A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;

(B) The compliance schedule shall contain the following increments of progress:

(i) a date by which purchase orders shall be issued for low solvent coatings and process modifications;

(ii) a date by which process modifications shall be initiated; and

(iii) a date by which process modifications shall be completed and use of low solvent coatings shall begin; and

(C) Final compliance with applicable rules in this Section shall be achieved no later than April 1, 2009;

(D) For facilities with potential to emit less than 100 tons of volatile organic compounds per year, final compliance with applicable rules in this Section shall be achieved no later than May 1, 2015.

(3) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress defined in this Paragraph, whether the required increment of progress has been met.

(e) If the Director requires a test in accordance with 15A NCAC 02D .2600 to demonstrate that compliance has been achieved, the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) Sources already in compliance.

(1) Maintenance area contingency plan. Paragraph (c) of this Rule shall not apply to any source subject to this Rule that is in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance by the Director within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.

(2) Moderate nonattainment areas. Paragraph (d) of this Rule does not apply to sources subject to this Rule if they are in compliance with applicable rules of this Section on March 1, 2007.

(g) New sources.

(1) Maintenance area contingency plan. The owner or operator of any source subject to this Rule not in existence or under construction before the date that the Director notices in the North Carolina Register pursuant to 15A NCAC 02D .0902(h) the implementation of rules that resolves a violation of the ambient air quality standard for ozone shall comply with all applicable rules in this Section upon start-up of the source.

(2) Moderate nonattainment areas. The owner or operator of any new source subject to this Rule not in existence or under construction before March 1, 2007 in an area identified in 15A NCAC 02D .0902(f) shall comply with all applicable rules in this Section upon start-up of the source.

History Note Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. May 1, 2013; September 1, 2010; January 1, 2009; July 1, 2007; March 1, 2007; July 1, 2000; April 1, 1997; July 1, 1995; July 1, 1994; July 1, 1988; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of any volatile organic compound source required to comply with rules in this Section shall demonstrate compliance by the methods described in 15A NCAC 02D .2600, if the test method is not stated in the Rule governing that source. The owner or operator of a volatile organic compound source shall demonstrate compliance when the Director requests such demonstration.

(b) If the volatile organic compound emissions test shows noncompliance, the owner or operator of the volatile organic source shall submit, along with the final test report, the proposed corrective action.

(c) Compliance shall be determined on a line-by-line basis using the more stringent of the following two:

(1) Compliance shall be determined on a daily basis for each coating line using a weighted average by dividing the sum of the mass in pounds of volatile organic compounds in coatings consumed on that coating line, as received, and the mass in pounds of volatile organic compound solvents added to the coatings on that coating line by the volume in gallons of coating solids consumed during that day on that coating line; or

(2) Compliance shall be determined as follows:

(A) When low solvent or high solids coatings are used to reduce emissions of volatile organic compounds, compliance shall be determined instantaneously.

(B) When add on control devices, such as solvent recovery systems or incinerators, are used to reduce emissions of volatile organic compounds, compliance shall be determined by averaging emissions over a one-hour period.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. June 1, 2008; April 1, 2003; July 1, 1993; July 1, 1991; March 1, 1991; December 1, 1989; January 1, 1985; July 1, 1980;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0918 CAN COATING

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

(1) "End sealing compound" means a synthetic rubber compound that is coated onto can ends and functions as a gasket when the end is assembled on the can.

(2) "Exterior base coating" means a coating applied to the exterior of a can to provide exterior protection to the metal and to provide background for the lithographic or printing operation.

(3) "Interior base coating" means a coating applied by roller coater or spray to the interior of a can to provide a protective lining between the can metal and product.

(4) "Interior body spray" means a coating sprayed on the interior of the can body to provide a protective film between the product and the can.

(5) "Overvarnish" means a coating applied directly over ink to reduce the coefficient of friction, to provide gloss, and to protect the finish against abrasion and corrosion.

(6) "Three-piece can side-seam spray" means a coating sprayed on the exterior and interior of a welded, cemented, or soldered seam to protect the exposed metal.

(7) "Two-piece can exterior end coating" means a coating applied by roller coating or spraying to the exterior end of a can to provide protection to the metal.

(b) This Rule applies to volatile organic compound emissions from coating applicators and ovens of sheet, can, or end coating lines involved in sheet exterior and interior basecoat and overvarnish; two-piece can interior body spray; two-piece spray or roll coat can exterior; and three-piece can side-seam spray and end sealing compound operations.

(c) Unless the exception in Paragraph (d) of this Rule applies, emissions of volatile organic compounds from any can coating line subject to this Rule shall not exceed:

(1) 4.5 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from sheet exterior and interior basecoat and overvarnish or two-piece can exterior basecoat and overvarnish operations;

(2) 9.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from two and three-piece can interior body spray and two-piece spray or roll coat can exterior end operations;

(3) 21.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from a three-piece applicator from a three-piece can side-seam spray operations; or

(4) 7.4 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from end sealing compound operations.

(d) Any source that has controlled emissions pursuant to 15A NCAC 02D .0518(e) prior to July 1, 2000 and that has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989 may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any can coating line subject to this Rule shall not exceed:

(1) 2.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from sheet exterior and interior basecoat and overvarnish or two-piece can exterior basecoat and overvarnish operations;

(2) 4.2 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from two and three-piece can interior body spray and two-piece can spray or roll coat exterior end operations;

(3) 5.5 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from a three-piece applicator from a three-piece can side-seam spray operations; or

(4) 3.7 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from end sealing compound operations.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0919 COIL COATING

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

(1) "Coil coating" means the coating of any flat metal sheet or strip that comes in rolls or coils.

(2) "Quench area" means a chamber where the hot metal exiting the oven is cooled by either a spray of water or a blast of air followed by water cooling.

(b) This Rule applies to volatile organic compound emissions from the coating applicators, ovens, and quench areas of coil coating lines involved in prime and top coat or single coat operations.

(c) Unless the exception in Paragraph (d) of this Rule applies, emissions of volatile organic compounds from any coil coating line subject to this Rule shall not exceed 4.0 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from prime and topcoat or single coat operations.

(d) Any source that has controlled emissions of volatile organic compounds pursuant to .0518(e) prior to July 1, 2000 and that has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989 may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any coil coating line subject to this Rule shall not exceed 2.6 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from prime and topcoat or single coat operations.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0922 METAL FURNITURE COATINGS

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

(1) "Application area" means the area where the coating is applied by spraying, dipping, or flowcoating techniques.

(2) "Coating unit" means one or more coating areas and any associated drying area or oven wherein a coating is applied, dried, or cured.

(3) "Metal furniture coatings" means paints, sealants, caulks, inks, adhesives, and maskants.

(b) This Rule applies to each metal furniture surface coating unit source whose emissions of volatile organic compounds meet the threshold established in 15A NCAC 02D .0902(b).

(c) Unless the exception in Paragraph (f) of this Rule applies, emissions of all volatile organic compounds from metal furniture coating unit subject to this Rule shall not exceed:

(1) 2.3 pounds of volatile organic compounds per gallon of coating excluding water and exempt compounds or 3.3 pounds of volatile organic compounds per gallon of solids delivered from general, one component or general, multi-component types of coating operations; and

(2) 3.0 pounds of volatile organic compounds per gallon of coating excluding water and exempt compounds or 5.1 pounds of volatile organic compounds per gallon of solids delivered from any other types of coating operations.

(d) EPA Method 24 of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coating materials used at metal furniture surface coating units unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(e) Emissions limits established in Subparagraph (c)(2) of this Rule do not apply to stencil coatings, safety-indicating coatings, solid film lubricants, electric-insulating and thermal-conducting coatings, touch-up and repair coatings, coating application utilizing hand-held aerosol cans, or cleaning operations.

(f) Any coating unit that has chosen to use add-on control for coating operations rather than the emission limits established in Paragraph (c) of this Rule shall install control equipment with an overall control efficiency of 90 percent or use a combination of coating and add-on control equipment on a coating unit to meet limits established in Paragraph (c) of this Rule.

(g) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. September 1, 2010; July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0923 SURFACE COATING OF LARGE APPLIANCE PARTS

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

(1) "Application area" means the area where the coating is applied by spraying, dipping, or flowcoating techniques.

(2) "Coating" means paints, sealants, caulks, inks, adhesives, and maskants.

(3) "Coating unit" means a unit that consists of a series of one or more coating applicators and any associated drying area or oven where a coating is dried or cured.

(4) "Large appliance part" means any organic surface-coated metal lid, door, casing, panel, or other interior or exterior metal part or accessory that is assembled to form a large appliance product.

(5) "Large appliance product" means any organic surface-coated metal range, oven, microwave oven, refrigerator, freezer, washer, dryer, dishwasher, water heater, or trash compactor manufactured for household, commercial, or recreational use.

(b) This Rule applies to each large appliance coating unit source whose volatile organic compounds emissions meet the threshold established in 15A NCAC 02D .0902.

(c) Emissions of all volatile organic compounds from any large appliance coating unit subject to this Rule shall not exceed:

(1) 2.3 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds or 3.3 pounds of volatile organic compounds per gallon of solids delivered from general, one component coating or general, multi-component types of coating operations; and

(2) 2.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds or 4.5 pounds of volatile organic compounds per gallon of solids delivered from any other types of coating operations.

(d) EPA Method 24 of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coating materials used at surface coating of large appliances parts facilities unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(e) Emissions limits established in Subparagraph (c)(2) of this Rule do not apply to stencil coatings, safety-indicating coatings, solid film lubricants, electric-insulating and thermal-conducting coatings, touch-up and repair coatings, coating applications utilizing hand- held aerosol cans, or any cleaning material.

(f) Any coating unit that has chosen to use add-on controls for coating operations rather than the emission limits established in Paragraph (c) of this Rule shall install control equipment with an overall control efficiency of 90 percent or use a combination of coating and add-on control equipment on a coating unit to meet limits established in Paragraph (c) of this Rule.

(g) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. September 1, 2010; July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0924 MAGNET WIRE COATING

(a) For the purpose of this Rule, "magnet wire coating" means the process of applying a coating of electrically insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

(b) This Rule applies to volatile organic compound emissions from the oven(s) of magnet wire coating operations.

(c) With the exception stated in Paragraph (d) of this Rule, emissions of volatile organic compounds from any magnet wire coating oven subject to this Rule shall not exceed 2.2 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from magnet wire coating operations.

(d) Any source that has controlled emissions of volatile organic compounds pursuant to 15A NCAC 02D .0518(e) prior to July 1, 2000 and installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989 may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any magnet wire coating oven subject to this Rule shall not exceed 1.7 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from magnet wire coating operations.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0925 PETROLEUM LIQUID STORAGE IN FIXED ROOF TANKS

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

(1) "Condensate" means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

(2) "Crude oil" means a naturally occurring mixture that consists of hydrocarbons or sulfur, nitrogen or oxygen derivatives of hydrocarbons or mixtures thereof that is a liquid at standard conditions.

(3) "Custody transfer" means the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage tanks or automatic transfer facilities to pipeline or any other forms of transportation.

(4) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck that rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(5) "Internal floating roof" means a cover or roof in a fixed roof tank that rests upon or is floated upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(6) "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

(7) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oils, or through redistillation, cracking, extraction, or reforming of unfinished petroleum derivatives.

(b) This Rule applies to all fixed roof storage vessels with capacities greater than 39,000 gallons containing volatile petroleum liquids whose true vapor pressure is greater than 1.52 pounds per square inch.

(c) This Rule does not apply to volatile petroleum liquid storage vessels:

(1) equipped with external floating roofs; or

(2) having capacities less than 416,000 gallons used to store produced crude oil and condensate prior to lease custody transfer.

(d) With the exceptions stated in Paragraph (c) of this Rule, the owner or operator of any fixed roof storage vessel subject to this Rule shall not use the storage vessel unless:

(1) The storage vessel has been retrofitted with an internal floating roof equipped with a closure seal, or seals, to close the space between the roof edge and tank wall;

(2) The storage vessel is maintained such that there are no visible holes, tears, or other openings in the seal or any seal fabric or materials;

(3) All openings except stub drains are equipped with covers, lids, or seals such that:

(A) the cover, lid, or seal is in the closed position at all times except when in actual use;

(B) automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports; and

(C) rim vents, if provided, are set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting;

(4) Planned routine visual inspections are conducted through roof hatches once per month;

(5) A complete inspection of cover and seal is conducted whenever the tank is emptied for maintenance, shell inspection, cleaning, or for other nonoperational reasons or whenever excessive vapor leakage is observed; and

(6) Records are maintained in accordance with 15A NCAC 02D .0903 and shall include:

(A) reports of the results of inspections conducted pursuant to Subparagraphs (d)(4) and (d)(5) of this Rule;

(B) a record of the average monthly storage temperature, and true vapor pressures of petroleum liquids stored; and

(C) records of the throughput quantities and types of petroleum liquids for each storage vessel.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. March 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0926 BULK GASOLINE PLANTS

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

(1) "Average daily throughput" means annual throughput of gasoline divided by 312 days per year.

(2) "Bottom filling" means the filling of a cargo tank or stationary storage tank through an opening flush with the tank bottom.

(3) "Bulk gasoline plant" means a gasoline storage and distribution facility with an average daily throughput of less than 20,000 gallons of gasoline and that typically receives gasoline from bulk terminals by cargo tank transport, stores it in tanks, and subsequently dispenses it via account cargo tanks to farms, businesses, and service stations.

(4) "Bulk gasoline terminal" means a gasoline storage facility that typically receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by cargo tank; and has an average daily throughput of greater than or equal to 20,000 gallons of gasoline.

(5) "Cargo tank" means the storage vessels of freight trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations.

(6) "Gasoline" means any petroleum distillate having a Reid Vapor Pressure (RVP) of 4.0 psi or greater.

(7) "Incoming vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading cargo tank and a receiving stationary storage tank such that vapors displaced from the receiving stationary storage tank are transferred to the cargo tank being unloaded.

(8) "Outgoing vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading stationary storage tank and a receiving cargo tank such that vapors displaced

from the receiving cargo tank are transferred to the stationary storage tank being unloaded.

(9) "Splash filling" means the filling of a cargo tank or stationary storage tank through a pipe or hose whose discharge opening is above the surface level of the liquid in the tank being filled.

(10) "Submerged filling" means the filling of a cargo tank or stationary tank through a pipe or hose whose discharge opening is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or whose discharge opening is entirely submerged when the liquid level is six inches above the bottom of the tank.

(b) This Rule applies to the unloading, loading, and storage facilities of all bulk gasoline plants, and of all cargo tanks delivering or receiving gasoline at bulk gasoline plants except stationary storage tanks with capacities less than 528 gallons.

(c) The owner or operator of a bulk gasoline plant shall not transfer gasoline to any stationary storage tanks unless the unloading cargo tank and the receiving stationary storage tank are equipped with an incoming vapor balance system as described in Paragraph (i) of this Rule and the receiving stationary storage tank is equipped with a fill line whose discharge opening is flush with the bottom of the tank.

(d) The owner or operator of a bulk gasoline plant with an average daily gasoline throughput of 4,000 gallons or more shall not load cargo tank at such plant unless the unloading stationary storage tank and the receiving cargo tank are equipped with an outgoing vapor balance system as described in Paragraph (i) of this Rule and the receiving cargo tank is equipped for bottom filling.

(e) The owner or operator of a bulk gasoline plant with an average daily throughput of more than 2,500 gallons but less than 4,000 gallons located in an area with a housing density exceeding the limits in this Paragraph shall not load any cargo tank at such bulk gasoline plant unless the unloading stationary storage tank and receiving cargo tank are equipped with an outgoing vapor balance system as described in Paragraph (i) of this Rule and the receiving cargo tank is equipped for bottom filling. In the counties of Alamance, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Orange, Rowan, and Wake, the specified limit on housing density is 50 residences in a square one mile on a side with the square centered on the loading rack at the bulk gasoline plant and with one side oriented in a true North-South direction. In all other counties the specified limit on housing density is 100 residences per square mile. The housing density shall be determined by counting the number of residences using aerial photographs or other methods approved by the Director to provide equivalent accuracy.

(f) The owner or operator of a bulk gasoline plant not subject to the outgoing vapor balance system requirements of Paragraph (d) or (e) of this Rule shall not load cargo tanks at such plants unless:

(1) equipment is available at the bulk gasoline plant to provide for submerged filling of each cargo tank; or

(2) each receiving cargo tank is equipped for bottom filling.

(g) For gasoline bulk plants located in a nonattainment area for ozone, the owner or operator shall continue to comply with Paragraph (d) or (e) of this Rule even if the average daily throughput falls below the applicable threshold if ever the facility throughput triggered compliance.

(h) The owner or operator of a bulk gasoline plant shall ensure a cargo tank that is required to be equipped with a vapor balance system pursuant to Paragraphs (c), (d), or (e) of this Rule shall not transfer gasoline between the cargo tank and the stationary storage tank unless:

(1) the vapor balance system is in good working order and is connected and operating;

(2) cargo tank hatches are closed at all times during loading and unloading operations; and

(3) the cargo tank's pressure/vacuum relief valves, hatch covers, and the cargo tank's and storage tank's associated vapor and liquid lines are vapor tight during loading or unloading.

(i) Vapor balance systems required under Paragraphs (c), (d), and (e) of this Rule shall consist of the following major components:

(1) a vapor space connection on the stationary storage tank equipped with fittings that are vapor tight and will be automatically and immediately closed upon disconnection to prevent release of volatile organic material;

(2) a connecting pipe or hose equipped with fittings that are vapor tight and will be automatically and immediately closed upon disconnection to prevent release of volatile organic material; and

(3) a vapor space connection on the cargo tank equipped with fittings that are vapor tight and will be automatically and immediately closed upon disconnection to prevent release of volatile organic material.

(j) The owner or operator of a bulk gasoline plant shall paint all tanks used for gasoline storage white or silver.

(k) The pressure relief valves on cargo tanks loading or unloading at bulk gasoline plants shall be set to release at the highest possible pressure in accordance with State or local fire codes or the National Fire Prevention Association Guidelines. The pressure relief valves on stationary storage tanks shall be set at 0.5 psi for storage tanks placed in service on or after November 1, 1992, and 0.25 psi for storage tanks existing before November 1, 1992.

(l) No owner or operator of a bulk gasoline plant may permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

(m) The owner or operator of a bulk gasoline plant shall observe loading and unloading operations and shall discontinue the transfer of gasoline:

(1) if any liquid leaks are observed; or

(2) if any vapor leaks are observed where a vapor balance system is required under Paragraphs (c), (d), or (e) of this Rule.

(n) The owner or operator of a bulk gasoline plant shall not load, or allow to be loaded, gasoline into any cargo tank unless the cargo tank has been certified leak tight in accordance with 15A NCAC 02D .0932, .0960, and .2615.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. July 1, 1996; May 1, 1993; March 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0927 BULK GASOLINE TERMINALS

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

(1) "Bulk gasoline terminal" means:
  (A) a pipeline breakout station of an interstate oil pipeline facility; or
  (B) a gasoline storage facility that typically receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by cargo tank; and has an average daily throughput of more than 20,000 gallons of gasoline.

(2) "Cargo tank" means the storage vessels of freight trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations.

(3) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.

(4) "Degassing" means the process by which a tank's interior vapor space is decreased to below the lower explosive limit for the purpose of cleaning, inspection, or repair.

(5) "Gasoline" means a petroleum distillate having a Reid Vapor Pressure (RVP) of 4.0 psi or greater.

(6) "Leak" means a crack or hole letting petroleum product vapor or liquid escape that is identifiable through sight, sound, smell, an explosimeter, or the use of a meter that measures volatile organic compounds. When an explosimeter or meter is used to detect a leak, a leak is a measurement that is equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Appendix B of EPA-450/2-78-051. This test procedure is incorporated by reference, including any subsequent amendments and editions. A copy of this test procedure may be obtained free of charge at https://nepis.epa.gov/Exe/ZyPDF.cgi/2000M9RD.PDF?Dockey=2000M9RD.PDF.

(7) "Liquid balancing" means a process used to degas floating roof gasoline storage tanks with a liquid whose vapor pressure is below 1.52 psi. This is done by removing as much gasoline as possible without landing the roof on its internal supports, pumping in the replacement fluid, allowing mixing, remove as much mixture as possible without landing the roof, and repeating these steps until the vapor pressure of the mixture is below 1.52 psi.

(8) "Liquid displacement" means a process by which gasoline vapors, remaining in an empty tank, are displaced by a liquid with a vapor pressure below 1.52 psi.

(9) "Pipeline breakout station" means a facility along a pipeline containing storage tanks used to:
  (A) relieve surges in a hazardous liquid pipeline system; or
  (B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.

(b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the cargo tank compartments.

(c) Gasoline shall not be loaded into any cargo tank from any bulk gasoline terminal unless:

(1) the bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in the cargo tank's records a pre-installation certification stating the vapor control efficiency of the system in use;

(2) displaced vapors and gases are vented only to the vapor control system or to a flare;

(3) a means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

(4) all loading and vapor lines are equipped with fittings that make vapor-tight connections and that are automatically and immediately closed upon disconnection.

(d) Sources regulated by this Rule shall not:

(1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation; or

(2) allow the pressure in the vapor collection system to exceed the cargo tank pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome.

(g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:

(1) rim-mounted secondary seals on all external and internal floating roof tanks;

(2) gaskets on deck fittings; and

(3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:

(1) deck seams shall be welded, bolted, or riveted; and

(2) seams on bolted contact decks and on riveted contact decks shall be gasketed.

(i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

(1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and

(2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter, then, the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) The owner or operators of a bulk gasoline terminal that received an air permit before December 1, 1992 to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with 15A NCAC 02D .1100 shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with 15A NCAC 02D .1100 according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.

(k) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any cargo tank unless the cargo tank has been certified leak tight according to 15A NCAC 02D .0932, .0960, and .2615.

(l) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to 15A NCAC 02D .0932 for each gasoline cargo tank loaded at the terminal.

(m) Emissions of gasoline from degassing of external or internal floating roof tanks at a bulk gasoline terminal shall be collected and controlled by at least 90 percent by weight. Liquid balancing shall not be used to degas gasoline storage tanks at bulk gasoline terminals. Bulk gasoline storage tanks containing not more than 138 gallons of liquid gasoline or the equivalent of gasoline vapor and gasoline liquid are exempted from the degassing requirements if gasoline vapors are vented for at least 24 hours. Documentation of degassing external or internal floating roof tanks shall be made according to 15A NCAC 02D .0903.

(n) According to 15A NCAC 02D .0903, the owner or operator of a bulk gasoline terminal shall visually inspect the following for leaks each day that the terminal is both manned and open for business:

(1) the vapor collection system;

(2) the vapor control system; and

(3) each lane of the loading rack while a gasoline cargo tank is being loaded.

If no leaks are found, the owner or operator shall record that no leaks were found. If a leak is found, the owner or operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(o) The owner or operator of a bulk gasoline terminal shall inspect weekly for leaks:

(1) the vapor collection system;

(2) the vapor control system; and

(3) each lane of the loading rack while a gasoline cargo tank is being loaded.

The weekly inspection shall be done using sight, sound, or smell; a meter used to measure volatile organic compounds; or an explosimeter. An inspection using either a meter used to measure volatile organic compounds or an explosimeter shall be conducted every month. If no leaks are found, the owner or operator shall record the date that the inspection was done and that no leaks were found. If a leak is found, the owner or operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(p) For each leak found under Paragraph (n) or (o) of this Rule, the owner or operator of a bulk gasoline terminal shall record:

(1) the date of the inspection;

(2) the findings detailing the location, nature, and severity of each leak;

(3) the corrective action taken;

(4) the date when corrective action was completed; and

(5) any other information that the terminal deems necessary to demonstrate compliance.

(q) The owner or operator of a bulk gasoline terminal shall repair all leaks as follows:

(1) The vapor collection hose that connects to the cargo tank shall be repaired or replaced before another cargo tank is loaded at that rack after a leak has been detected originating with the terminal's equipment rather than from the gasoline cargo tank.

(2) All other leaks shall be repaired as expeditiously as possible but no later than 15 days from their detection. If more than 15 days are required to make the repair, the reasons that the repair cannot be made shall be documented, and the leaking equipment shall not be used after the fifteenth day from when the leak detection was found until the repair is made.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;

Amended Eff. January 1, 2007; April 1, 2003; August 1, 2002; July 1, 1998; July 1, 1996; July 1, 1994; December 1, 1992; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0928 GASOLINE SERVICE STATIONS STAGE I

(a) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "Coaxial vapor recovery system" means the delivery of the gasoline and recovery of vapors occurring through a single coaxial fill tube, which is a tube within a tube. Gasoline is delivered through the inner tube, and vapor is recovered through the annular space between the walls of the inner tube and outer tube.

(2) "Delivery vessel" means cargo tanks used for the transport of gasoline from sources or supply to stationary storage tanks of gasoline dispensing facilities.

(3) "Dual point vapor recovery system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tank occurring through two separate openings in the storage tank and two separate hoses between the cargo tank and the stationary storage tank.

(4) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psi or greater.

(5) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(6) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.

(7) "Line" means any pipe suitable for transferring gasoline.

(8) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.

(9) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.

(10) "Poppeted vapor recovery adaptor" means a vapor recovery adaptor that automatically and immediately closes itself when the vapor return line is disconnected and maintains a tight seal when the vapor return line is not connected.

(11) "Stationary storage tank" means a gasoline storage container that is a permanent fixture.

(12) "Submerged fill pipe" means any fill pipe with a discharge opening that is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or that is entirely submerged when the level of the liquid is:

(A) six inches above the bottom of the tank if the tank does not have a vapor recovery adaptor; or

(B) 12 inches above the bottom of the tank if the tank has a vapor recovery adaptor. If the opening of the submerged fill pipe is cut at a slant, the distance is measured from the top of the slanted cut to the bottom of the tank.

(13) "Throughput" means the amount of gasoline dispensed at a facility during a calendar month after November 15, 1990.

(b) Applicability. This Rule applies to all gasoline dispensing facilities and gasoline service stations, and to delivery vessels delivering gasoline to a gasoline dispensing facility or gasoline service station.

(c) Exemptions. This Rule does not apply to:

(1) transfers made to storage tanks at gasoline dispensing facilities or gasoline service stations equipped with floating roofs or their equivalent;

(2) stationary tanks with a capacity of not more than 2,000 gallons that are in place before July 1, 1979, if the tanks are equipped with a permanent or portable submerged fill pipe;

(3) stationary storage tanks with a capacity of not more than 550 gallons that are installed after June 30, 1979, if tanks are equipped with a permanent or portable submerged fill pipe;

(4) stationary storage tanks with a capacity of not more than 2,000 gallons located on a farm or a residence and used to store gasoline for farm equipment or residential use if gasoline is delivered to the tank through a permanent or portable submerged fill pipe. This exemption does not apply in ozone non-attainment areas;

(5) stationary storage tanks at a gasoline dispensing facility or gasoline service station where the combined annual throughput of gasoline at the facility or station does not exceed 50,000 gallons, if the tanks are permanently equipped with submerged fill pipes; or

(6) any tanks used exclusively to test the fuel dispensing meters.

(d) With exceptions stated in Paragraph (c) of this Rule, gasoline shall not be transferred from any delivery vessel into any stationary storage tank unless:

(1) the tank is equipped with a submerged fill pipe, and the vapors displaced from the storage tank during filling are controlled by a vapor control system as described in Paragraph (e) of this Rule;

(2) the vapor control system is in good working order and is connected and operating with a vapor tight connection;

(3) the vapor control system is properly maintained and all damaged or malfunctioning components or elements of design are repaired, replaced, or modified;

(4) gauges, meters, or other specified testing devices are maintained in proper working order;

(5) the delivery vessel and vapor collection system complies with 15A NCAC 02D .0932; and

(6) the following records are kept in accordance with 15A NCAC 02D .0903:

(A) the scheduled date for maintenance or the date that a malfunction was detected;

(B) the date the maintenance was performed or the malfunction corrected; and

(C) the component or element of design of the control system repaired, replaced, or modified.

(e) The vapor control system required by Paragraph (d) of this Rule shall include one or more of the following:

(1) a vapor-tight line from the storage tank to the delivery vessel, and:

(A) for a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor;

(B) for a dual point vapor recovery system, a poppeted vapor recovery adaptor; or

(2) a refrigeration-condensation system or equivalent designed to recover at least 90 percent by weight of the volatile organic compounds in the displaced vapor.

(f) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the tank liquid fill connection shall remain covered either with a vapor-tight cap or a vapor return line, except when the vapor return line is being connected or disconnected.

(g) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor when the tank is replaced or is removed and upgraded.

(h) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adapters shall be used. No more than one tank is to be loaded at a time if the manifold vapor lines are size 2.5 inches and smaller. If the manifold vapor lines are 3.0 inches and larger, then two tanks at a time may be loaded.

(i) Vent lines on tanks with Stage I controls shall have pressure release valves or restrictors.

(j) The vapor-laden delivery vessel:

(1) shall be designed and maintained to be vapor-tight during loading and unloading operations and during transport with the exception of normal pressure/vacuum venting as required by the Department of Transportation; and

(2) if it is refilled in North Carolina, shall be refilled only at:

(A) bulk gasoline plants complying with 15A NCAC 02D .0926; or

(B) bulk gasoline terminals complying with 15A NCAC 02D .0927 or .0524.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. July 1, 1996; July 1, 1994; March 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0930 SOLVENT METAL CLEANING

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

(1) "Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing, or immersion while maintaining the solvent below its boiling point. Wipe cleaning is not included in this definition.

(2) "Conveyorized degreasing" means the continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvents.

(3) "Freeboard height" means for vapor degreasers the distance from the top of the vapor zone to the top of the degreaser tank. For cold cleaners, freeboard height means the distance from liquid solvent level in the degreaser tank to the top of the tank.

(4) "Freeboard ratio" means the freeboard height divided by the width of the degreaser.

(5) "Open top vapor degreasing" means the batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

(6) "Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasing, or conveyorized degreasing.

(b) This Rule applies to cold cleaning, open top vapor degreasing, and conveyorized degreasing operations.

(c) The provisions of this Rule shall apply with the following exceptions:

(1) Open top vapor degreasers with an open area smaller than 10.8 square feet shall be exempt from Subparagraph (e)(3) of this Rule; and

(2) Conveyorized degreasers with an air/vapor interface smaller than 21.6 square feet shall be exempt from Subparagraph (f)(2) of this Rule.

(d) The owner or operator of a cold cleaning facility shall:

(1) equip the cleaner with a cover and the cover shall be designed so that it can be easily operated with one hand, if:

(A) the solvent volatility is greater than 15 millimeters of mercury or 0.3 pounds per square inch measured at 100°F;

(B) the solvent is agitated; or

(C) the solvent is heated;

(2) equip the cleaner with a facility for draining cleaned parts. The drainage facility shall be constructed internally so that parts are enclosed under the cover while draining if the solvent volatility is greater than 32 millimeters of mercury or 0.6 pounds per square inch measured at 100°F. However, the drainage facility may be external for applications where

an internal type cannot fit into the cleaning system;

(3) install one of the following control devices if the solvent volatility is greater than 33 millimeters of mercury or 0.6 pounds per square inch measured at 100°F, or if the solvent is heated above 120°F:

(A) freeboard that gives a freeboard ratio greater than or equal to 0.7;

(B) water cover if the solvent is insoluble in and heavier than water; or

(C) other systems of equivalent control, such as refrigerated chiller or carbon adsorption, approved by the Director;

(4) provide a permanent, conspicuous label, summarizing the operating requirements;

(5) store waste solvent only in covered containers and not dispose of waste solvent or transfer it to another party, such that greater than 20 percent of the waste solvent (by weight) can evaporate into the atmosphere;

(6) close the cover whenever parts are not being handled in the cleaner;

(7) drain the cleaned parts for at least 15 seconds or until dripping ceases; and

(8) if used, supply a solvent spray that is a solid fluid stream (not a fine, atomized, or shower type spray) at a pressure that does not cause excessive splashing.

(e) With the exception stated in Paragraph (c) of this Rule the owner or operator of an open top vapor degreaser shall:

(1) equip the vapor degreaser with a cover that can be opened and closed easily without disturbing the vapor zone;

(2) provide the following safety switches or devices:

(A) a condenser flow switch and thermostat or other device that prevents heat input if the condenser coolant is either not circulating or too warm;

(B) a spray safety switch or other device that shuts off the spray pump if the vapor level drops more than 10 inches; and

(C) a vapor level control thermostat or other device that prevents heat input when the vapor level rises too high;

(3) install one of the following control devices:

(A) freeboard ratio greater than or equal to 0.75. If the degreaser opening is greater than 10.8 square feet, the cover must be powered;

(B) refrigerated chiller;

(C) enclosed design where the cover or door opens only when the dry part is actually entering or exiting the degreaser; or

(D) carbon adsorption system with ventilation greater than or equal to 50 cubic feet per minute per square foot of air/vapor area, when cover is open, and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(4) keep the cover closed at all times except when processing workloads through the degreaser; and

(5) minimize solvent carryout by:

(A) racking parts to allow complete drainage;

(B) moving parts in and out of the degreaser at less than 11 feet per minute;

(C) holding the parts in the vapor zone at least 30 seconds or until condensation ceases;

(D) tipping out any pools of solvent on the cleaned parts before removal from the vapor zone; and

(E) allowing parts to dry within the degreaser for at least 15 seconds or until visually dry;

(6) not degrease porous or absorbent materials, such as cloth, leather, wood, or rope;

(7) not occupy more than half of the degreaser's open top area with a workload;

(8) not load the degreaser to the point where the vapor level would drop more than 10 inches when the workload is removed from the vapor zone;

(9) always spray below the vapor level;

(10) repair solvent leaks immediately or shutdown the degreaser;

(11) store waste solvent only in covered containers and not dispose of waste solvent or transfer it to another party, such that greater than 20 percent of the waste solvent (by weight) can evaporate into the atmosphere;

(12) not operate the cleaner so as to allow water to be visually detectable in solvent exiting the water separator;

(13) not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 65 cubic feet per minute per square foot of degreaser open area, unless necessary to meet OSHA requirements (OSHA is the U.S. Occupational Safety and Health Administration; in North Carolina the N.C. Labor Department has delegation of OSHA programs); and

(14) provide a permanent, conspicuous label, summarizing the operating procedures of Subparagraph (4) through (12) of this Paragraph.

(f) With the exception stated in Paragraph (c) of this Rule, the owner or operator of a conveyorized degreaser shall:

(1) not use workplace fans near the degreaser opening, nor provide exhaust ventilation exceeding 65 cubic feet per minute per square foot of degreaser opening, unless necessary to meet OSHA requirements;

(2) install one of the following control devices:
  (A) refrigerated chiller; or
  (B) carbon adsorption system with ventilation greater than or equal to 50 cubic feet per minute per square foot of air/vapor area, when downtime covers are open, and exhausting less than 25 parts per million of solvent by volume averaged over a complete adsorption cycle;

(3) equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor;

(4) provide the following safety switches or devices:
  (A) a condenser flow switch and thermostat or other device that prevents heat input if the condenser coolant is either not circulating or too warm;
  (B) a spray safety switch or other device that shuts off the spray pump or the conveyor if the vapor level drops more than 10 inches; and
  (C) a vapor level control thermostat or other device that prevents heat input when the vapor level rises too high;

(5) minimize openings during operation so that entrances and exits will silhouette workloads with an average clearance between the parts and the edge of the degreaser opening of less than four inches or less than 10 percent of the width of the opening;

(6) provide downtime covers for closing off the entrance and exit during shutdown hours;

(7) minimize carryout emissions by:
  (A) racking parts for best drainage; and
  (B) maintaining the vertical conveyor speed at less than 11 feet per minute;

(8) store waste solvent only in covered containers and not dispose of waste solvent or transfer it to another party, such that greater than 20 percent of the waste solvent (by weight) can evaporate into the atmosphere;

(9) repair solvent leaks immediately, or shut down the degreaser;

(10) not operate the cleaner so as to allow water to be visually detectable in solvent exiting the water separator; and

(11) place downtime covers over entrances and exits or conveyorized degreasers immediately after the conveyors and exhausts are shutdown and not remove them until just before start-up.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. March 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0931 CUTBACK ASPHALT

(a) For the purpose of this Rule, the following definitions apply:
  (1) "Asphalt" means a dark-brown to black cementitious material, solid, semisolid, or liquid in consistency, in which the predominating constituents are bitumens that occur in nature as such or that are obtained as residue in refining petroleum.
  (2) "Cutback asphalt" means asphalt cement that has been liquefied by blending with petroleum solvents or diluents. Upon exposure to atmospheric conditions, the diluents evaporate, leaving the asphalt cement to perform its function.
  (3) "Penetrating prime coat" means an application of low-viscosity liquid asphalt to an absorbent surface. It is used to prepare an untreated base for an asphalt surface. The prime penetrates the base and plugs the voids, hardens the top, and helps bind it to the overlying asphalt course. It also reduces the necessity of maintaining an untreated base course prior to placing the asphalt pavement.

(b) This Rule applies to the manufacture and use of cutback asphalts for the purpose of paving or maintaining roads, highways, streets, parking lots, driveways, curbs, sidewalks, airfields, such as runways, taxiways, and parking aprons, recreational facilities, such as tennis courts, playgrounds, and trails, and other similar structures.

(c) Cutback asphalt shall not be manufactured, mixed, stored, used, or applied except where:
  (1) long-life, of one month or more, stockpile storage is necessary;
  (2) the use or application at ambient temperatures less than 50°F, as measured at the nearest National Weather Service Field Local Office or Federal Aviation Administration Surface Weather Observation Station, is necessary;
  (3) the cutback asphalt is to be used solely as a penetrating prime coat; or
  (4) the user can demonstrate to the Director that there are no volatile organic compound emissions under conditions of normal use.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. December 1, 1989; January 1, 1985; June 1, 1980;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0933 PETROLEUM LIQUID STORAGE IN EXTERNAL FLOATING ROOF TANKS

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

(1) "Condensate" means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

(2) "Crude oil" means a naturally occurring mixture consisting of hydrocarbons or sulfur, nitrogen or oxygen derivatives of hydrocarbons or mixtures thereof that is a liquid in the reservoir at standard conditions.

(3) "Custody transfer" means the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(4) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck that rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(5) "Internal floating roof" means a cover or roof in a fixed roof tank that rests upon or is floated upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(6) "Liquid-mounted seal" means a primary seal mounted so the bottom of the seal covers the liquid surface between the tank shell and the floating roof.

(7) "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

(8) "Vapor-mounted seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank shell, the liquid surface, and the floating roof.

(b) This Rule applies to all external floating roof tanks with capacities greater than 950 barrels containing petroleum liquids whose true vapor pressure exceed 1.52 pounds per square inch absolute.

(c) This Rule does not apply to petroleum liquid storage vessels:

(1) that have external floating roofs that have capacities less than 10,000 barrels and that are used to store produced crude oil and condensate prior to custody transfer;

(2) that have external floating roofs and that store waxy, heavy-pour crudes;

(3) that have external floating roofs, and that contain a petroleum liquid with a true vapor pressure less than 4.0 pounds per square inch absolute; and:

(A) the tanks are of welded construction; and

(B) the primary seal is a metallic-type shoe seal, a liquid-mounted foam seal, a liquid-mounted filled type seal, or any other closure device of demonstrated equivalence; or

(4) that have fixed roofs with or without internal floating roofs.

(d) With the exceptions stated in Paragraph (c) of this Rule, an external floating roof tank subject to this Rule shall not be used unless:

(1) The tank has:

(A) a continuous secondary seal extending from the floating roof to the tank wall, known as a rim-mounted secondary seal;

(B) a metallic-type shoe primary seal and a secondary seal from the top of the shoe seal to the tank wall, known as a shoe-mounted secondary seal; or

(C) a closure or other control device demonstrated to have an efficiency equal to or greater than that required under Part (A) or (B) of this Subparagraph;

(2) The seal closure devices meet the following requirements:

(A) There shall be no visible holes, tears, or other openings in the seal or seal fabric;

(B) The seal shall be intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall; and

(C) For vapor mounted primary seals, any gaps exceeding 0.125 inch in width between the secondary seal and the tank wall shall not exceed 1.0 square inch per foot of tank diameter;

(3) All openings in the external floating roof, except for automatic bleeder vents, rim space vents, and leg sleeves, are:

(A) provided with a projection below the liquid surface; and

(B) equipped with covers, seals, or lids that remain in a closed position at all times except when in actual use;

(4) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports;

(5) Rim vents are set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting;

(6) Any emergency roof drains are provided with slotted membrane fabric covers or equivalent

covers that cover at least 90 percent of the area at the opening;

(7) Planned routine visual inspections to verify the conditions of the seal are conducted once per month;

(8) For tanks equipped with a vapor-mounted primary seal, the secondary seal gap measurements are made annually in accordance with Paragraph (e) of this Rule; and

(9) Records are maintained pursuant to 15A NCAC 02D .0903, including:

(A) reports of the results of inspections conducted under Subparagraphs (7) and (8) of this Paragraph;

(B) a record of the average monthly storage temperature and the true vapor pressures or Reid vapor pressures of the petroleum liquids stored; and

(C) records of the throughput quantities and types of petroleum liquids for each storage vessel.

(e) The secondary seal gap area shall be determined by measuring the length and width of the gaps around the entire circumference of the secondary seal. Only gaps equal to or greater than 0.125 inch shall be used in computing the gap area. The area of the gaps shall be accumulated to determine compliance with Part (d)(2)(C) of this Rule.

(f) The owner or operator of a petroleum liquid storage vessel with an external floating roof that is not equipped with a secondary seal or approved alternative and contains a petroleum liquid with a true vapor pressure greater than 1.0 pound per square inch shall maintain records of the average monthly storage temperature, the type of liquid, throughput quantities, and the maximum true vapor pressure for all petroleum liquids with a true vapor pressure greater than 1.0 pound per square inch.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1980;
Amended Eff. June 1, 2004; July 1, 1994; March 1, 1991; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0935 FACTORY SURFACE COATING OF FLAT WOOD PANELING

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

(1) "Flat wood paneling coatings" means wood paneling product that are any interior, exterior, or tileboard (class I hardboard) panel to which a protective, decorative, or functional material or layer has been applied.

(2) "Hardboard" is a panel manufactured primarily from inter felted lignocellulosic fibers that are consolidated under heat and pressure in a hot-press.

(3) "Tileboard" means a premium interior wall paneling product made of hardboard that is used in high moisture area or areas of the home.

(b) This Rule applies to each flat wood paneling coatings source whose volatile organic compounds emissions meet the threshold established in 15A NCAC 02D .0902(b) at the facilities with flat wood paneling coating applications for the following products:

(1) class II finishes on hardboard panels;

(2) exterior siding;

(3) natural finish hardwood plywood panels;

(4) printed interior panels made of hardwood, plywood, and thin particleboard; and

(5) tileboard made of hardboard.

(c) Emissions of volatile organic compounds from any facility finished flat wood product operation subject to this Rule shall not exceed 2.1 pounds of volatile organic compounds per gallon material, excluding water and exempt compounds or 2.9 pounds of volatile organic compounds per gallon solids.

(d) EPA Method 24 of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coating materials used at surface coating of flat wood paneling facilities, unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(e) Any facility meeting applicability requirements of Paragraph (b) of this Rule that has chosen to use add-on controls for flat wood paneling coating operation rather than the emission limits established in Paragraph (c) of this Rule shall install control equipment with an overall control efficiency of 90 percent or use a combination of coating and add-on control equipment on a flat wood paneling coating operation to meet limits established in Paragraph (c) of this Rule.

(f) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1980;
Amended Eff. September 1, 2010; July 1, 1996; December 1, 1989; January 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0937 MANUFACTURE OF PNEUMATIC RUBBER TIRES

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

(1) "Bead dipping" means the dipping of an assembled tire bead into a solvent-based cement.

(2) "Green tires" means assembled tires before molding and curing.

(3) "Green tire spraying" means spray coating release compounds inside and outside of green tires to remove air during the molding process and prevent the tire from sticking to the mold after curing completion.

(4) "Pneumatic rubber tire manufacture" means the production of passenger car tires, light and medium truck tires, and other tires manufactured on assembly lines.

(5) "Tread end cementing" means the application of a solvent-based cement to the tire tread ends.

(6) "Undertread cementing" means the application of a solvent-based cement to the underside of a tire tread.

(b) This Rule applies to undertread cementing, tread end cementing, bead dipping, and green tire spraying operations of pneumatic rubber tire manufacturing.

(c) Emissions of volatile organic compounds from any pneumatic rubber tire manufacturing plant shall not exceed:

(1) 25 grams of volatile organic compounds per tire from each undertread cementing operation;

(2) 4.0 grams of volatile organic compounds per tire from each tread end cementing operation;

(3) 1.9 grams of volatile organic compounds per tire from each bead dipping operation; or

(4) 24 grams of volatile organic compounds per tire from each green tire spraying operation.

(d) If the total volatile organic compound emissions from all undertread cementing, tread end cementing, bead dipping, and green tire spraying operations at a pneumatic rubber tire manufacturing facility does not exceed 50 grams per tire, Paragraph (c) of this Rule shall not apply.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1980;
Amended Eff. July 1, 1996; December 1, 1989; January 1, 1985.
Readopted Eff. November 1, 2020.

15A NCAC 02D .0943 SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING

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

(1) "Closed vent system" means a system that is not open to the atmosphere and is composed of piping, connections, and if necessary, flow inducing devices that transport gas or vapor from a fugitive emission source to an enclosed combustion device or vapor recovery system.

(2) "Enclosed combustion device" means any combustion device that is not open to the atmosphere such as a process heater or furnace, but not a flare.

(3) "Fugitive emission source" means each pump, valve, safety/relief valve, open-ended valve, flange or other connector, compressor, or sampling system.

(4) "In gas vapor service" means that the fugitive emission source contains process fluid that is in the gaseous state at operating conditions.

(5) "In light liquid service" means that the fugitive emission source contains a liquid having:

(A) a vapor pressure of one or more of the components greater than 0.3 kilopascals at 201° C; and

(B) a total concentration of the pure components having a vapor pressure greater than 0.3 kilopascals at 201° C equal to or greater than 10 percent by weight, and the fluid is a liquid at operating conditions.

(6) "Open-ended valve" means any valve, except safety/relief valves, with one side of the valve seat in contact with process fluid and one side that is open to the atmosphere, either directly or through open piping.

(7) "Polymer manufacturing" means the industry that produces, as intermediates or final products, polyethylene, polypropylene, or polystyrene.

(8) "Process unit" means equipment assembled to produce, as intermediates or final products, polyethylene, polypropylene, polystyrene, or one or more of the chemicals listed in 40 CFR 60.489. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the final product.

(9) "Quarter" means a three-month period. The first quarter concludes at the end of the last full month during the 180 days following initial start-up.

(10) "Synthetic organic chemical manufacturing" means the industry that produces, as intermediates or final products, one or more of the chemicals listed in 40 CFR Part 60.489.

(b) This Rule applies to synthetic organic chemicals manufacturing facilities and polymer manufacturing facilities.

(c) The owner or operator of a synthetic organic chemical manufacturing facility or a polymer manufacturing facility shall not cause, allow, or permit:

(1) any liquid leakage of volatile organic compounds; or

(2) any gaseous leakage of volatile organic compound of 10,000 ppm or greater from any fugitive emission source.

The owner or operator of these facilities shall control emissions of volatile organic compounds from open-ended valves as described in Paragraph (f) of this Rule.

(d) The owner or operator shall visually inspect each week every pump in light liquid service. If there are indications of liquid leakage, the owner or operator shall repair the pump within 15 days after detection, except as provided in Paragraph (k) of this Rule.

(e) Using procedures in 15A NCAC 02D .2600, the owner or operator shall monitor each pump, valve, compressor and safety/relief valve in gas/vapor service or in light liquid service for gaseous leaks at least once each quarter. The owner or operator shall monitor safety/relief valves after each overpressure relief to ensure the valve has properly reseated. If a volatile organic compound concentration of 10,000 ppm or greater is measured, the owner or operator shall repair the component within 15 days after detection, except as provided in Paragraph (k) of this Rule. Exceptions to the quarterly monitoring frequency are provided for in Paragraphs (h), (i), and (j) of this Rule.

(f) The owner or operator shall install on each open-ended valve:

(1) a cap;

(2) a blind flange;

(3) a plug; or
(4) a second closed valve that shall remain attached to seal the open end at all times except during operations requiring process fluid flow through the opened line.

(g) If any fugitive emission source appears to be leaking on the basis of sight, smell, or sound, it shall be repaired within 15 days after detection, except as provided in Paragraph (k) of this Rule.

(h) If after four consecutive quarters of monitoring, no more than two percent of the valves in gas/vapor service or in light liquid service are found leaking more than 10,000 ppm of volatile organic compounds, then the owner or operator may monitor valves for gaseous leaks only every third quarter. If the number of these valves leaking more than 10,000 ppm of volatile organic compounds remains at or below two percent, these valves need only be monitored for gaseous leaks every third quarter. However, if more than two percent of these valves are found leaking more than 10,000 ppm of volatile organic compounds, they shall be monitored every quarter until four consecutive quarters are monitored that have no more than two percent of these valves leaking more than 10,000 ppm of volatile organic compounds.

(i) When a fugitive emission source is unsafe to monitor because of extreme temperatures, pressures, or other reasons, the owner or operator of the facility shall monitor the fugitive emission source only when process conditions are such that the fugitive emission source is not operating under extreme conditions. The Director may allow monitoring of these fugitive emission sources less frequently than each quarter, provided they are monitored at least once per year.

(j) Any fugitive emission source more than 12 feet above a permanent support surface shall be monitored once per year.

(k) The repair of a fugitive emission source may be delayed until the next turnaround if the repair is technically infeasible without a complete or partial shutdown of the process unit.

(l) The owner or operator of the facility shall maintain records in accordance with 15A NCAC 02D .0903, which shall include:

(1) an identification of the source being inspected or monitored;
(2) the dates of inspection or monitoring;
(3) the results of inspection or monitoring;
(4) the action taken if a leak was detected;
(5) the type of repair made and when it was completed; and
(6) if the repair was delayed, an explanation as to why.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. May 1, 1985;
Amended Eff. June 1, 2008; March 1, 1991; December 1, 1989;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0944 MANUFACTURE OF POLYETHYLENE: POLYPROPYLENE AND POLYSTYRENE

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

(1) "By-product and diluent recovery operation" means the process that separates the diluent from the by-product (atactic) and purifies and dries the diluent for recycle.
(2) "Continuous mixer" means the process that mixes polymer with anti-oxidants.
(3) "Decanter" means the process that separates the diluent/crude product slurry from the alcohol-water solution by decantation.
(4) "Ethylene recycle treater" means the process that removes water and other impurities from the recovered ethylene.
(5) "High-density polyethylene plants using liquid phase slurry processes" means plants that produce high-density polyethylene in which the product, polyethylene, is carried as a slurry in a continuous stream of process diluent, usually pentane or isobutane.
(6) "Neutralizer" means the process that removes catalyst residue from the diluent/crude produce slurry.
(7) "Polypropylene plants using liquid phase process" means plants that produce polypropylene in which the product, polypropylene, is carried as a slurry in a continuous stream of process diluent, usually hexane.
(8) "Polystyrene plants using continuous processes" means plants that produce polystyrene in which the product, polystyrene, is transferred in a continuous stream in a molten state.
(9) "Product devolatilizer system" means the process that separates unreacted styrene monomer and by products from the polymer melt.
(10) "Reactor" means the process in which the polymerization takes place.

(b) This Rule applies to:

(1) polypropylene plants using liquid phase processes;
(2) high-density polyethylene plants using liquid phase slurry processes; and
(3) polystyrene plants using continuous processes.

(c) For polypropylene plants subject to this Rule, the emissions of volatile organic compounds shall be reduced by 98 percent by weight or to 20 ppm, whichever is less stringent, from:

(1) reactor vents;
(2) decanter vents;
(3) neutralizer vents;
(4) by-product and diluent recovery operation vents;
(5) dryer vents; and
(6) extrusion and pelletizing vents.

(d) For high-density polyethylene plants subject to this Rule, the emissions of volatile organic compounds shall be reduced by 98 percent by weight or to 20 ppm, whichever is less stringent, from:

(1) ethylene recycle treater vents;
(2) dryer vents; and
(3) continuous mixer vents.

(e) For polystyrene plants subject to this Rule, the emissions of volatile organic compounds shall not exceed 0.24 pounds per ton of product from the product devolatilizer system.
(f) If flares are used to comply with this Rule, all of the following conditions shall be met:

(1) visible emissions shall not exceed five minutes in any two-hour period;
(2) a flame in the flare shall be present;
(3) if the flame is steam-assisted or air-assisted, the net heating value shall be at least 300 Btu per standard cubic foot. If the flame is non-assisted, the net heating value shall be at least 200 Btu per standard cubic foot; and
(4) if the flare is steam-assisted or non-assisted, the exit velocity shall be no more than 60 feet per second. If the flare is air-assisted, the exit velocity shall be no more than (8.706 + 0.7084 HT) feet per second, where HT is the net heating value.

A flare that meets the conditions given in Subparagraphs (1) through (4) of this Paragraph are presumed to achieve 98 percent destruction of volatile organic compounds by weight. If the owner or operator of the source chooses to use a flare that fails to meet one or more of these conditions, he or she shall demonstrate to the Director that the flare shall destroy at least 98 percent of the volatile organic compounds by weight. To determine if the specifications for the flare are being met, the owner or operator of a source using the flare to control volatile organic compound emissions shall install, operate, and maintain necessary monitoring instruments and shall keep records as required by 15A NCAC 02D .0903.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. May 1, 1985;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0945 PETROLEUM DRY CLEANING

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

(1) "Cartridge filter" means perforated canisters containing filtration paper or filter paper and activated carbon that are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden solvent, together with the piping and ductwork used in the installation of this device.
(2) "Containers and conveyors of solvent" means piping, ductwork, pumps, storage tanks, and other ancillary equipment that are associated with the installation and operation of washers, dryers, filters, stills, and settling tanks.
(3) "Dry cleaning" means a process for the cleaning of textiles and fabric products in which articles are washed in a non-aqueous solution or solvent and then dried by exposure to a heated air stream.
(4) "Dryer" means a machine used to remove petroleum solvent from articles of clothing or other textile or leather goods, after washing and removing of excess petroleum solvent, together with the piping and ductwork used in the installation of this device.
(5) "Perceptible leaks" means any petroleum solvent vapor or liquid leaks that are visible, such as pools or droplets of liquid, open containers of solvent, or solvent laden waste standing open to the atmosphere, or bubble after application of a soap solution.
(6) "Petroleum solvent" means organic material produced by petroleum distillation comprising of a hydrocarbon range of eight to 12 carbon atoms per organic molecule that exists as a liquid under standard conditions.
(7) "Petroleum solvent dry cleaning" means a dry cleaning facility that uses petroleum solvent in a combination of washers, dryers, filters, stills, and settling tanks.
(8) "Settling tank" means a container that gravimetrically separates oils, grease, and dirt from petroleum solvent, together with the piping and ductwork used in the installation of the device.
(9) "Solvent filter" means a discrete solvent filter unit containing a porous medium which traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.
(10) "Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to condense and recover solvent vapors evaporated in a closed-loop stream of heated air, together with the piping and ductwork used in the installation of this device.
(11) "Still" means a device used to volatilize, separate, and recover petroleum solvent from contaminated solvent, together with the piping and ductwork used in the installation of this device.
(12) "Washer" means a machine that agitates fabric articles in a petroleum solvent bath and spins the articles to remove the solvent, together with the piping and ductwork used in the installation of this device.

(b) This Rule applies to petroleum solvent washers, dryers, solvent filters, settling tanks, stills, and other containers and conveyors of petroleum solvent that are used in petroleum solvent dry cleaning facilities that consume 32,500 gallons or more of petroleum solvent annually.
(c) The owner or operator of a petroleum solvent dry cleaning dryer subject to this Rule shall:

(1) limit emissions of volatile organic compounds to the atmosphere to an average of 3.5 pounds of volatile organic compounds per 100 pounds dry weight of articles dry cleaned; or
(2) install and operate a solvent recovery dryer in a manner such that the dryer remains closed and the recovery phase continues until a final

recovered solvent flow rate of 50 milliliters per minute is attained.

(d) The owner or operator of a petroleum solvent filter subject to this Rule shall:

(1) reduce the volatile organic compound content in all filter wastes to 1.0 pound or less per 100 pounds dry weight of articles dry cleaned, before disposal and exposure to the atmosphere; or

(2) install and operate a cartridge filter and drain the filter cartridges in their sealed housings for eight hours or more before their removal.

(e) The owner or operator of a petroleum solvent dry cleaning facility subject to this Rule shall inspect the facility every 15 days and shall repair all perceptible leaks within 15 business days after identifying the sources of the leaks. If the necessary repair parts are not on hand, the owner or operator shall order these parts within 15 business days and repair the leaks no later than 15 business days following the arrival of the necessary parts. The owner or operator shall maintain records, in accordance with 15A NCAC 02D .0903, of when the inspections were performed, what equipment was inspected, leaks found, repairs made, and when the repairs were completed.

(f) To determine compliance with Subparagraph (c)(1) of this Rule, the owner or operator shall use the appropriate test method in 15A NCAC 02D .2613(g) and shall:

(1) field calibrate the flame ionization analyzer with propane standards;

(2) determine in a laboratory the ratio of the flame ionization analyzer response to a given parts per million by volume concentration of propane to the response to the same parts per million concentration of the volatile organic compounds to be measured;

(3) determine the weight of volatile organic compounds vented to the atmosphere by:

(A) multiplying the ratio determined in Subparagraph (2) of this Paragraph by the measured concentration of volatile organic compound gas, as propane, as indicated by the flame ionization analyzer response output record;

(B) converting the parts per million by volume value calculated in Part (A) of this Subparagraph into a mass concentration value for the volatile organic compounds present; and

(C) multiplying the mass concentration value calculated in Part (B) of this Subparagraph by the exhaust flow rate; and

(4) calculate and record the dry weight of articles dry cleaned. The test shall be repeated for normal operating conditions that encompass at least 30 dryer loads that total not less than 4,000 pounds dry weight and represents a normal range of variation in fabrics, solvents, load weights, temperatures, flow rates, and process deviations.

(g) To determine compliance with Subparagraph (c)(2) of this Rule, the owner or operator shall verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery phase is no greater than 50 milliliters per minute. This one-time procedure shall be conducted for a duration of not less than two weeks during which not less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate. Near the end of the recovery cycle, the flow of recovered solvent shall be diverted to a graduated cylinder. The cycle shall continue until the minimum flow of solvent is 50 milliliters per minute. The type of articles cleaned and the total length of the cycle shall be recorded and retained in accordance with 15A NCAC 02D .0903.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. May 1, 1985;
Amended Eff. June 1, 2008;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0947 MANUFACTURE OF SYNTHESIZED PHARMACEUTICAL PRODUCTS

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

(1) "Production equipment exhaust system" means a device for collecting and directing out of the work area fugitive emissions of volatile organic compounds from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting workers from excessive exposure to volatile organic compounds.

(2) "Synthesized pharmaceutical products manufacturing" means manufacture of pharmaceutical products by chemical synthesis.

(b) This Rule applies to synthesized pharmaceutical products manufacturing facilities.

(c) The owner or operator of a synthesized pharmaceutical products manufacturing facility shall control the emissions of volatile organic compounds from:

(1) reactors, distillation operations, crystallizers, centrifuges, and vacuum dryers that have the potential to emit 15 pounds per day or more of volatile organic compounds with surface condensers that meet the requirements of Paragraph (e) of this Rule or equivalent controls;

(2) air dryers and production equipment exhaust system by reducing emissions of volatile organic compounds:

(A) by 90 percent if they are 330 pounds per day or more; or

(B) to 33 pounds per day if they are less than 330 pounds per day;

(3) storage tanks by:

(A) providing a vapor balance system or equivalent control that is at least 90 percent effective in reducing emissions from truck or railcar deliveries to storage tanks with

capacities greater than 2,000 gallons storing volatile organic compounds with a vapor pressure greater than 4.1 pounds per square inch at 68° F; and

(B) installing pressure/vacuum conservation vents, which shall be set at plus or minus 0.8 inches of water unless a more effective control system is used, on all storage tanks that store volatile organic compounds with a vapor pressure greater than 1.5 pounds per square inch at 68°F;

(4) centrifuges containing volatile organic compounds, rotary vacuum filters processing liquid containing volatile organic compounds, and other filters having an exposed liquid surface where the liquid contains volatile organic compounds by enclosing those centrifuges and filters that contain or process volatile organic compounds with a vapor pressure of 0.5 pounds per square inch or more at 68°F; and

(5) in-process tanks by installing covers, which shall remain closed except when production, sampling, maintenance, or inspection procedures require operator access.

(d) The owner or operator of a synthesized pharmaceutical products manufacturing facility shall repair as expeditiously as possible all leaks from which liquid volatile organic compounds can be seen running or dripping. This repair shall take place at least within 15 days after which said leak is discovered, unless the leaking component cannot be repaired before the process is shutdown, in which case the leaking component must be repaired before the process is restarted.

(e) If surface condensers are used to comply with Subparagraph (c)(1) of this Rule, the condenser outlet temperature shall not exceed:

(1) -13°F when condensing volatile organic compounds of vapor pressure greater than 5.8 pounds per square inch at 68°F;

(2) 5°F when condensing volatile organic compounds of vapor pressure greater than 2.9 pounds per square inch at 68°F;

(3) 32°F when condensing volatile organic compounds of vapor pressure greater than 1.5 pounds per square inch at 68°F;

(4) 50°F when condensing volatile organic compounds of vapor pressure greater than 1.0 pounds per square inch at 68°F; or

(5) 77°F when condensing volatile organic compounds of vapor pressure greater than 0.5 pounds per square inch at 68°F.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1994;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0948 VOC EMISSIONS FROM TRANSFER OPERATIONS

(a) This Rule applies to operations transferring volatile organic compounds from a storage tank to cargo tanks or railroad tank cars not specified by 15A NCAC 02D .0926, .0927, or .0928.

(b) The owner or operator of a facility to which this Rule applies shall not load in any one day more than 20,000 gallons of volatile organic compounds with a vapor pressure of 1.5 pounds per square inch or greater under actual conditions into any cargo tank or railroad tank car from any loading operation unless the loading uses submerged loading through boom loaders extending down into the compartment being loaded or by other methods at least as efficient based on source testing or engineering calculations.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1994;
Amended Eff. July 1, 2000;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0949 STORAGE OF MISCELLANEOUS VOLATILE ORGANIC COMPOUNDS

(a) This Rule applies to the storage of volatile organic compounds in stationary tanks, reservoirs, or other containers with a capacity greater than 50,000 gallons not regulated by 15A NCAC 02D .0925 or .0933.

(b) The owner or operator of any source shall not place, store, or hold in any stationary tank, reservoir, or other container with a capacity greater than 50,000 gallons, any liquid volatile organic compound with a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such tank, reservoir, or other container:

(1) is a pressure tank capable of maintaining working pressures to prevent vapor gas loss into the atmosphere at all time; or

(2) is designed and equipped with one of the following vapor loss control devices:

(A) a floating pontoon, double deck type floating roof, or internal pan type floating roof equipped with closure seals to enclose any space between the cover's edge and compartment wall. This control equipment shall not be permitted for volatile organic compounds with a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place; or

(B) a vapor recovery system or other equipment or means of air pollution control that reduces the emission of organic materials into the atmosphere by at least 90 percent by weight. All tank gauging or sampling devices shall

be gas-tight except when tank gauging or sampling is taking place.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1994;
Amended Eff. July 1, 2000;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0951 RACT FOR SOURCES OF VOLATILE ORGANIC COMPOUNDS

(a) Facilities required to install reasonably available control technology pursuant to 15A NCAC 02D .0902(f) shall determine the emissions control level according to this Rule. If the only other applicable emissions control rule in this Section for the facility is 15A NCAC 02D .0958, then both this Rule and 15A NCAC 02D .0958 apply.

(b) This Rule does not apply to architectural or maintenance coatings.

(c) The owner or operator of any facility to which this Rule applies shall comply by either of the following:

(1) install and operate reasonably available control technology as set forth by category-specific emission standards defined in this Section; or

(2) install and operate alternative reasonably available control technology based on the Division's technical analysis of the information provided in Paragraph (d) of this Rule. All reasonably available control technology demonstrations, and any modifications or changes to those determinations, approved or determined by the Division pursuant to this Subparagraph and Paragraph (d) of this Rule, shall be submitted by the Division to the U.S. EPA as a revision to the State Implementation Plan. No reasonably available control technology demonstration, nor any modification or change to a demonstration, approved or determined by the Division pursuant to this Subparagraph, shall revise the State Implementation Plan or be used as a State Implementation Plan credit, until it is approved by the U.S. EPA as a state implementation plan revision.

(d) If the owner or operator of a facility chooses to install reasonably available control technology under Subparagraph (c)(2) of this Rule, the owner or operator shall submit to the Director:

(1) the name and location of the facility;

(2) information identifying the source for which a reasonably available control technology limitation or standard is being proposed;

(3) a demonstration that shows the proposed reasonably available control technology limitation or standard advances attainment equivalent to or better than application of requirements under Subparagraph (c)(1) of this Rule; and

(4) a proposal for demonstrating compliance with the proposed reasonably available control technology limitation or standard.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1994;
Amended Eff. May 1, 2013; September 1, 2010; July 1, 2000; July 1, 1996;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0952 PETITION FOR ALTERNATIVE CONTROLS FOR RACT

(a) This Rule applies to all sources regulated by this Section.

(b) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he or she may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions.

(c) The petition shall include:

(1) the name and address of the company and the name and telephone number of the petitioner;

(2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;

(3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;

(4) a description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction that will be achieved, and the quantity and composition of volatile organic compounds that will be emitted if the alternative operational or equipment controls are instituted;

(5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound emissions from other source operations at the facility, further than that required by the rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;

(6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with 15A NCAC 02D .0909, as applicable; and

(7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, State, and federal laws and regulations.

The petition may include a copy of the permit application.

(d) The Director shall approve a petition for alternative control if:

(1) the petition is submitted in accordance with Paragraph (c) of this Rule;

(2) the Director determines that the petitioner cannot comply with the rules in question because of technological or economical infeasibility;

(3) all other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, State, and federal regulations; and

(4) the petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable.

(e) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, the permit shall contain a condition stating such controls.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1994;
Amended Eff. September 1, 2010; January 1, 2009; April 1, 2003; July 1, 1995; May 1, 1995;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0955 THREAD BONDING MANUFACTURING

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

(1) "Capture hoods" means any device designed to remove emissions from the solution bath tray areas during the manufacturing process.

(2) "Curing" means exposing coated threads to high temperatures in an oven until the nylon solution mixture hardens, vaporizing the solvents, and bonds to the threads.

(3) "Day tanks" means holding tanks that contain nylon solution mixture ready for use.

(4) "Drying ovens" means any apparatus through which the coated threads are conveyed while curing.

(5) "Enclose" means to construct an area within the plant that has a separate ventilation system and is maintained at a slightly negative pressure.

(6) "Fugitive emissions" means emissions that cannot be collected and routed to a control system.

(7) "Nylon thread coating process" means a process in which threads are coated with a nylon solution and oven cured.

(8) "Permanent label" means a label that cannot be easily removed or defaced by any person.

(9) "Polyester solution mixture" means a mixture of polyester and solvents that is used for thread coating.

(10) "Storing" means reserving material supply for future use.

(11) "Thread bonding manufacturing" means coating single or multi-strand threads with plastic (nylon or polyester solution mixture) to impart properties such as additional strength and durability, water resistance, and moth repellency.

(12) "Transporting" means moving material supply from one place to another.

(b) This Rule shall apply to any thread bonding manufacturing facility with total uncontrolled exhaust emissions from nylon thread coating process collection hoods and drying ovens of volatile organic compounds (VOC) equal to or greater than 100 tons per year.

(c) Annual VOC emissions from each nylon thread coating process shall be determined by multiplying the hourly amount of VOC consumed by the total scheduled operating hours per year.

(d) Emissions from each nylon thread coating process subject to this Rule shall be reduced:

(1) by at least 95 percent by weight; or

(2) by installing a thermal incinerator with a temperature of at least 1600°F and a residence time of at least 0.75 seconds.

(e) The owner or operator of any thread bonding manufacturing facility shall:

(1) enclose the nylon thread coating process area of the plant to prevent fugitive emissions from entering other plant areas;

(2) store all VOC-containing materials in covered tanks or containers;

(3) ensure that equipment used for transporting or storing VOC containing material does not leak and that all lids and seals used by the equipment are kept in the closed position at all times except when in actual use;

(4) not cause or allow VOC-containing material to be splashed, spilled, or discarded in sewers;

(5) hold only enough nylon solution mixture in the day tanks to accommodate daily process times measured in hours; and

(6) place permanent and conspicuous labels on all equipment affected by Subparagraphs (3) through (5) of this Paragraph summarizing handling procedures described in these Subparagraphs for VOC-contaminated materials at the nylon thread coating process.

(f) The owner or operator of a thread bonding manufacturing facility shall notify the Director within 30 days after the calculated annual emissions of VOC from nylon thread coating processes equal or exceed 100 tons per year. The owner or operator shall submit within six months after such calculation a permit application including a schedule to bring the facility into compliance with this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a);
Eff. May 1, 1995;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0956 GLASS CHRISTMAS ORNAMENT MANUFACTURING

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

(1) "Coating" means the application of a layer of material, either by dipping or spraying, in a relatively unbroken film onto glass Christmas ornaments.
(2) "Curing ovens" means any apparatus through which the coated glass Christmas ornaments are conveyed while drying.
(3) "Glass Christmas ornament" means any glass ornament that is coated with decorative exterior and is traditionally hung on Christmas trees.
(4) "Glass Christmas ornament manufacturing facility" means a facility that coats glass Christmas ornaments through the process of interior coating or exterior coating that uses either mechanical or hand-dipping methods, drying (curing), cutting, and packaging operations.
(5) "Mechanical coating lines" means equipment that facilitates mechanized dipping or spraying of a coating onto glass Christmas ornaments in which the neck of each ornament is held mechanically during the coating operation.
(6) "Solvent-borne coating" means a coating that uses organic solvents as an ingredient.

(b) This Rule applies to any curing ovens servicing the mechanical coating lines in the coating of glass Christmas ornaments at glass Christmas tree ornament manufacturing facilities with potential volatile organic compound (VOC) emissions of 100 tons per year or more.

(c) This Rule does not apply to glass Christmas ornament manufacturing facilities that do not use solvent-borne coating materials.

(d) Emissions of VOC from each curing oven shall be reduced by at least 90 percent by weight.

(e) If the owner or operator of a facility subject to this Rule chooses to use low VOC content, solvent-borne coatings to reduce emissions, the emission reduction from the use of these coatings shall be equivalent to that achieved using add-on controls.

(f) The owner or operator of a Christmas tree ornament manufacturing facility shall notify the Director within 30 days after the calculated annual emissions of VOC from the facility equal or exceed 100 tons per year. The owner or operator shall submit within six months after such calculation a permit application including a schedule to bring the facility into compliance with this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a);
Eff. May 1, 1995;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0957 COMMERCIAL BAKERIES

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

(1) "Baking Oven" means an oven used at any time for the purpose of baking yeast-leavened products, including bread and rolls.
(2) "Commercial Bakery" means an establishment where bread and baked goods are produced.

(b) This Rule applies in accordance with 15A NCAC 02D .0902 to any baking oven at a commercial bakery with potential volatile organic compound (VOC) emissions of 100 tons per year or more. Daily volatile organic compound emissions shall be determined according to the calculation procedures in Paragraph (d) of this Rule.

(c) Emissions of VOC from baking ovens subject to this Rule shall be reduced by at least:

(1) 90 percent by weight; or
(2) 60 percent by weight, if biofiltration is used.

(d) Daily volatile organic compound emissions from each commercial baking oven in a commercial bakery shall be determined according to the following: $EtOH = 0.40425 + 0.444585[(Y \times T) + (S \times t)]$, where:

(1) EtOH = pounds ethanol per ton of baked bread;
(2) Y = baker's percent yeast in sponge to the nearest tenth of a percent;
(3) T = total time of fermentation in hours to the nearest tenth of an hour;
(4) S = baker's percent of yeast added to dough to the nearest tenth of a percent; and
(5) t = proof time plus floor time in hours to the nearest tenth of an hour.

(e) The owner or operator of a commercial bakery shall notify the Director within 30 days after the calculated emissions of VOC from the bakery equal or exceed 100 tons per year. The owner or operator shall submit within six months after such calculation a permit application including a schedule to bring the facility into compliance with this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a);
Eff. May 1, 1995;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0958 WORK PRACTICES FOR SOURCES OF VOLATILE ORGANIC COMPOUNDS

(a) This Rule applies to all facilities that use volatile organic compounds as solvents, carriers, material processing media, or industrial chemical reactants, or in other similar uses, or that mix, blend, or manufacture volatile organic compounds, or emit volatile organic compounds as a product of chemical reactions.

(b) This Rule does not apply to:

(1) architectural or maintenance coatings; or
(2) sources subject to 40 CFR Part 63, Subpart JJ.

(c) The owner or operator of any facility subject to this Rule shall:

(1) store all material, including waste material, containing volatile organic compounds in containers covered with a tightly fitting lid that is free of cracks, holes, or other defects, when not in use;

(2) clean up spills as soon as possible following proper safety procedures;
(3) store wipe rags in closed containers;
(4) not clean sponges, fabric, wood, paper products, and other absorbent materials;
(5) drain solvents used to clean supply lines and other coating equipment into closable containers and close containers immediately after each use;
(6) clean mixing, blending, and manufacturing vats and containers by adding cleaning solvent and closing the vat or container before agitating the cleaning solvent. The spent cleaning solvent shall then be poured into a closed container.

(d) When cleaning parts, the owner or operator of any facility subject to this Rule shall:

(1) flush parts in the freeboard area;
(2) take precautions to reduce the pooling of solvent on and in the parts;
(3) tilt or rotate parts to drain solvent and allow a minimum of 15 seconds for drying or until all dripping has stopped, whichever is longer;
(4) not fill cleaning machines above the fill line;
(5) not agitate solvent to the point of causing splashing.

(e) The owner or operator of a source on which a control device has been installed shall continue to maintain and operate the control device unless the Director determines that the removal of the control device shall not cause or contribute to a violation of the ozone ambient air quality standard, as set forth in 15A NCAC 02D .0405.

(f) The owner or operator of a source that has complied with 15A NCAC 02D .0518 prior to July 1, 2000, by complying with a rule in this Section, shall continue to comply with that Rule unless the Director determines that if the source ceases to comply with that rule, it shall not cause or contribute to a violation of the ozone ambient air quality standard, as set forth in 15A NCAC 02D .0405.

(g) All sources at a facility subject to this Rule shall be permitted unless they are exempted from permitting by 15A NCAC 02Q .0102.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 2000;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0959 PETITION FOR SUPERIOR ALTERNATIVE CONTROLS

(a) This Rule applies to all sources regulated by this Section.

(b) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section can demonstrate that an alternative operational or equipment control is superior to the required control, he or she may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions.

(c) The petition shall include:

(1) the name and address of the company and the name and telephone number of the petitioner;
(2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
(3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
(4) a description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction that will be achieved, and the quantity and composition of volatile organic compounds that will be emitted if the alternative operational or equipment controls are instituted; and
(5) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, State, and federal laws and regulations.

The petition may include a copy of the permit application.

(d) The Director shall approve a petition for alternative control if:

(1) the petition is submitted in accordance with Paragraph (c) of this Rule;
(2) the Director determines that the proposed alternative operational or equipment control is superior to the required controls;
(3) all other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, State, and federal regulations; and
(4) the petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable.

(e) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, the permit shall contain a condition stating such controls.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. April 1, 2003;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0961 OFFSET LITHOGRAPHIC PRINTING AND LETTERPRESS PRINTING

(a) For the purposes of this Rule, the definitions listed in this Paragraph and 15A NCAC 02D .0101 and .0902 shall apply.

(1) "Composite partial vapor pressure" means the sum of the partial pressure of the compounds defined as volatile organic compounds. Volatile organic compounds composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_c}{MW_c} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

Where:

Wi = Weight of the "i" volatile organic compound, in grams

Ww = Weight of water, in grams

Wc = Weight of exempt compound, in grams

MWi = Molecular weight of the "i" volatile organic compound, in g/g-mole

MWw = Molecular weight of water, in g/g-mole

MWc = Molecular weight of exempt compound, in g/g-mole

PPc = Volatile organic compounds composite partial vapor pressure at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

VPi = Vapor pressure of the "i" volatile organic compound at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

(2) "First installation date" means the actual date when this control device becomes operational. This date does not change if the control device is later redirected to a new press.

(3) "Fountain solution" means water-based solution that applies to lithographic plate to render the non-image areas unreceptive to the ink.

(4) "Heatset" means any operation in which heat is required to evaporate ink oils from the printing ink, excluding ultraviolet (UV) curing, electron beam curing, and infrared drying.

(5) "Letterpress printing" means a printing process in which the image area is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.

(6) "Non-heatset" means a lithographic printing process where the printing inks are set by absorption or oxidation of the ink oil, not by evaporation of the ink oils in a dryer. For the purposes of this Rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

(7) "Offset lithography" means a printing process that uses sheet-fed or web method of press feeding and transfers ink from the lithographic plate to a rubber-covered intermediate "blanket" cylinder and then from the blanket cylinder to the substrate.

(8) "Press" means a printing production assembly composed of one or more units used to produce a printed substrate including any associated coating, spray powder application, heatset web dryer, ultraviolet or electron beam curing units, or infrared heating units.

(9) "Sheet-fed printing" means offset lithographic printing when individual sheets of paper or other substrate are fed to the press.

(10) "Web printing" means offset lithographic printing when continuous rolls of substrate material are fed to the press and rewound or cut to size after printing.

(b) This Rule applies to any offset lithographic and any letterpress printing operations sources that are not covered by 15A NCAC 02D .0966(c)(1) and whose emissions of volatile organic compounds exceed:

(1) the threshold established in 15A NCAC 02D .0902(b) and (f); or

(2) an equivalent level of three tons per 12-consecutive month rolling period.

(c) Volatile organic compounds content in the fountain solution for on-press (as-applied) heatset web offset lithographic printing shall meet one of the following requirements or equivalent level of control as determined in permit conditions:

(1) contain 1.6 percent alcohol or less, by weight, as applied, in the fountain solution:

(2) contain three percent alcohol or less, by weight, on-press (as-applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(3) contain five percent alcohol substitute or less, by weight, on-press (as-applied) and no alcohol in the fountain solution.

(d) Volatile organic compounds content in the fountain solution for on-press (as-applied) sheet-fed lithographic printing shall meet one of the following requirements or equivalent level of control as determined in permit conditions:

(1) contain five percent alcohol or less, by weight, on-press (as-applied) in the fountain solution;

(2) contain 8.5 percent alcohol or less, by weight, on-press (as-applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(3) contain five percent alcohol substitute or less, by weight, on-press (as-applied) and no alcohol in the fountain solution.

(e) Volatile organic compounds content in emissions from fountain solution from non-heatset web offset lithographic printing shall not exceed five percent alcohol substitute (by weight) on-press (as-applied) and contain no alcohol in the fountain solution.

(f) An owner or operator of an individual web offset lithographic printing press dryer or letterpress-printing heatset press subject to this Rule that emits 25 or more tons per year potential emissions of volatile organic compounds shall:

(1) use an enforceable limitation on potential emissions to keep individual heatset press below 25 tons per year potential to emit volatile organic compounds (petroleum ink oil) threshold, which can be achieved by using inks and coatings that contain less than 31.25 tons per year volatile organic compound (petroleum ink oil) where 20 percent retention factor of

petroleum ink oil applies, or by using other methods established by permit conditions; or

(2) use an add-on control system that meets one of the following requirements:

(A) reduces volatile organic compounds emissions from each dryer by at least 90 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was prior to July 1, 2010, at facilities with potential to emit 100 tons or more of volatile organic compounds per year;

(B) reduces volatile organic compounds emissions from each dryer by at least 90 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was prior to May 1, 2013, at facilities with potential to emit less than 100 tons of volatile organic compounds per year;

(C) reduces volatile organic compounds emissions from each dryer by at least 95 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was on or after July 1, 2010, at facilities with potential to emit 100 tons or more of volatile organic compounds per year;

(D) reduces volatile organic compounds emissions from each dryer by at least 95 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was on or after May 1, 2013, at facilities with potential to emit less than 100 tons of volatile organic compounds per year; or

(E) maintains a maximum volatile organic compounds outlet concentration of 20 parts per million by volume (ppmv), as hexane (C_6H_{14}) on a dry basis.

(g) The control limits established in:

(1) Paragraphs (c), (d), and (e) of this Rule shall not be applied to any press with total fountain solution reservoir of less than one gallon;

(2) Paragraph (d) of this Rule shall not be applied to sheet-fed presses with maximum sheet size 11x 17 inches or smaller; and

(3) Subparagraph (f)(2) of this Rule shall not be applied to a heatset press used for book printing, or to a heatset press with maximum web width of 22 inches or less.

(h) If the owner or operator of a printing press is required by permit conditions to determine:

(1) the volatile organic compounds content, Method 24 of Appendix A to 40 CFR Part 60 or approved alternative methods pursuant to 15A NCAC 02D .2602(h) shall be used; and

(2) the control efficiency by measuring volatile organic compounds at the control device inlet and outlet, Methods 18, 25, or 25A of Appendix A to 40 CFR Part 60, or approved alternative methods pursuant to 15A NCAC 02D .2602(h) shall be used.

(i) All test methods defined in Paragraph (h) of this Rule shall be conducted at typical operating conditions and flow rates.

(j) The owner or operator of any facility subject to this Rule shall demonstrate compliance with RACT applicability requirements by calculating volatile organic compounds emissions and keep records of the basis of the calculations required by 15A NCAC 02D .0605 and .0903. Volatile organic compounds emissions from offset lithographic printing and letterpress printing shall be determined by permit condition requirements or by using the following retention and capture efficiency factors:

(1) the retention factors are:

(A) 20 percent for heatset petroleum ink oils;

(B) 100 percent for heatset vegetable ink oils;

(C) 95 percent for sheet-fed and coldset web petroleum ink oils; and

(D) 100 percent for sheet-fed and coldset web vegetable ink oils.

(2) the retention factor is 50 percent for low volatile organic compounds composite vapor pressure cleaning materials in shop towels where:

(A) volatile organic compounds composite vapor pressure of the cleaning material is less than 10 mm Hg at 20ºC; and

(B) cleaning materials and used shop towels are kept in closed containers.

(3) carryover (capture) factors of volatile organic compounds from automatic blanket wash and fountain solution to offset lithographic heatset dryers are:

(A) 40 percent VOC carryover (capture) factor for automatic blanket washing when the volatile organic compounds composite vapor pressure of the cleaning material is less than 10mm Hg at 20°C.

(B) 70 percent VOC carryover (capture) factor for alcohol substitutes in fountain solution.

(4) capture efficiency for volatile organic compounds (petroleum ink oils) from oil-based paste inks and oil-based paste varnishes (coatings) in heatset web offset lithographic presses and heatset web letterpress presses shall be demonstrated by showing that the dryer is operating at negative pressure relative to the surrounding pressroom. As long as the dryer is operated at negative pressure, the capture efficiency for VOC from the heatset lithographic inks and varnishes (coatings) formulated with low volatility ink oils is 100 percent of the VOC (ink oils) volatilized in the dryer. Capture efficiency test is not required in this situation.

(k) Except as specified in this Paragraph, all cleaning materials used for cleaning a press, press parts, or to remove dried ink from areas around the press shall meet one of the following requirements:

(1) the volatile organic compounds content shall be less than 70 percent by weight; or

(2) composite partial vapor pressure of volatile organic compounds shall be less than 10 mm Hg at 20 degrees Celsius.

No more than 110 gallons per year of cleaning materials that do not meet the requirements of Subparagraph (1) or (2) of this Paragraph shall be used during any 12 consecutive months.

(l) The owner or operator of any facility subject to this Rule shall maintain the following records for a minimum of five years:

(1) parametric monitoring for processes and control devices as determined and at the frequency specified in the permit or by Paragraph (f) of this Rule;

(2) the total amount of each individual or class of fountain solution and ink used monthly for the printing operations and the percentage of volatile organic compounds, alcohol, and alcohol substitute as applied in it;

(3) the total amount of each individual or class of cleaning solutions used monthly with vapor pressure and the percentage of volatile organic compounds as applied in it;

(4) the total amount of cleaning solutions used monthly with vapor pressure and the percentage of volatile organic compounds as applied that does not meet the vapor pressure or percentage of volatile organic compounds requirements of Paragraph (k) of this Rule;

(5) the temperature of fountain solutions for lithographic printing presses using alcohol at the frequency specified in the permit; and

(6) any other parameters required by the permit in accordance with 15A NCAC 02D .0605 and .0903.

(m) The owner or operator of any source subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Amended Eff. May 1, 2013;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0962 INDUSTRIAL CLEANING SOLVENTS

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

(1) "Organic solvent" means a liquid hydrocarbon, such as methyl ethyl ketone or toluene, used to dissolve paints, varnishes, grease, oil, or other hydrocarbons.

(2) "Solvent cleaning" means the process of removing the excess penetrant from the surface or a part by wiping, flushing, or spraying with a solvent for the penetrant.

(3) "Wipe cleaning" means the method of cleaning that utilizes a material such as a rag wetted with a solvent, prior to a physical rubbing process to remove contaminants from surfaces.

(b) This Rule applies, with exemptions defined in Paragraphs (c) and (d) of this Rule, to sources whose volatile organic compound emissions exceed the threshold in 15A NCAC 02D .0902(b) from the following cleaning operations:

(1) spray gun cleaning;
(2) spray booth cleaning;
(3) large manufactured components cleaning;
(4) parts cleaning;
(5) equipment cleaning;
(6) line cleaning;
(7) floor cleaning;
(8) tank cleaning; and
(9) small manufactured components cleaning.

(c) Paragraph (e) of this Rule does not apply to any cleaning material used for cleaning operations covered by 15A NCAC 02D .0918, .0919, .0923, .0924, .0930, .0935, .0961, .0963, .0964, .0965, .0966, .0967, and .0968.

(d) Cleaning operations of portable or stationary mixing vats, high dispersion mills, grinding mills, tote tanks, and roller mills for manufacturing of coating, ink, or adhesive shall apply one or more of the following methods:

(1) use industrial cleaning solvents that either contain less than 1.67 pounds VOC per gallon or have an initial boiling point greater than 120 degrees Celsius, and where the initial boiling point exceeds the maximum operating temperature by at least 100 degrees Celsius. The industrial cleaning solvents shall be collected and stored in closed containers;

(2) implement the following work practices:

(A) maintain the equipment being cleaned as leak free;

(B) drain volatile organic compounds containing cleaning materials from the cleaned equipment upon completion of cleaning;

(C) store or dispose of volatile organic compounds containing cleaning materials, including waste solvent, in

a manner that will prevent evaporation into atmosphere; and

(D) store all volatile organic containing cleaning materials in closed containers;

(3) collect and vent the emissions from equipment cleaning to an add-on control system as set forth in Paragraph (g) of this Rule; or

(4) use organic solvents other than listed in Subparagraph (d)(1) of this Rule if no more than 60 gallons of fresh solvent shall be used per month. Organic solvent reused or recycled either onsite or offsite for further use in equipment cleaning or the manufacture of coating, ink, or adhesive shall not be included in this limit.

(e) Any cleaning material of the cleaning operations listed in Paragraph (b) of this Rule shall have:

(1) volatile organic compounds content that does not exceed 0.42 pounds per gallon; or

(2) composite vapor limit of eight millimeters of mercury at 20 degrees Celsius.

(f) Method 24 of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coating materials used in industrial cleaning solvents operations, unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(g) Facilities that have chosen to use add-on control shall install control equipment with 85 percent overall efficiency.

(h) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Amended Eff. May 1, 2013;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0963 FIBERGLASS BOAT MANUFACTURING MATERIALS

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

(1) "Closed molding" means any fabrication techniques in which pressure is used to distribute the resin through the reinforcing fabric placed between two mold surfaces to either saturate the fabric or fill the mold cavity.

(2) "Monomer" means a volatile organic compound that partly combines with itself, or other similar compounds, by a cross-linking reaction to become part of the cured resin.

(3) "Open molding" means the open mold that is first spray-coated with a clear or pigmented polyester resin known as a gel coat. The gel coat will become the outer surface of the finished part.

(b) This Rule applies to a facility that manufactures hulls or decks of boats and related parts, builds molds to make fiberglass boat hulls or decks and related parts from fiberglass, or makes polyester resin putties for assembling fiberglass parts; and whose volatile organic compounds emissions meet the threshold established in 15A NCAC 02D .0902(b) from sources for the following operations:

(1) open molding and gel coat operation, including pigmented gel coat, clear gel coat, production resin, tooling gel coat, and tooling resin;

(2) resins and gel coat mixing operations; and

(3) resins and gel coat application equipment cleaning operations.

(c) The following activities are exempted from the provisions of this Rule:

(1) surface coatings applied to fiberglass boats;

(2) surface coatings for fiberglass and metal recreational boats; and

(3) industrial adhesives used in the assembly of fiberglass boats.

(d) Volatile organic compounds content limits in resin and gel coat that are used for any molding operations listed in Paragraph (b) of this Rule and closed molding operations that do not meet the definition of monomer established in Subparagraph (a)(2) of this Rule, such as vacuum bagging operations, shall not exceed monomer volatile organic compounds limits established in Table 1:

Table 1. Organic Hazardous Air Pollutants Content Requirements for Open Molding Resin and Gel Coat Operations (40 CFR 63, Subpart VVVV)

Material	Application Method	Limit of Weighted-Average Monomer VOC Content (weight percent)
Production resin	Atomized (spray)	28
Production resin	Nonatomized	35
Pigmented gel coat	Any method	33
Clear gel coat	Any method	48
Tooling resin	Atomized	30
Tooling resin	Nonatomized	39
Tooling gel coat	Any method	40

The average monomer volatile organic compounds contents listed in the Table 1 shall be determined by using Equation 1 below:

$$\text{Weighted Average Monomer VOC Content} = \frac{\sum_{i=1}^{n}(M_i * VOC_i)}{\sum_{i=1}^{n}(M_i)}$$

Where: M_i = mass of open molding resin or gel coat i used in the past 12 month in an operation in megagrams;
VOC_i = monomer volatile organic compounds content, by weight percent, of open molding resin or gel coat i used in the past 12 month in an operation;
n = number of different open molding resins or gel coats used in the past 12 months in an operation.

(e) The volatile organic compounds limits established in Paragraph (d) of this Rule are not applicable to:

(1) production resins, including skin coat resins, that meet specifications for use in military vessels or are approved by the U.S. Coast Guard for the use in the construction of lifeboats, rescue boats, and other lifesaving appliances approved under 46 CFR Subchapter Q, or the construction of small passenger vessels regulated by 46 CFR Subchapter T. Production resins that meet these criteria shall be applied with non-atomizing resin application equipment;

(2) production and tooling resins; and pigmented, clear, and tooling gel coat used for part or mold repair and touch up. Total resin and gel coat materials that meet these criteria shall not exceed one percent by weight of all resin and gel coat used at a facility on a 12-month rolling-average basis; or

(3) pure, 100-percent vinyl ester resin used for skin coats that are applied with non-atomizing resin application equipment and with the total amount of the resin materials not exceeding five percent by weight of all resin used at a factory on 12-month rolling-average basis.

(f) Any molding resin and gel coat operations listed in Paragraph (b) of this Rule that a facility chooses to include into average emissions among different operations to meet numerical monomer volatile organic compounds emission rate limits rather than to comply with the emission limits established in Paragraph (d) of this Rule shall use the following equations:

(1) to estimate a facility-specific monomer volatile organic compounds mass emission limit (12-month rolling average) use Equation 2 below:

$$\text{Monomer VOC Limit} = 46(M_R) + 159(M_{PG}) + 291(M_{CG}) + 54(M_{TR}) + 214(M_{TG})$$

Where:

Monomer VOC Limit = total allowable monomer volatile organic compounds that can be emitted from the open molding operations included in the average, in kilograms per 12-month period.

M_R = mass of production resin in megagrams used in the past 12 months, excluding any materials that are exempt;

M_{PG} = mass of pigmented gel coat in megagrams used in the past 12 months, excluding any materials that are exempt;

M_{CG} = mass of clear gel coat in megagrams used in the past 12 months, excluding any materials that are exempt;

M_{TR}= mass of tooling resin coat in megagrams used in the past 12 months, excluding any materials that are exempt;

M_{TG} = mass of tooling gel coat in megagrams used in the past 12 months, excluding any materials that are exempt.

Estimates of average emissions shall be determined on a 12-month rolling average basis at the end of every month. The numerical coefficients associated with each term on the right hand side of Equation 2 are the allowable monomer volatile organic compounds emission rate for that particular material in units of kilograms of VOC per megagrams of material used.

(2) to determine if the monomer volatile organic compounds emissions from the operations included in the average do not exceed the emission limit calculated using Equation 2 from Subparagraph (f)(1) of this Rule for the same 12-month period use Equation 3 below:

$$\text{Monomer VOC emissions} = (PV_R)(M_R) + (PV_{PG})(M_{PG}) + (PV_{CG})(M_{CG}) + (PV_{TR})(M_{TR}) + (PV_{TG})(M_{TG})$$

Where:

Monomer VOC emissions = monomer volatile organic compounds emissions calculated using the monomer volatile organic compounds emission equation for each operation included in the average in kilograms;

PV_R = weighted-average monomer volatile organic compounds emission rate in kilograms per megagram for production resin used in the past 12 months;

M_R = Mass of production resin in megagrams used in the past 12 months;

PV_{PG} = weighted-average monomer volatile organic compounds emission rate in kilograms per megagram for pigmented gel coat used in the past 12 months;

M_{PG} = mass of pigmented gel coat in megagrams used in the past 12 months;

PV_{CG} = weighted-average monomer volatile organic compounds emission rate in kilograms per megagram for clear gel coat used in the past 12 months;

M_{CG} = Mass of clear gel coat in megagrams used in the past 12 months;

PV_{TR} = Weighted-average monomer volatile organic compounds emission rate in kilograms per megagram for tooling resin used in the past 12 months;
M_{TR} = Mass of tooling resin in megagrams used in the past 12 months;
PV_{TG} = Weighted-average monomer volatile organic compounds emission rate in kilograms per megagram for tooling gel coat used in the past 12 months;
M_{TG} = Mass of tooling gel coat in megagrams used in the past 12 months.
This demonstration shall be conducted at the end of the first 12-month averaging period and at the end of every subsequent month for only those operations that are included in the average.

(3) to compute the weighted-average monomer volatile organic compounds emission rate for the previous 12 months for each open molding resin and gel coat operation use Equation 4 below:

$$PV_{OP} = \frac{\sum_{i=1}^{n}(M_i * PV_i)}{\sum_{i=1}^{n} M_i}$$

Where:
PV_{OP} = weighted-average monomer volatile organic compounds emission rate in kilograms of monomer volatile organic compounds per megagram of material applied for each open molding operation (PV_R, PV_{PG}, PV_{CG}, PV_{TR}, and PV_{TG}) included in the average;
M_i = mass or resin or gel coat i in megagrams used within an operation in the past 12 months;
n = number of different open molding resins and gel coats used within an operation in the past 12 months;
PV_i = the monomer volatile organic compounds emission rate for resin or gel coat i in kilograms of monomer volatile organic compounds per megagram of material applied used within an operation in the past 12 months. Equations in Table 2 shall be used to compute PV. The calculated averages from Equation 4 shall be used as the weighted-average values in Equation 3 in Subparagraph (f)(2) of this Rule.

Table 2. Compliant Materials Monomer Volatile Organic Compounds Content for Open Molding Resin and Gel Coat

For this material	and this application method	Use this formula to calculate the monomer VOC emission rate
1. Production resin, tooling resin	a. Atomized	$0.014 \times (\text{Resin VOC\%})^{2.425}$
	b. Atomized, plus vacuum bagging with roll-out	$0.01185 \times (\text{Resin VOC\%})^{2.425}$
	c. Atomized, plus vacuum bagging without roll-out	$0.00945 \times (\text{Resin VOC\%})^{2.425}$
	d. Nonatomized	$0.014 \times (\text{Resin VOC\%})^{2.275}$
	e. Nonatomized, plus vacuum bagging with roll-out	$0.0110 \times (\text{Resin VOC\%})^{2.275}$
	f. Nonatomized, plus vacuum bagging without roll-out	$0.0076 \times (\text{Resin VOC\%})^{2.275}$
2. Pigmented gel coat, clear gel coat, tooling gel coat	All methods	$0.445 \times (\text{Gel coat VOC\%})^{1.675}$

(g) If the owner or operator of any facility with molding resin and gel coat operations listed in Paragraph (b) of this Rule chooses to use higher-monomer volatile organic compound materials rather than to comply with the emission limits established in Paragraph (d) of this Rule, they shall:

(1) install control equipment to meet the emission limit determined by Equation 2 in Subparagraph (f)(1) of this Rule, by applying the mass of each material used during the control device performance test in Equation 2 to determine the emission limit, in kilogram of monomer VOC, that is applicable during the test, instead of using the mass of each material as established in Subparagraph (f)(1) of this Rule;

(2) monitor and record relevant control device and capture system operating parameters during the control device performance test to use the recorded values to establish operating limits for those parameters; and

(3) monitor the operating parameters for the control device and emissions capture system and maintain the parameters within the established limits.

(h) Any molding resin and gel coat operations that use a filled production resin or filled tooling resin shall calculate the emission

rate for the filled production resin or filled tooling resin on as-applied basis using Equation 5. If the filled resin:

(1) is used as a production resin then the value of PV_F calculated by Equation 5 shall not exceed 46 kilograms of monomer VOC per megagram of filled resin applied;

(2) is used as a tooling resin then the value of PV_F calculated by Equation 5 shall not exceed 54 kilograms of monomer VOC per megagram of filled resin applied; and

(3) is included in the emissions averaging procedure then the facility shall use the value of PV_F calculated by Equation 5 below for the value PV_i in Equation 4 in Subparagraph (f)(3) of this Rule.

$$PV_F = \frac{PV_U * (100 - \%Filler)}{100}$$

Where:

PV_F = The as-applied monomer volatile organic compounds emission rate in kilograms monomer VOC per megagram of filled material for the filled production resin or tooling resin;

PV_U = The monomer volatile organic compounds emission rate for the neat (unfilled) resin before filler is added, as calculated using the formulas in Table 2 of Subparagraph (f)(3) of this Rule.

%Filler = The weight-percent of filler in the as-applied filled resin system.

(i) All resins and gel coats included in volatile organic compounds limits described in Paragraphs (d) through (h) of this Rule shall meet the non-monomer volatile organic compounds content limit of five percent.

(j) If the non-monomer volatile organic compounds content of a resin or gel coat exceeds five percent, then the excess non-monomer volatile organic compounds over the five percent shall be counted toward the monomer volatile organic compounds content.

(k) SCAQMD Method 312-91, Determination of Percent Monomer in Polyester Resins, revised April 1996 shall be used to determine the monomer volatile organic compounds content of resin and gel coat materials unless the facility maintains records to document the volatile organic compounds content of resin and gel coat materials from the manufacturer. This test method was developed by the South Coast Air Quality Management District and is incorporated by reference, excluding subsequent amendments or editions, and may be obtained free of charge online at http://www.aqmd.gov/docs/default-source/laboratory-procedures/methods-procedures/312-91.pdf.

(l) All resin and gel coat mixing containers with a capacity equal to or greater than 55 gallons, including those used for on-site mixing of putties and polyputties, shall have a cover with no visible gaps in place at all times except for the following operations:

(1) when material is being manually added to or removed from a container; or

(2) when mixing or pumping equipment is being placed or removed from a container.

(m) Volatile organic compounds cleaning solvents for routine application equipment cleaning shall contain no more than five percent volatile organic compounds by weight, or have a composite vapor pressure of no more than 0.50 mm Hg at 68 degrees Fahrenheit.

(n) Only non-volatile organic compounds solvents shall be used to remove cured resin and gel coat from application equipment.

(o) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0964 MISCELLANEOUS INDUSTRIAL ADHESIVES

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

(1) "Air-assisted airless spray" means a system that consists of an airless spray gun with a compressed air jet at the gun tip to atomize the adhesive.

(2) "Airless spray" means the application of an adhesive through an atomizing nozzle at high pressure of 1,000 to 6,000 pounds per square inch by a pump forces.

(3) "Application process" means a process that consists of a series of one or more adhesive applicators and any associated drying area or oven where an adhesive is applied, dried, and cured.

(4) "Dip coating" means application where substrates are dipped into a tank containing the adhesive. The substrates are then withdrawn from the tank and any excess adhesive is allowed to drain.

(5) "Electrocoating" means a specialized form of dip coating where opposite electric charges are applied to the waterborne adhesive and the substrate.

(6) "Electrostatic spray" means application where the adhesive and substrate are oppositely charged.

(7) "Flow coating" means conveying the substrate over an enclosed sink where the adhesive is applied at low pressure as the item passes under a series of nozzles.

(8) "HVLP" means a system with specialized nozzles that provide better air and fluid flow than conventional air atomized spray systems at low air pressure, shape spray pattern, and guide high volumes of atomized adhesive particles to the substrate using lower air pressure of 10 pounds per square inch or less at the spray cap.

(9) "Miscellaneous industrial adhesives" means adhesives, including adhesive primers used in conjunction with certain types of adhesives used at industrial manufacturing and repair facilities for a wide variety of products and

equipment that operate adhesives application processes.

(10) "Roll coating," "brush coating," and "hand application" means application of high viscosity adhesives onto small surface area.

(b) Control of volatile organic compounds emissions from miscellaneous industrial adhesives product categories covered by 15A NCAC 02D .0923, .0935, .0961, .0962, .0963, .0965, .0966, .0967, and .0968 are exempted from the requirements of this Rule.

(c) This Rule applies to miscellaneous industrial adhesive application sources whose volatile organic compounds emissions meet the threshold established in 15A NCAC 02D .0902(b).

(d) With the exception established in Paragraph (b) of this Rule, all volatile organic compounds containing materials applied by each miscellaneous industrial adhesive application processes before control shall:

(1) not exceed limits established in Table 1 of this Rule; and

(2) be used in one of the following application methods in conjunction with using low volatile organic compounds adhesives or adhesive primers:

(A) electrostatic spray;

(B) HVLP spray;

(C) flow coat;

(D) roll coat or hand application, including non-spray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application;

(E) dip coat including electrodesposition;

(F) airless spray;

(G) air-assisted airless spray; or

(H) any other adhesive application method capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spraying.

(e) Emission limits established in Subparagraph (d)(1) of this Rule shall be:

(1) met by averaging the volatile organic compounds content of materials used on a single application unit for each day; and

(2) calculated as mass of volatile organic compounds per volume of adhesive primer, excluding water and exempt compounds, as applied.

(f) If an adhesive is used to bond dissimilar substrates together in general adhesive application process as set forth in Table 1, then the applicable substrate category with the highest volatile organic compounds emission limit shall be established as the limit for such application.

Table 1. Volatile Organic Compounds Emission Limits for General and Specialty Adhesive Application Process.

General Adhesive Application Processes	VOC Emission Limit (lb/gal)
Reinforced Plastic Composite	1.7
Flexible vinyl	2.1
Metal	0.3
Porous Material (Except Wood)	1
Rubber	2.1
Wood	0.3
Other Substrates	2.1
Specialty Adhesive Application Processes	**VOC Emission Limit (lb/gal)**
Ceramic Tile Installation	1.1
Contact Adhesive	2.1
Cove Base Installation	1.3
Floor Covering Installation (Indoor)	1.3
Floor Covering Installation (Outdoor)	2.1
Floor Covering Installation (Perimeter Bonded Sheet Vinyl)	5.5
Metal to Urethane/Rubber Molding or Casting	7.1
Motor Vehicle Adhesive	2.1
Motor Vehicle Weatherstrip Adhesive	6.3
Multipurpose Construction	1.7
Plastic Solvent Welding (ABS)	3.3
Plastic Solvent Welding (Except ABS)	4.2
Sheet Rubber Lining Installation	7.1
Single-Ply Roof Membrane Installation/Repair (Except EPDM)	2.1
Structural Glazing	0.8

Thin Metal Laminating	6.5
Tire Repair	0.8
Waterproof Resorcinol Glue	1.4
Adhesive Primer Application Processes	VOC Emission Limit1 (lb/gal)
Motor Vehicle Glass Bonding Primer	7.5
Plastic Solvent Welding Adhesive Primer	5.4
Single-Ply Roof Membrane Adhesive Primer	2.1
Other Adhesive Primer	2.1

(g) Any miscellaneous industrial adhesive application processes subject to this Rule, which chooses to use add-on control for adhesive application processes rather than to comply with the emission limits established in Paragraph (d) of this Rule, shall install control equipment with overall control efficiency of 85 percent or use a combination of adhesives and add-on control equipment on an application process to meet limits established in Paragraph (d) of this Rule.
(h) EPA Method 24 or 25A of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of adhesives, other than reactive adhesives, and the procedure established in Appendix A of the NESHAP for surface coating of plastic parts (40 CFR Part 63, Subpart PPPP) shall be used to determine the volatile organic compounds content of reactive adhesives unless the facility maintains records to document the volatile organic compounds content of adhesives from the manufacturer.
(i) The owner or operator of any facility subject to this Rule shall comply with the 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0965 FLEXIBLE PACKAGE PRINTING

(a) For the purpose of this Rule, the following definitions apply:
- (1) "First installation date" means the actual date when the equipment or control device becomes operational. This date does not change if the equipment or control device is later moved to a new location.
- (2) "Flexible Packaging" means any package or part of a package whose shape can be readily changed.
- (3) "Flexographic printing" means a printing process in which an image is raised above the printing plate, and the image carrier is made of rubber or other elastomeric materials.
- (4) "Rotogravure press" means an unwind or feed section, which may include:
  - (A) more than one unwind or feed station, such as on a laminator;
  - (B) a series of individual work stations, one or more of which is a rotogravure print station;
  - (C) any dryers associated with the work stations; and
  - (D) a rewind, stack, or collection section.
- (5) "Rotogravure printing" means a printing process in which an image type and art is etched or engraved below the surface of a plate or cylinder.

(b) This Rule applies to flexible packaging printing press sources whose emissions of volatile organic compounds meet the threshold established in 15A NCAC 02D .0902(b).
(c) The volatile organic compounds content of materials used on any single flexible packaging printing press subject to this Rule shall not exceed 0.8 pounds volatile organic compounds per one pound of solids applied, or 0.16 pounds volatile organic compounds per one pound of materials applied limits. These volatile organic compounds content limits are consistent with 80 percent overall emissions reduction level and reflect similar control levels as the capture and control option.
(d) Any flexible packaging printing press that has chosen to use add-on control for coating operations rather than comply with the emission limits established in Paragraph (c) of this Rule shall install control equipment with:
- (1) 65 percent overall control based on a capture efficiency of 75 percent and a control device efficiency of 90 percent for a press that was first installed prior to March 14, 1995 and that is controlled by an add-on control device whose first installation date was prior to July 1. 2010;
- (2) 70 percent overall control based on a capture efficiency of 75 percent and a control device efficiency of 95 percent for a press that was first installed prior to March 14, 1995 and that is controlled by an add-on control device whose first installation date was on or after July 1, 2010;
- (3) 75 percent overall control based on a capture efficiency of 85 percent and a control device efficiency of 95 percent for a press that was first installed on or after March 14, 1995 and that is controlled by an add-on control device whose first installation date was prior July 1, 2010; and
- (4) 80 percent overall control based on a capture efficiency of 85 percent and a control device efficiency of 95 percent for a press that was first installed on or after March 14, 1995 and that is controlled by an add-on control device whose first installation date was on or after July 1, 2010.

(e) EPA Method 24 or 25A of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coating materials used at flexible package printing facilities, unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.
(f) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0966 PAPER, FILM AND FOIL COATINGS

(a) For the purpose of this Rule, the following definitions apply:
(1) "Paper, film, and foil coating line" means a series of coating applicators, flash-off areas, and any associated curing/drying equipment between one or more unwind/feed stations and one or more rewind/cutting stations.
(2) "Flexographic coating" means that the area to be coated is delineated by a raised surface on a flexible plate.
(3) "Rotary screen or flat screen coating" means the application of a coating material to a substrate by means of masking the surface and applying a color or finish using a screen either in flat form or rotary form.
(4) "Rotogravure coating" means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

(b) This Rule applies to paper, film and foil surface coating operations sources, including related cleaning activity, whose emissions of volatile organic compounds meet the threshold established in 15A NCAC 02D .0902(b), at a facility that applies:
(1) paper, film, or foil surfaces in the manufacturing of products for pressure sensitive tape and labels, including fabric coated for use in pressure sensitive tapes and labels; photographic film; industrial and decorative laminates; abrasive products, including fabric coated for use in abrasive products; and flexible packaging, including coating of non-woven polymer substrates for use in flexible packaging; and
(2) coatings during coating applications for production of corrugated and solid fiber boxes; die-cut paper paperboard and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

(c) The following types of coatings are not covered by this Rule:
(1) coatings performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press; or
(2) size presses and on-machine coaters that function as part of an in-line papermaking system.

(d) Emissions of volatile organic compounds from:
(1) pressure sensitive tape and label surface coating lines with the potential to emit, prior to controls, less than 25 tons per year of volatile organic compounds from coatings shall not exceed 0.20 pounds volatile organic compounds per pound of solids applied (0.067 pounds volatile organic compounds per pound of coating applied); and
(2) paper, film, and foil surface coating lines with the potential to emit, prior to controls, less than 25 tons per year of volatile organic compounds from coatings shall not exceed 0.40 pounds of volatile organic compounds per pound of solids (0.08 pounds volatile organic compounds per pound of coating applied).

Compliance shall be determined pursuant to 15A NCAC 02D .0912(c).
(e) EPA Method 24 or 25A of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coating materials used at paper, film, and foil coatings facilities, unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.
(f) Any individual paper, film, and foil coating line with the potential to emit, prior to controls, at least 25 tons per year of volatile organic compounds from coatings shall apply control with overall volatile organic compounds efficiency of 90 percent rather than the emission limits established in Paragraph (d) of this Rule or use a combination of coating and add-on control equipment on a coating unit to meet limits that are equivalent to 90 percent overall control efficiency.
(g) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0967 MISCELLANEOUS METAL AND PLASTIC PARTS COATINGS

(a) For the purpose of this Rule, the following definitions apply:
(1) "Air dried coating" means a coating that is cured at a temperature below 90 degrees Celsius (194 degrees Fahrenheit).
(2) "Baked coating" means a coating that is cured at a temperature at or above 90 degrees Celsius (194 degrees Fahrenheit).
(3) "Clear coat" means a colorless coating that contains binders, but no pigment, and is formulated to form a transparent film.
(4) "Coating unit" means a series of one or more coating applicators and any associated drying

area and oven where a coating is applied, dried, and cured.

(5) "Drum" means any cylindrical metal shipping container with a capacity greater than 12 gallons but less than 110 gallons.

(6) "Electric dissipating coating" means a coating that rapidly dissipates a high voltage electric charge.

(7) "Electric-insulating varnish" means a nonconvertible type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

(8) "Etching filler" means a coating that contains less than 23 percent solids by weight and at least 1/2-percent acid by weight, and is used instead of applying a pretreatment coating followed by a primer.

(9) "Extreme high-gloss coating" means a coating which, when tested by the American Society for Testing Material Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degrees meter.

(10) "Extreme-performance coating" means a coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to the following:

(A) Chronic exposure to corrosive, caustic, or acidic agents, chemicals, chemical fumes, chemical mixtures or solutions;

(B) Repeated exposure to temperatures in excess of 250 degrees Fahrenheit; or

(C) Repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents.

Extreme performance coatings include coatings applied to locomotives, railroad cars, farm machinery, and heavy duty trucks.

(11) "High-performance architectural coating" means a coating used to protect architectural subsections that meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 2604-05: Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels or AAMA 2605-05: Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels. These performance requirements and test procedures are incorporated by reference, including subsequent amendments and editions. A copy of AAMA 2604-05 may be obtained free of charge at http://www.starrail.com/wp-content/docs/AAMA2604-05.pdf. A copy of AAMA 2605-05 may be obtained free of charge at http://www.starrail.com/wp-content/docs/AAMA2605-05.pdf.

(12) "Miscellaneous metal product and plastic parts surface coatings" means the coatings that are applied to the surfaces of a varied range of metal and plastic parts and products that are constructed either entirely or partially from metal or plastic. These miscellaneous metal products and plastic parts include metal and plastic components of the following types of products, as well as the products themselves: fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavy duty trucks, lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, metal pipes, and other industrial and household products.

(13) "Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form a dry film.

(14) "One-component coating" means a coating that is ready for application as it comes out of its container to form a dry film. A thinner, necessary to reduce the viscosity, shall not be considered a component.

(b) This Rule applies to miscellaneous metal and plastic parts surface coating units whose volatile organic compounds emissions meet the threshold established in 15A NCAC 02D .0902(b) for coating and related cleaning activities of the following types of products:

(1) fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment;

(2) automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods;

(3) toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavy duty trucks, lawn and garden equipment;

(4) business machines, laboratory and medical equipment; and

(5) electronic equipment, steel drums metal pipes, and other industrial and household products.

(c) This Rule does not apply to:

(1) coatings that are applied to test panels and coupons as part of research and development, quality control;
(2) performance testing activities at paint research or manufacturing facility; or
(3) sources covered by 15A NCAC 02D .0922, .0923, .0935, .0961, .0962, .0963, .0964, .0965, .0966, and .0968.

(d) With the exception stated in Paragraph (c) of this Rule, emissions of volatile organic compounds before control for surface coating of:

(1) Metal parts and products shall not exceed limits as established in Table 1;

Table 1. Metal Parts and Products Volatile Organic Compounds Content Limits

Coating Category	Air Dried lb VOC/gal coating	Baked lb VOC/gal coating
General One Component; General Multi Component; Military Specification	2.8	2.3
Camouflage; Electric-Insulating Varnish; Etching Filler; High Temperature; Metallic; Mold-Seal; Pan Backing; Pretreatment Coatings; Drum Coating, New, Interior; Drum Coating, Reconditioned, Exterior; Silicone Release; Vacuum-Metalizing	3.5	3.5
Extreme High-Gloss; Extreme Performance; Heat-Resistant; Repair and Touch Up; Solar-Absorbent	3.5	3.0
High Performance Architectural	6.2	6.2
Prefabricated Architectural Multi-Component; Prefabricated Architectural One-Component	3.5	2.3
Drum Coating, New, Exterior	2.8	2.8
Drum Coating, Reconditioned, Interior	4.2	4.2

(2) Plastic parts and products shall not exceed limits as established in Table 2;

Table 2. Plastic Parts and Products Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
General One Component	2.3
General Multi Component; Metallic	3.5
Electric Dissipating Coatings and Shock-Free Coatings; Optical Coatings; Vacuum-Metalizing	6.7
Extreme Performance	3.5 (2-pack coatings)
Military Specification	2.8 (1 pack) 3.5 (2 pack)
Mold-Seal	6.3
Multi-colored Coatings	5.7

(3) automotive/transportation and business machine plastic parts shall not exceed limits as established in Table 3;

Table 3. Automotive/Transportation and Business Machine Plastic Parts Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
Automotive/Transportation Coatings	
I. High Bake Coatings – Interior and Exterior Parts	
Non-flexible Primer	3.5
Base Coats; Non-basecoat/clear coat; Flexible Primer	4.3
Clear Coat	4.0
II. Low Bake/Air Dried Coatings – Exterior Parts	
Primers; Basecoat; Non-basecoat/clearcoat	4.8
Clearcoats	4.5
III. Low Bake/Air Dried Coatings – Interior Parts	5.0
IV. Touchup and Repair Coatings	5.2

Business Machine Coatings	
Primers; Topcoat Texture Coat; Touchup and repair	2.9
Fog Coat	2.2

(4) pleasure craft shall not exceed limits as established in Table 4;

Table 4. Pleasure Craft Surface Coating Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
Extreme High Gloss Topcoat	4.1
High Gloss Topcoat Finish; Primer/Surfacer; All other pleasure craft surface coatings for metal or plastic	3.5
Pretreatment Wash Primers	6.5
High Build Primer Surfacer; Other Substrate Antifoulant Coating	2.8
Aluminum Substrate Antifoulant Coating	4.7

(5) motor vehicle materials shall not exceed limits as established in Table 5.

Table 5. Motor Vehicle Materials Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
Motor vehicle cavity wax; Motor vehicle sealer; Motor vehicle deadener; Motor vehicle underbody coating; Motor vehicle trunk interior coating	5.4
Motor vehicle gasket/gasket sealing material; Motor vehicle bedliner	1.7
Motor vehicle lubricating wax/compound	5.8

(e) With the exception of motor vehicle materials coatings, any miscellaneous metal and plastic parts coatings operations facility may choose a combination of low volatile organic compounds coatings and add-on control equipment on a coating unit. Emissions of volatile organic compounds before control with such combination shall not exceed limits for surface coating of:

(1) Metal parts and products as established in Table 6;

Table 6. Metal Parts and Products Volatile Organic Compounds Content Limits

Coating Category	Air Dried	Baked
	lb VOC/gal solids	lb VOC/gal solids
General One Component; General Multi Component; Military Specification	4.52	3.35
Etching Filler; High Temperature; Metallic; Mold-Seal; Pan Backing; Pretreatment Coatings; Silicone Release; Drum Coating, New, Interior; Drum Coating, Reconditioned, Exterior; Vacuum-Metalizing	6.67	6.67
Extreme High-Gloss; Extreme Performance; Heat-Resistant; Solar-Absorbent	6.67	5.06
High Performance Architectural	38.0	38.0
Prefabricated Architectural Multi-Component	6.67	3.35
Prefabricated Architectural One-Component	6.67	3.35
Solar-Absorbent	6.67	5.06
Drum Coating, New, Exterior	4.52	4.52
Drum Coating, Reconditioned, Interior	6.67	9.78

(2) plastic parts and products as established in Table 7;

Table 7. Plastic Parts and Products Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal solids
General One Component	3.35
General Multi Component; Metallic	6.67
Electric Dissipating Coatings and Shock-Free Coatings Optical Coatings; Vacuum-Metalizing	74.7

Extreme Performance	6.67 (2-pack)
Military Specification	4.52 (1 pack) 6.67 (2 pack)
Mold-Seal	43.7
Multi-colored Coatings	25.3

(3) automotive/transportation and business machine plastic parts as established in Table 8;

Table 8. Automotive/Transportation and Business Machine Plastic Parts Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal solids
Automotive/Transportation Coatings	
I. High Bake Coatings – Interior and Exterior Parts	
Flexible Primer	11.58
Non-flexible Primer; Non-basecoat/clear coat	6.67
Base Coats	10.34
Clear Coat	8.76
II. Low Bake/Air Dried Coatings – Exterior Parts	
Primers	13.8
Basecoat; Non-basecoat/clearcoat	15.59
Clearcoats:	11.58
III. Low Bake/Air Dried Coatings – Interior Parts	15.59
IV. Touchup and Repair Coatings	17.72
Business Machine Coatings	
Primers; Topcoat; Texture Coat; Touchup and repair	4.8
Fog Coat	3.14

(4) pleasure craft surface coatings as established in Table 9.

Table 9. Pleasure Craft surface Coatings Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal solids
Extreme High Gloss Topcoat	9.2
High Gloss Topcoat; Finish Primer/Surfacer; All other pleasure craft surface coatings for metal or plastic	6.7
Pretreatment Wash Primers	55.6
Aluminum Substrate Antifoulant Coating	12.8
High Build Primer Surfacer; Other Substrate Antifoulant Coating	4.4

(f) EPA Method 24 or 25A of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coating materials used at miscellaneous metal and plastic part coating facilities, unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(g) With the exception of motor vehicle materials coatings, any miscellaneous metal and plastic parts coatings operations facility may choose to use add-on control equipment with an overall control efficiency of 90 percent in lieu of using low-VOC coatings and specified application methods.

(h) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and 0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Readopted Eff. November 1, 2020.

15A NCAC 02D .0968 AUTOMOBILE AND LIGHT DUTY TRUCK ASSEMBLY COATINGS

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

(1) "Automobile" means a motor vehicle designed to carry up to eight passengers, excluding vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property.

(2) "Automobile Topcoat Protocol" means Protocol For Determining The Daily Volatile Organic Compound Emission Rate Of Automobile and Light-duty Truck Topcoat Operations (EPA-453/R-08-002) or 40 CFR Part 60, Subpart MM, Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations. The protocol document can be obtained free of charge at

https://www3.epa.gov/airquality/ctg_act/20080 9_voc_epa453_r-08-002_auto_ldtruck_vocemisrate_protocol.pdf.

(3) "Electrodeposition" means a process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides coverage of recessed areas. It is a dip coating method that uses an electrical field to apply or deposit the conductive coating onto the part. The object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank.

(4) "Final repair" means the operations performed and coating(s) applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating.

(5) "Light-duty truck" means vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property with a gross vehicle weight rating of 8,500 pounds or less.

(6) "Primer-surfacer" means an intermediate protective coating applied over the electrodeposition primer (EDP) and under the topcoat. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish.

(7) "Solids turnover ratio (R_T)" means the ratio of total volume of coating solids that is added to the EDP system in a calendar month divided by the total volume design capacity of the EDP system.

(b) This Rule applies to automobile and light-duty truck assembly coating operations and related cleaning activities whose emissions of volatile organic compounds meet the threshold established in 15A NCAC 02D .0902(b) at:

(1) automobile or light-duty assembly plants during the vehicle assembly processes with the following primary coating product applications:

(A) new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks;

(B) other parts that are coated along with these bodies or body parts; or

(C) additional coatings that include glass bonding primer, adhesives, cavity wax, sealer, deadener, gasket/gasket sealing material, underbody coating, trunk interior coating, bedliner, weatherstrip adhesive, and lubricating waxes/compounds; and

(2) facilities that perform coating operations on a contractual basis other than plastic or composites molding facilities.

(c) This Rule does not apply to:

(1) aerosol coatings of automobile and light-truck assembly coatings;

(2) coatings that are applied to other parts intended for use in new automobiles or new light-duty trucks, such as application of spray primer, color and clear coat to fascia or bumpers, on coating lines that are not related to the vehicle assembly process at automobile or light-duty assembly plants. Those coatings are regulated by 15A NCAC 02D .0964 and .0967; and

(3) aftermarket repair or replacement parts for automobiles or light-duty trucks that are regulated by 15A NCAC 02D .0964 and .0967.

(d) With the exception of materials supplied in containers with a net volume of 16 ounces or less, or a net weight of one pound or less, emissions of volatile organic compounds before control for:

(1) automobile and light-duty truck assembly coatings shall not exceed limits established in Table 1.

Table 1. Volatile Organic Compounds emission limits for automobile and light-duty truck assembly coatings.

Assembly Coating Process	Volatile Organic Compounds Emission Limit		
Electrodeposition primer (EDP) operations, including application area, spray/rinse stations, and curing oven	When solids turnover ratio $R_T \geq 0.160$;	When $0.040 \leq R_T < 0.160$	When $R_T < 0.040$;
	0.7 lb/gal coatings solids applied.	$0.084^{0.160-R_T}$ x 8.34 lb/gal coating solids applied.	No VOC emission limit.
Primer-surfacer operations, including application area, flash-off area, and oven	12.0 lb VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the Automobile Topcoat Protocol		
Topcoat operations, including application area, flash-off area, and oven	12.0 lb VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the Automobile Topcoat Protocol		
Final repair operations	4.8 lb VOC/gallon of coating less water and less exempt solvents on a daily weighted average basis or as an occurrence weighted average.		
Combined primer-surfacer and topcoat operations	12.0 lb VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the Automobile Topcoat Protocol		

(2) materials used at automobile and light-duty truck assembly coatings facilities shall not exceed limits established in Table 2.

Table 2. Volatile Organic Compounds emission limits for miscellaneous materials used at automobile and light-duty truck assembly coatings facilities.

Material	VOC Emission Limit (grams of VOC per liter of coating excluding water and exempt compounds, as applied)
Automobile and light-duty truck glass bonding primer	900
Automobile and light-duty truck adhesive	250
Automobile and light-duty truck cavity wax	650
Automobile and light-duty truck sealer	650
Automobile and light-duty truck deadener	650
Automobile and light-duty truck gasket/gasket sealing material	200
Automobile and light-duty truck underbody coating	650
Automobile and light-duty truck trunk interior coating	650
Automobile and light-duty truck bedliner	200
Automobile and light-duty truck weatherstrip adhesive	750
Automobile and light-duty truck lubricating wax/compound	700

(e) EPA Method 24 or 25A of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of coatings, other than reactive adhesives used at automobile and light-duty truck coating facilities, unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.
(f) The emission limits established in Paragraph (d) of this Rule may be achieved with a combination of higher-solid solvent-borne coatings, efficient application equipment, and bake oven exhaust control.
(g) The owner or operator of any facility subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. September 1, 2010;
Readopted Eff. November 1, 2020.

15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the facility's premises to any significant ambient air concentration that may adversely affect human health, except as allowed pursuant to 15A NCAC 02Q .0700. In determining these significant ambient air concentrations, the Division shall be governed by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure, except for asbestos:

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m^3) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		0.03	1	
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.1×10^{-6}			
asbestos (1332-21-4)	2.8×10^{-6} fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2×10^{-4}			
benzidine and salts (92-87-5)	1.5×10^{-8}			
benzo(a)pyrene (50-32-8)	3.3×10^{-5}			

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m^3) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1×10^{-6}			
beryllium chloride (7787-47-5)	4.1×10^{-6}			
beryllium fluoride (7787-49-7)	4.1×10^{-6}			
beryllium nitrate (13597-99-4)	4.1×10^{-6}			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3×10^{-8}			
bis-chloromethyl ether (542-88-1)	3.7×10^{-7}			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	4.4×10^{-4}			
cadmium (7440-43-9)	5.5×10^{-6}			
cadmium acetate (543-90-8)	5.5×10^{-6}			
cadmium bromide (7789-42-6)	5.5×10^{-6}			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7×10^{-3}			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3×10^{-3}			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3×10^{-2}			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0×10^{-4}			
ethylene dichloride (107-06-2)	3.8×10^{-3}			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7×10^{-5}			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	7.6×10^{-8}			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m^3) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl bromide (74-83-9)	0.005[a]	1.0		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4×10^{-2}		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1×10^{-6}			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	5.0×10^{-5}			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3×10^{-8}			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9×10^{-1}			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	8.3×10^{-5}			
soluble chromate compounds, as chromium (VI) equivalent		6.2×10^{-4}		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	3.0×10^{-9}			
1,1,2,2-tetrachloroethane (79-34-5)	6.3×10^{-3}			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9×10^{-2}			
vinyl chloride (75-01-4)	3.8×10^{-4}			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

[a] This compound has not been defined as a carcinogen.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(4); 143-215.107(a)(5); 143B-282;
Eff. May 1, 1990;
Amended Eff. September 1, 1992; March 1, 1992;
Temporary Amendment Eff. July 20, 1997;
Amended Eff. July 7, 2014; May 1, 2014; March 1, 2010; June 1, 2008; April 1, 2005; April 1, 2001; July 1, 1998;
Readopted Eff. July 1, 2018;
Amended Eff. November 1, 2020.

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15A NCAC 13B .0531 PURPOSE AND APPLICABILITY FOR CONSTRUCTION AND DEMOLITION LANDFILLS

(a) Purpose. Rules .0531 through .0546 of this Section shall govern the permitting procedures, siting, design, construction, performance standards, operation, closure, and post-closure of all construction and demolition solid waste landfill (C&DLF) facilities and units.

(b) Applicability. Owners and operators of C&DLF facilities and units shall conform to the requirements of Rules .0531 through .0546 of this Section as follows:

(1) C&DLF units that stopped receiving waste before June 30, 2008 are exempt from Rules .0531 through .0546 of this Section and shall comply with the solid waste permit and Rule .0510 of this Section.

(2) C&DLF units permitted after December 31, 2006 shall comply with the requirements of Rules .0531 through .0546 of this Section.

(3) C&DLF units permitted to operate prior to January 1, 2007 that continued to receive waste on or after June 30, 2008 shall comply with Rules .0531 through .0546 of this Section, except that C&DLF units on top of closed MSWLFs are subject to the corrective action requirements of Rules .1635, .1636, and .1637 of this Subchapter, and the closure and post-closure requirements of Rule .1627 of this Subchapter.

(c) In addition to the requirements of G.S. 130A-295.3, owners and operators of a C&DLF facility shall comply with local laws, ordinances, rules, regulations, and orders that are applicable to the location and operation of the C&DLF facility, including zoning and property requirements, floodplain requirements, wetland requirements, sedimentation and erosion control requirements, and mining requirements.

(d) Incorporation by Reference. References to Title 40 of the U.S. Code of Federal Regulations (CFR) in Rules .0531 through .0546 of this Section are incorporated by reference including subsequent amendments or editions, and can be obtained free of charge at the US Government Publishing Office website at www.ecfr.gov.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Pending Delayed Eff. Date.

15A NCAC 13B .0532 DEFINITIONS FOR C&DLF FACILITIES

The definitions in Article 9 of Chapter 130A of the General Statutes, the definitions in Rule .0101 of this Subchapter, and the following definitions shall apply to Rules .0531 through .0546 of this Section.

(1) "Active life" means the period of operation beginning with the initial receipt of C&D solid waste and ending at completion of closure activities in accordance with Rule .0543 of this Section.

(2) "Active portion" means that part of a facility or unit(s) that has received or is receiving wastes and that has not been closed in accordance with Rule .0543 of this Section.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding groundwater.

(4) "Areas susceptible to mass movement" means those areas characterized as having an active or substantial possibility of mass movement where the movement of earth material at, beneath, or adjacent to the C&DLF unit(s), because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement may include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(5) "Base liner system" means the liner system installed on the C&DLF unit's foundation to control the flow of leachate.

(6) "Cap system" means a liner system installed over the C&DLF unit(s) to minimize infiltration of precipitation and contain the wastes.

(7) "C&D solid waste" means solid waste generated solely from the construction, remodeling, repair, or demolition operations on pavement and buildings or structures. C&D solid waste may include municipal and industrial solid wastes that are identical to materials generated from the construction, remodeling, repair, or demolition operations on pavement and buildings or structures.

(8) "Construction and demolition debris landfill unit" or "C&DLF unit" means a discrete area of land or an excavation that receives C&D solid waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR 257.2. Such a C&DLF unit may be publicly or privately owned; and may be located at a municipal solid waste landfill facility, an industrial solid waste landfill facility, or other waste management facility.

(9) "Groundwater" means water below the land surface in a zone of saturation.

(10) "Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes may include sinkholes, sinking streams, caves, large springs, and blind valleys.

(11) "Landfill facility" means all contiguous land and structures, waste management unit(s), other appurtenances, and improvements on the land within the legal description of the site included

in or proposed for the permit issued in accordance with this Subchapter.

(12) "Landfill unit" means a discrete area of land or an excavation that receives a particular type of waste such as C&D, industrial, or municipal solid waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257.2. Such a landfill unit may be publicly or privately owned, and may be located at a municipal solid waste landfill facility, a construction and demolition debris landfill facility, an industrial solid waste landfill facility, or other waste management facility.

(13) "Lateral expansion" means a horizontal expansion of the waste boundaries of a C&DLF unit(s).

(14) "Liner system" means an engineered environmental control system which can incorporate filters, drainage layers, compacted soil liners, geomembrane liners, piping systems, and connected structures.

(15) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by EPA SW-846 Test Method 9095B (Paint Filter Liquids Test), which is incorporated by reference including subsequent amendments or editions; and can be obtained free of charge at the US EPA website at www.epa.gov/hw-sw846/sw-846-test-method-9095b-paint-filter-liquids-test.

(16) "Poor foundation conditions" means those areas where features exist that indicate that a natural or man-induced event may result in a loss or reduction of foundation support for the structural components of a C&DLF unit(s).

(17) "Project engineer" means the licensed professional engineer that represents the permittee and is responsible for observing, documenting, and certifying that activities related to the quality assurance of the construction of the solid waste management unit conform to the permit to construct, incorporated plans, and Rules .0531 through .0546 of this Section. All certifications shall bear the seal and signature of the licensed professional engineer and the date of certification.

(18) "Seasonal high groundwater table" and "SHGT" means the highest level of the uppermost aquifer during a year with normal rainfall. SHGT may be determined in the field through identification of redoximorphic features in the soil profile, monitoring of the water table elevation, or modeling of predicted groundwater elevations.

(19) "Structural components" means liners, leachate collection systems, final covers, systems that manage rainwater that drains over land from or onto any part of the facility or unit and any other component used in the construction and operation of the C&DLF facility.

(20) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

(21) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .0533 GENERAL APPLICATION REQUIREMENTS AND PROCESSING FOR C&DLF FACILITIES

(a) An owner or operator of a C&DLF unit or facility shall submit an application document as detailed in Rule .0535 of this Section in accordance with the following criteria and scheduling requirements:

(1) New permit. An applicant for a new permit as defined by G.S. 130A-294(a3)(1) shall submit a site study and subsequently an application for a permit to construct as set forth in Rule .0535(a) and (b) of this Section. The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter. An application for a new permit is subject to the application fees set forth in G.S. 130A-295.8(d2).

(2) Amendment to the permit. The owner or operator shall submit an application to amend the permit to construct in accordance with Rule .0535(c) of this Section for the following circumstances:

(A) A subsequent stage of landfill development. A permit to construct issued in accordance with Paragraph (c) of this Rule approves the life-of-site development of the C&DLF unit indicated in the facility plan plus a set of plans defined in Rule .0534(b)(1) of this Section as the Division approved plans submitted by the applicant for either the entire C&DLF unit or a portion of the C&DLF unit. For any subsequent stage of landfill development that the applicant has not included in the plans required by Rule .0534(b)(1) of this Section for any prior stage of landfill development, the

owner or operator shall submit the amended permit application no less than 180 days prior to the date scheduled for commencing construction.

(B) A change in ownership or corporate structure of a permitted C&DLF facility in accordance with G.S. 130A-294(a3)(2)b. The owner or operator shall notify the Division within 30 days of a change in ownership or corporate structure in accordance with G.S. 130A-295.2(g).

(3) Modifications to the permit. An owner or operator proposing changes to the plans approved in the permit shall request prior approval from the Division in accordance with Rule .0535(d) of this Section.

(4) Permit for Closure and Post-Closure Care. The owner or operator shall submit an application for a closure and post-closure care permit to the Division when the facility reaches its final permitted elevations and prior to initiating closure activities for the final permitted C&DLF unit at the facility in accordance with Rule .0535(e) of this Section. Owners or operators that closed all C&DLF units at the facility prior to the readopted effective date of this Rule shall not be required to submit a permit application for closure and post-closure. The Division shall issue a permit for closure and post-closure for these facilities based on the most recent permit application submittal, if a closure and post-closure permit has not already been issued.

(b) Application format requirements. All applications and plans required by Rules .0531 through .0546 of this Section shall be prepared in accordance with the following:

(1) The application shall:

(A) contain a cover sheet stating the project title and location, the applicant's name and address, and the engineer's name, address, signature, date of signature, and seal;

(B) contain a statement defining the purpose of the submittal signed and dated by the applicant;

(C) contain a table of contents or index outlining the body of the application and the appendices;

(D) be paginated consecutively; and

(E) identify any revised text by noting the date of revision on the page.

(2) Drawings. The engineering drawings for all landfill facilities shall be submitted using the following format:

(A) the cover sheet shall include the project title, applicant's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal; and

(B) maps and drawings shall be prepared at a scale that illustrates the subject requirements, and that is legible if printed at a size of 22 inches by 34 inches.

(3) Number of copies. An applicant shall submit one copy of the application to the Division in an electronic format that is accessible and viewable by the Division. The Division may request that the applicant submit up to three paper copies of the application in three-ring binders.

(c) Permitting and Public Information Procedures.

(1) Purpose and Applicability.

(A) Purpose. During the permitting process, the Division shall provide for public review of and input to permit documents containing the applicable design and operating conditions. The Division shall provide for consideration of comments received and notification to the public of the permit design as set forth in Subparagraph (4) of this Paragraph.

(B) Applicability. Applications for a new permit as defined in G.S. 130A-294(a3)(1), or for a modification to the permit involving corrective remedy selection required by Rule .0545(g)(1) of this Section shall be subject to the requirements of this Paragraph. Applications submitted in accordance with Subparagraphs (a)(2), (a)(3), and (a)(4) of this Rule are not subject to the requirements of this Paragraph.

(2) Draft Permits.

(A) The Division shall review all permit applications for compliance with Rules .0531 through .0546 of this Section and Rule .0203 of this Subchapter. Once an application is complete, the Division shall either issue a notice of intent to deny the permit to the applicant or prepare a draft permit.

(B) If the Division issues a notice of intent to deny the permit to the applicant, the notice shall include the reasons for permit denial in accordance with Rule .0203(e) of this Subchapter and G.S. 130A-294(a)(4)c.

(C) If the Division prepares a draft permit, the draft permit shall contain all applicable terms and conditions for the permit.

(D) All draft permits shall be subject to the procedures of Subparagraphs (3)

through (9) of this Paragraph, unless otherwise specified in those Subparagraphs.

(3) Fact Sheet. The Division shall prepare a fact sheet for every draft permit, and shall send this fact sheet to the applicant and post the fact sheet on the Division website. The fact sheet shall include:

(A) a description of the type of facility or activity that is the subject of the draft permit;

(B) a description of the area to be served, the volume and characteristics of the waste stream, and a projection of the useful life of the landfill;

(C) a summary of the basis for the draft permit conditions, including references to statutory or regulatory provisions and supporting references to the permit application;

(D) the beginning and ending dates of the comment period under Subparagraph (4) of this Paragraph;

(E) the address where comments will be received;

(F) the name, phone number, and e-mail address of a person to contact for additional information;

(G) the procedures for requesting a public hearing; and

(H) other procedures by which the public may provide comments during the comment period under Subparagraph (4) of this Paragraph, such as social media or a web-based meeting, if the Division or the applicant elects to use such procedures.

(4) Public Notice of Permit Actions and Public Hearings.

(A) The Division shall give public notice of each of the following: a draft permit has been prepared; a public hearing has been scheduled under Subparagraph (6) of this Paragraph; or a notice of intent to deny a permit has been prepared under Part (2)(B) of this Paragraph.

(B) No public notice is required when a request for a permit modification is denied.

(C) The Division shall give written notice of denial to the applicant.

(D) Public notices may describe more than one permit or permit action.

(E) Public notice of the preparation of a draft permit or a notice of intent to deny a permit shall allow at least 45 days for public comment.

(F) The Division shall give public notice of a public hearing at least 15 days before the hearing; and the notice shall contain the date, time, and place of the public hearing; a description of the nature and purpose of the public hearing, including the applicable rules and procedures; and a statement of the issues raised by the persons requesting the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(G) Public notice of activities described in Part (A) of this Subparagraph shall be given by publication on the Division website, by posting in the post office and public places of the municipalities nearest the site under consideration, or publication by a local news organization. The Division may also provide notice by posting on other State or local government websites or social media to give actual notice of the activities to persons potentially affected.

(H) All public notices issued under this Subparagraph shall contain the name, address and phone number of the office processing the permit action for which notice is being given; the name and address of the owner and operator applying for the permit; a description of the business conducted at the facility or activity described in the permit application including the size and location of the facility and type of waste accepted; a description of the comment procedures required by Subparagraphs (5) and (6) of this Paragraph, including a statement of procedures to request a public hearing unless a hearing has already been scheduled, and other procedures by which the public may participate in the permit decision; the name, address, and telephone number of the Division contact from whom interested persons may obtain further information; and a description of the time frame and procedure for making an approval or disapproval decision of the application.

(5) Public Comments and Requests for Public Hearings. During the public comment period any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall

be in writing and shall state the nature of the issues proposed to be raised in the hearing. The Division shall consider all comments in making a final permit decision. The Division shall respond to all comments as provided in Subparagraph (9) of this Paragraph.

(6) Public Hearings.

(A) The Division shall hold a public hearing on a draft permit(s) when a hearing is requested. The Division may also hold a public hearing whenever such a hearing might clarify one or more issues involved in the permit decision. Public hearings held pursuant to this Rule shall be at a location accessible to the residents of the municipality closest to the subject facility. Public notice of the hearing shall be given as specified in Subparagraph (4) of this Paragraph.

(B) Any person may submit oral or written statements and data concerning the draft permit. The Division shall extend the public comment period under Subparagraph (4) of this Paragraph to the close of any public hearing conducted under this Subparagraph. The Division may also extend the public comment period by so stating at the hearing, when information is presented at the hearing which indicates the importance of extending the period to receive additional comments, to allow potential commenters to gather more information, to allow time for submission of written versions of oral comments made at the hearing, or to allow time for rebuttals of comments made during the hearing. The Division shall publish the end date of the extended comment period on the Division's website prior to the end of the existing public comment period.

(C) The Division shall make available to the public a recording or written transcript of the hearing upon request.

(7) Reopening of the Public Comment Period.

(A) In response to data, information, or arguments received during the public comment period, the Division may prepare a revised draft permit under Subparagraph (2) of this Paragraph; prepare a revised fact sheet under Subparagraph (3) of this Paragraph, and reopen or extend the comment period under Subparagraph (4) of this Paragraph.

(B) Comments filed during the reopened comment period shall be limited to the information that was revised in the draft permit following the original comment period. The public notice shall be in accordance with Subparagraph (4) of this Paragraph and shall define the scope of the reopening.

(8) Permit Decision.

(A) After the close of the public comment period under Subparagraph (4) of this Paragraph on a draft permit or a notice of intent to deny a permit, the Division shall issue a permit decision. The Division shall notify the applicant and each person who has submitted a written request for notice of the permit decision. For the purposes of this Subparagraph, a permit decision means a decision to issue, deny, or modify a permit in accordance with Paragraph (d) of this Rule.

(B) A permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.

(9) Response to Comments.

(A) At the time that a permit decision is issued under Subparagraph (8) of this Paragraph, the Division shall issue a written response to comments. This response shall specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change. The response shall also describe and respond to all comments pertaining to the requirements in the draft permit raised during the public comment period, or during any public hearing.

(B) The Division shall publish the response to comments on the Division website upon request.

(d) Permit approval or denial. The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Pending Delayed Eff. Date.

15A NCAC 13B .0534 GENERAL REQUIREMENTS FOR C&DLF FACILITIES AND UNITS

(a) Permits issued by the Division for C&DLF facilities and units shall be subject to the general requirements set forth in this Rule.

(b) Terms of the Permit. The Solid Waste Management Permit shall incorporate requirements necessary to comply with this

Subchapter and the North Carolina Solid Waste Management Act including the provisions of this Paragraph.

(1) Division Approved Plans. Permits issued after December 31, 2006 shall incorporate the Division approved plans.

(A) The scope of the Division approved plans shall include the information necessary to comply with the requirements set forth in Rule .0535 of this Section.

(B) The Division approved plans shall be subject to and may be limited by the conditions of the permit.

(C) The Division approved plans for a C&DLF facility shall be described in the permit and shall include the Facility Plan required by Rule .0537 of this Section, the Design Hydrogeologic Report required by Rule .0538(b) of this Section, the Engineering Plan required by Rule .0539 of this Section, the Construction Quality Assurance Plan required by Rule .0541 of this Section, the Operation Plan required by Rule .0542 of this Section, the Closure and Post-Closure Plan required by Rule .0543 of this Section, and the Monitoring Plans required by Rule .0544 of this Section.

(2) Permit provisions. All C&DLF facilities and units shall conform to the specific conditions set forth in the permit and the following general provisions.

(A) Duty to Comply. The permittee shall comply with all conditions of the permit. Any permit noncompliance, except as otherwise authorized by the Division, constitutes a violation of the Act and is grounds for enforcement action or for permit revocation, modification, or suspension.

(B) Duty to Mitigate. In the event of noncompliance with the permit, the permittee shall minimize the release of waste, leachate, or contaminants to the environment, and shall prevent adverse impacts on human health or the environment.

(C) Duty to Provide Information. The permittee shall furnish to the Division any information that the Division may request to determine whether cause exists for modifying, revoking or suspending the permit, or to determine compliance with the permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept under the conditions of the permit.

(D) Recordation Procedures. The permittee shall comply with the requirements of G.S. 130A-301 for a new permit to be effective.

(E) Need to Halt or Reduce Activity. It shall not be a defense for a permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of the permit.

(F) Permit Actions. The permit may be modified, reissued, revoked, suspended, or terminated in accordance with G.S. 130A-23. The filing of a request by the permittee for a permit modification, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.

(G) Not Transferable. A permit for a solid waste management facility is transferable only with prior approval of the Department in accordance with G.S. 130A-294(a1).

(H) Construction. If construction is not commenced within 18 months from the issuance date of the permit to construct, or an amendment to the permit to construct, then the permit shall expire. The applicant may re-apply for the permit, which shall be subject to statutes and rules in effect on the date of the re-application.

(I) Proper Operation and Maintenance. The permittee shall at all times operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee in compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures, in accordance with the conditions of the permit. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(J) Inspection. The permittee shall allow the Department to enter the permittee's premises where a regulated unit or

activity is located or conducted, or where records are kept under the conditions of the permit. The Department shall have access to copy any records required to be kept under the conditions of the permit. The permittee shall allow the Department to inspect any facilities, equipment including practices, operations, or monitoring and control equipment that are required or regulated by the facility permit or the rules of this Subchapter. The permittee shall allow the Department to take photographs for documenting items of compliance or noncompliance at permitted facilities. At the request of the Department, the permittee shall take such photographs and submit them to the Department.

(K) Monitoring. Samples and measurements taken for monitoring shall be representative of the monitored activity. For the purpose of assuring compliance with the permit or with Chapters 113A, 130A, and 143 of the General Statutes and the rules adopted under the authority of those General Statutes, the permittee shall allow the Department to sample or monitor, at any location under the operation or control of the permittee, any materials, substances, wastes, leachate, soil, groundwater, surface water, gases, gas condensates, or ambient air to the extent authorized by Chapters 113A, 130A, and 143 of the General Statutes and the rules adopted under the authority of those General Statutes. The Department may allow the permittee to split samples with the Department. If the Department allows the permittee to split samples, the permittee and the Department shall collect the samples on a schedule that allows the permittee and the Department to obtain sample containers and equipment prior to sampling.

(L) Waste Exclusions. Waste to be excluded from disposal in a C&DLF is listed in Rule .0542 of this Section. Permit conditions may include additional exclusions if they are necessary to protect the public health and the environment or to ensure proper landfill operation.

(M) Additional Solid Waste Management Activities. Construction and operation of additional solid waste management activities at the landfill facility shall not impede operation or monitoring of the C&DLF unit(s). Any proposed additional activities shall be submitted to the Division for review, approval, and permitting, as applicable, before construction and operation.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .0535 APPLICATION REQUIREMENTS FOR C&DLF FACILITIES

(a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new C&DLF permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .0536 of this Section prior to submitting an application for a permit to construct.

(1) Permit to Construct. An application for a permit to construct for a new permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:

(A) a facility plan that describes the comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section;

(B) a design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;

(C) an engineering plan for the initial phase of landfill development prepared in accordance with Rule .0539 of this Section;

(D) a construction quality assurance plan prepared in accordance with Rule .0541 of this Section;

(E) an operation plan prepared in accordance with Rule .0542 of this Section;

(F) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section;

(G) monitoring plans prepared in accordance with Rule .0544 of this Section;

(H) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(I) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(2) Permit to Operate. The owner and operator shall meet the pre-operative requirements of the permit to construct to qualify the constructed C&DLF unit for a permit to operate.

(b) New permit as defined in G.S. 130A-294(a3)(1)b. An application for a new C&DLF permit as defined in G.S. 130A-294(a3)(1)b. shall contain:

(1) a facility plan that describes the comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section;
(2) local government approval in accordance with Rule .0536(c)(11) of this Section;
(3) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
(4) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(c) Amendment to the permit. An application for an amendment to the permit shall contain:

(1) an updated design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;
(2) an updated engineering plan prepared in accordance with Rule .0539 of this Section;
(3) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section;
(4) an updated operation plan prepared in accordance with Rule .0542 of this Section;
(5) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section;
(6) an updated monitoring plan prepared in accordance with Rule .0544 of this Section;
(7) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
(8) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.

(d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved in accordance with the requirements set forth in Rules .0531 through .0546 of this Section. A complete application shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance with Rules .0531 through .0546 of this Section.

(e) A permit for closure and post-closure. An application for closure and post-closure permit shall contain:

(1) an updated engineering plan prepared in accordance with Rule .0539 of this Section;
(2) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section;
(3) an updated closure plan and updated post-closure plan prepared in accordance with Rule .0543 of this Section; and
(4) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .0536 SITE STUDY FOR C&DLF FACILITIES

(a) Purpose. As required under Rule .0535 of this Section, the owner or operator shall prepare a site study that meets the requirements of this Rule. The Division shall review the site study for a proposed new facility prior to consideration of an application for a permit to construct to determine if the site is suitable for establishing a C&DLF unit because nothing would prevent the C&DLF unit from being able to be constructed and operated in accordance with Article 9 of Chapter 130A of the General Statutes, the rules of this Subchapter, and the Federal Resource Conservation and Recovery Act, as amended. Following review of the site study, the Division shall notify the applicant that either:

(1) the site is deemed suitable for establishing a C&DLF unit and the applicant is authorized to prepare an application for a permit to construct in accordance with Rule .0535 of this Section and the site-specific conditions and design requirements stated in the notification, if any; or
(2) the site is deemed unsuitable for establishing a C&DLF unit and shall specify the reasons that would prevent the C&DLF unit from being constructed and operated in accordance with Article 9 of Chapter 130A of the General Statutes, the rules of this Subchapter, and any applicable federal laws and regulations.

(b) Scope. The site shall be the land that is proposed for the landfill facility. The site study shall present a characterization of the land, incorporating various investigations and requirements pertinent to suitability of a C&DLF facility. The scope of the site study shall include criteria associated with the public health, public welfare, and the environment. The economic feasibility of a proposed site shall not be within the scope of this study. The information in the site study shall represent site characteristics and, if required by G.S. 89C, 89E, or 89F and not under the purview of another licensed profession, shall be prepared by licensed professional engineers, licensed geologists, licensed soil scientists, or licensed professional land surveyors. A C&DLF unit shall comply with the location restrictions set forth in Subparagraphs (c)(4) through (c)(10) of this Rule. To demonstrate compliance with specific criteria for each of the respective location restrictions, documentation or approval by agencies other than the Division of Waste Management, Solid Waste Section may be required. The scope of demonstrations including design and construction performance shall be addressed in the site study.

(c) The site study prepared for a C&DLF facility shall include the information required by this Paragraph.

(1) Characterization study. The site characterization study area includes the landfill facility and a 2000-foot perimeter measured from the proposed boundary of the landfill

facility. The study shall include an aerial photograph taken within one year of the date the site study is submitted to the Division, a report, and a local map. The map and photograph shall be at a scale of at least one inch equals 400 feet. The study shall identify the following:

(A) the entire property proposed for the disposal site and any on-site easements;
(B) existing land use and zoning;
(C) the location of residential structures and schools;
(D) the location of commercial and industrial buildings, and other potential sources of contamination;
(E) the location of potable wells and public water supplies;
(F) historic sites;
(G) state nature and historic preserves;
(H) the existing topography and features of the disposal site including: general surface water drainage patterns and watersheds, 100-year floodplains, perennial and intermittent streams, rivers, and lakes; and
(I) the classification of the surface water drainage from landfill site in accordance with 15A NCAC 02B .0300.

(2) Proposed Facility Plan. A conceptual plan for the development of the facility shall be prepared that includes the drawings and reports described in Rule .0537(d)(1), (e)(1), (e)(2), and (e)(3) of this Section.

(3) Site Hydrogeologic Report. The study shall be prepared in accordance with the requirements set forth in Rule .0538(a) of this Section.

(4) Floodplain Location Restrictions. A C&DLF unit shall meet the floodplain requirements of G.S. 130A-295.6(c)(1) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b). C&DLF units that are not subject to the requirements of G.S. 130A-295.6(c)(1) shall not be located in floodplains unless the owners or operators demonstrate that the unit will not restrict the flow of the flood, reduce the temporary water storage capacity of the floodplain, or result in the carrying away of solid waste by flood waters.

(5) Wetlands Location Restriction. For purposes of this Rule, "wetland" or "wetlands" shall mean the areas defined in 40 CFR 232.2(r). C&DLF units shall meet the wetland location restrictions of G.S. 130A-295.6(c)(2) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b). C&DLF units exempt from G.S. 130A-295.6(c)(2) shall not be located in wetlands, unless the owner or operator demonstrates the following for Division approval.

(A) Where applicable under Section 404 of the Clean Water Act or G.S. 113A, 130A, or 143, the presumption that a practicable alternative to the proposed landfill facility is available which does not involve wetlands is rebutted.
(B) The construction and operation of the C&DLF unit shall not cause or contribute to violations of any applicable State water quality standards and shall not violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act.
(C) The construction and operation of the C&DLF unit shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, or violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary.
(D) The construction and operation of the C&DLF unit shall not cause or contribute to degradation of wetlands.
(E) The owner or operator shall demonstrate the integrity of the C&DLF unit and its ability to protect ecological resources by addressing the following factors: erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the C&DLF unit; erosion, stability, and migration potential of dredged and fill materials used to support the C&DLF unit; the volume and chemical nature of the waste managed in the C&DLF unit; impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste; the potential effects of release of waste to the wetland and the resulting impacts on the environment; and any additional factors to demonstrate that ecological resources in the wetland are protected to the extent required under Section 404 of the Clean Water Act and G.S. 113A, 130A, and 143.
(F) The owner or operator shall demonstrate that steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by avoiding impacts to

wetlands as required by Parts (A) through (D) of this Subparagraph and offsetting remaining unavoidable wetland impacts through compensatory mitigation actions such as restoration of existing degraded wetlands or creation of man-made wetlands.

(G) The Division may request additional information if it is necessary to determine compliance with this Subparagraph.

(6) Unstable Area Location Restrictions. Owners and operators of C&DLF units proposed for location in an unstable area shall demonstrate that the C&DLF unit's design ensures that the integrity of any structural components of the C&DLF unit will not be disrupted. The owner and operator shall consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(7) Cultural Resources Location Restrictions. A C&DLF unit shall not damage or destroy a property of archaeological or historical significance which has been listed on the National Register of Historic Places or included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300, which are incorporated by reference including subsequent amendments and editions. A letter from the State Historic Preservation Office within the Department of Natural and Cultural Resources stating whether the proposed use of the property will impact properties of archaeological or historical significance shall be included in the site study.

(8) State Nature and Historic Preserve Location Restrictions. The location, access, size, and operation of the C&DLF unit shall not damage, destroy, or degrade any lands included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10. A letter from the Natural Heritage Program Office within the Department of Natural and Cultural Resources stating whether the proposed use of the property will damage, destroy, or degrade state nature and historic preserve locations shall be included in the site study.

(9) Water Supply Watersheds Location Restrictions.

(A) At the time that an C&DLF unit receives the first permit approval to construct, a C&DLF unit shall not be located in the critical area of a water supply watershed, or in the watershed for a stream segment classified as WS-I, or in watersheds of other water bodies which indicate that no new landfills are allowed in accordance with 15A NCAC 02B .0200.

(B) A C&DLF unit that proposes to discharge leachate to surface waters shall obtain a National Pollution Discharge Elimination System (NPDES) Permit from the Department pursuant to Section 402 of the United States Clean Water Act.

(C) At the time that a C&DLF unit receives the first permit approval to construct, an C&DLF unit that proposes to discharge leachate to surface waters shall not be located within watersheds classified as WS-II or WS-III, or in watersheds of other water bodies which indicate that no new discharging landfills are allowed, in accordance with 15A NCAC 02B .0200.

(10) Endangered and Threatened Species Location Restrictions. A C&DLF unit shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended.

(11) Local government approvals for C&DLFs.

(A) If the permit applicant is a unit of local government and the proposed C&DLF unit is located within the permit applicant's jurisdiction, the approval of the local governing board shall be required. Approval may be in the form of a resolution or a vote on a motion. A copy of the resolution or the minutes of the meeting where the vote was taken shall be submitted to the Division as part of the site study. Prior to issuance of approval, the jurisdictional local government where the C&DLF unit is to be located shall hold at least one public meeting to inform the community of the proposed waste management activities as described in the proposed facility plan prepared in accordance with Subparagraph (2) of this Paragraph. The local government where the C&DLF unit is to be located shall provide a public notice of the meeting at least 30 days prior to the meeting, shall place the proposed facility plan

in a location accessible by the public, and shall make the location known in the public notice.

(B) A permit applicant other than the unit of local government with jurisdiction over the proposed C&DLF unit shall obtain a franchise in accordance with G.S. 130A-294(b1). A copy of the franchise shall be submitted to the Division as part of the site study. Prior to issuance of a franchise, the jurisdictional local government where the C&DLF unit is to be located shall conduct a public hearing in accordance with the public notification requirements of G.S. 130A-294(b1)(3) and in accordance with the publication and documentation requirements of Parts (C) and (D) of this Subparagraph.

(C) Public notice required by this Subparagraph shall be given by publication on the jurisdictional local government website, publication by a local news organization, and by other methods that the Division may request, such as posting in the post office and public places of the municipalities nearest the site under consideration, or posting on social media or mass mailings, if it is necessary to give actual notice of the activities to potentially affected persons. Public notice shall include time, place, and purpose of the meetings required by this Subparagraph.

(D) Public notice shall be documented in the site study. A recording or a written transcript of the meeting, all written material submitted representing community concerns, and all other written material distributed or used at the meeting pertaining to the proposed C&DLF unit shall be submitted as part of the site study.

(E) A letter from the unit of local government(s) having zoning jurisdiction over the site which states that the proposal meets all the requirements of the local zoning ordinance, or that the site is not zoned, shall be submitted to the Division as part of the site study.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Pending Delayed Eff. Date.

15A NCAC 13B .0537 FACILITY PLAN FOR C&DLFS

(a) Purpose. A permit applicant shall prepare a facility plan which meets the requirements of this Rule.

(b) Scope.

(1) The facility plan shall define the comprehensive development of the property proposed for a permit or described in the permit of an existing facility. The plan shall include a set of drawings and a report that present the long-term, general design concepts related to construction, operation, and closure of the C&DLF unit(s). The scope of the plan shall span the active life of the unit(s). Additional solid waste management activities located at the C&DLF facility shall be identified in the plan and shall meet the requirements of this Subchapter. The facility plan shall define the waste stream proposed for management at the C&DLF facility. If different types of landfill units or non-disposal activities are included in the facility design, the plan shall describe general waste acceptance procedures.

(2) The areal limits of the C&DLF unit(s), total capacity of the C&DLF unit(s), and the proposed waste stream shall be consistent with the Division's approval in accordance with Rule .0536(a)(1) of this Section for a new facility.

(c) Use of Terms. The terminology used in describing areas of the C&DLF unit(s) shall be defined as follows and shall be used consistently throughout a permit application:

(1) "phase" means an area constructed that describes approximately five years of operating capacity. An applicant may request a permit to construct for any number of phases up to the entire extent of the disposal boundary for the life-of-site.

(2) "cell" means a subdivision of a phase, which describes modular or partial construction.

(3) "subcell" means a subdivision of a cell, which describes leachate and stormwater management, if required, for active or inactive areas of the constructed C&DLF.

(d) Facility Drawings. The facility plan shall include the following drawings:

(1) Site Development. The drawings that plot site development shall be prepared on topographic maps representative of existing site conditions; and the maps shall locate or delineate the following:

(A) delineate the areal limits of all landfill units, and incorporate the buffer requirements set forth in Rule .0540(1) of this Section;

(B) locate all solid waste management facilities and facility infrastructure, including landfill units;

(C) delineate the areal limits of grading, including borrow and stockpile areas;

(D) define phases of development of approximately five years of operating capacity each;

(E) delineate proposed final contours for the C&DLF unit(s) and facility features for closure; and

(F) delineate physical features including floodplains, wetlands, unstable areas, and cultural resource areas as defined in Rule .0536(c) of this Section.

(2) Landfill Operation. The following information related to the long-term operation of the C&DLF unit shall be included in facility drawings:

(A) proposed transitional contours for each phase of development including operational grades for existing phase(s) and construction grading for the new phase; and

(B) stormwater segregation features and details for inactive landfill subcells, if included in the design or required.

(3) Survey. A survey locating all property boundaries for the proposed landfill facility certified by a licensed professional land surveyor if required by G.S. 89C.

(e) Facility Report. The facility plan shall include the following information:

(1) Waste stream. A discussion of the characteristics of the wastes received at the facility and facility specific management plans shall incorporate:

(A) the types of waste specified for disposal;

(B) average yearly disposal rates in tons and a representative daily rate that is consistent with the local government approval in accordance with Rule .0536(c)(11) of this Section;

(C) the area served by the facility;

(D) procedures for segregated management at different on-site facilities; and

(E) equipment requirements for operation of the C&DLF unit(s).

(2) Landfill Capacity. An analysis of landfill capacity and soil resources shall be performed.

(A) The data and assumptions used in the analysis shall be included with the facility drawings and disposal rates specified in the facility plan and representative of operational requirements and conditions.

(B) The conclusions shall provide estimates of gross capacity of the C&DLF unit; gross capacity for each phase of development of the C&DLF unit; the estimated operating life of all C&DLF units in years; required quantities of soil for landfill construction, operation, and closure; and available soil resources from on-site. "Gross capacity" is defined as the volume of the landfill calculated from the elevation of the initial waste placement through the top of the final cover, including any periodic cover.

(3) Containment and environmental control systems. A general description of the systems designed for proper landfill operation, system components, and corresponding functions shall be provided.

(4) Leachate management systems, if required in accordance with the effective dates and applicability requirements in S.L. 2007-550 s. 9.(b) and S.L. 2013-413 s. 59.1 as amended by S.L. 2013-410 s. 47.6, or if proposed by the applicant. The performance of and design concepts for the leachate collection system within active areas of the C&DLF unit(s) and any storm water segregation included in the engineering design shall be described. Normal operating conditions shall be defined. A contingency plan shall be prepared for storm surges or other considerations exceeding design parameters for the storage or treatment facilities.

(5) Base liner systems, if required in accordance with the effective dates and applicability requirements in S.L. 2007-550 s. 9.(b) and S.L. 2013-413 s. 59.1 as amended by S.L. 2013-410 s. 47.6, or if proposed by the applicant, shall be described.

(6) Special engineering features. A description of any special engineering features specific to the landfill that the applicant is proposing shall be provided.

(7) Traffic study. A traffic study and NC Department of Transportation certification shall be prepared as required by G.S. 130A-295.5 and in accordance with the effective date and applicability requirements in S.L. 2007-550 s. 8.(b).

(8) Study of Environmental Impacts. A study of environmental impacts shall be conducted as required by G.S. 130A-295.6(a) in accordance with the effective dates and applicability requirements in S.L. 2007-550 s. 9.(b) and S.L. 2013-413 s. 59.1 as amended by S.L. 2013-410 s. 47.6.

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15A NCAC 13B .0538 GEOLOGIC AND HYDROGEOLOGIC INVESTIGATIONS FOR C&DLF FACILITIES

(a) Site Hydrogeologic Report. In accordance with Rule .0536(c)(3) of this Section, a permit applicant shall conduct a hydrogeologic investigation and prepare a report. An investigation shall assess the geologic and hydrogeologic characteristics of the parcel on which the C&DLF unit is proposed to be constructed (hereinafter "site") to determine the suitability of the site for solid waste management activities, which areas of the site are most suitable for C&DLF units, and the general groundwater flow paths and rates for the uppermost aquifer. The report shall provide an understanding of the relationship of the site groundwater flow regime to local and regional hydrogeologic features with special emphasis on the relationship of C&DLF units to groundwater receptors such as drinking water wells and to groundwater discharge features. Additionally, the scope of the investigation shall include the general geologic information necessary to address compliance with the location restrictions described in Rule .0536(c)(4) through (c)(10) of this Section. The site hydrogeologic report shall provide the following information:

(1) A report on the geology and hydrogeology of the regional and local study areas as defined in Rule .1618(c)(1) and (2) of this Subchapter based on research of available literature for the area. This information is to be used in planning the field investigation. For sites located in piedmont or mountain regions, this report shall include an evaluation of structurally controlled features identified on a topographic map of the area.

(2) A report on field observations of the site that includes information on the following:

(A) topographic setting, springs, streams, drainage features, existing or abandoned wells, rock outcrops including trends in strike and dip, and other features that may affect site suitability or the ability to effectively monitor the site; and

(B) groundwater discharge features. For a proposed site where the owner or operator does not control the property from any landfill unit boundary to the controlling, downgradient, groundwater discharge features additional borings, geophysical surveys, or other hydrogeological investigations shall be required to characterize the nature and extent of groundwater flow; and

(C) the hydrogeological properties of the bedrock, if the water table of the uppermost aquifer is in the bedrock. For the purpose of this Rule, "bedrock" means material below auger refusal.

(3) Borings for which the numbers, locations, and depths provide an understanding of the subsurface conditions and groundwater flow regime of the uppermost aquifer at the site. The number and depths of borings required shall depend on the hydrogeologic characteristics of the site. There shall be no less than an average of one boring for each 10 acres of the proposed landfill facility. All borings intersecting the water table shall be converted to piezometers or monitoring wells in accordance with 15A NCAC 02C .0108. Boring logs, field logs and notes, and well construction records for all onsite borings, wells, and piezometers shall be placed in the operating record, and shall also be provided to the Division upon request. Field logs and notes shall be legible; and may be typewritten.

(4) A testing program for the borings that describes the frequency, distribution, and type of samples taken and the methods of analysis, such as ASTM Standards provided at https://www.astm.org, used to obtain the following information:

(A) standard penetration - resistance using a method such as ASTM D 1586;

(B) particle size analysis using a method such as ASTM D 6913;

(C) soil classification: Unified Soil Classification System using a method such as ASTM D 2487;

(D) formation descriptions; and

(E) saturated hydraulic conductivity, porosity, and effective porosity for each lithologic unit of the uppermost aquifer including the vadose zone.

(5) In addition to borings, other investigation techniques may be used to obtain an understanding of the subsurface conditions at the site, including geophysical well logs, surface geophysical surveys, and tracer studies.

(6) Stratigraphic cross-sections identifying hydrogeologic and lithologic units, and stabilized water table elevations.

(7) Water table information, including:

(A) tabulations of water table elevations measured at the time of boring, 24 hours, and stabilized readings for all borings, measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow direction and rate;

(B) tabulations of stabilized water table elevations over time to develop an understanding of seasonal fluctuations in the water table;

(C) an estimation of the long-term seasonal high groundwater table based on stabilized water table readings,

hydrographs of wells in the area, precipitation and other meteorological data, streamflow measurements from the site frequent enough to demonstrate infiltration and runoff characteristics, and any other information available; and

(D) a discussion of any natural or man-made activities that have the potential for causing water table fluctuations, including tidal variations, river stage changes, flood pool changes of reservoirs, high volume production wells, and injection wells.

(8) The horizontal and vertical dimensions of groundwater flow including flow directions, rates, and gradients.

(9) Groundwater contour map(s) to show the occurrence and direction of groundwater flow in the uppermost aquifer and any other aquifers identified in the hydrogeologic investigation. The groundwater contours shall be superimposed on a topographic map. The location of all borings and rock cores and the water table elevations or potentiometric data at each location used to generate the groundwater contours shall be shown on the groundwater contour map(s).

(10) A topographic map of the site locating soil borings with accurate horizontal and vertical control, which are tied to a permanent onsite benchmark.

(11) Information for public potable wells and public water supply surface water intakes within the site characterization study area in accordance with Rule .0536(c)(1) of this Section, including:

(A) available information and records for well construction, number and location served by wells, and production rates for public potable water wells; and

(B) available information for all surface water intakes, including location, use, and production rate.

(12) Identification of other geologic and hydrologic considerations including slopes, streams, springs, gullies, trenches, solution features, karst terranes, sinkholes, dikes, sills, faults, mines, groundwater discharge features, and groundwater recharge and discharge areas.

(13) A report summarizing the geological and hydrogeological evaluation of the site that includes the following:

(A) a description of the relationship between the uppermost aquifer of the site to local and regional geologic and hydrogeologic features;

(B) a discussion of the groundwater flow regime of the site focusing on the relationship of C&DLF units to groundwater receptors and to groundwater discharge features;

(C) a discussion of the overall suitability of the proposed site for solid waste management activities and which areas of the site are most suitable for C&DLF units; and

(D) a discussion of the groundwater flow regime of the uppermost aquifer at the site and the ability to monitor the C&DLF units to ensure early detection of any release of monitored constituents to the uppermost aquifer.

(b) Design Hydrogeologic Report. A geological and hydrogeological report shall be submitted in the application for a permit to construct in accordance with Rule .0535(a)(1) of this Section, and shall meet the following criteria.

(1) The number and depths of borings required to characterize the geologic and hydrogeologic conditions of the site shall be based on the site-specific geologic and hydrogeologic characteristics of the site, and there shall be no less than an average of one boring for each acre of the area of investigation. The area of investigation shall be the area within the C&DLF unit footprint and the C&DLF unit relevant point of compliance, as defined in Rule .0544(b)(1)(B) of this Section. The scope and purpose of the investigation shall be as follows:

(A) The investigation shall provide information to demonstrate compliance with the vertical separation and foundation standards set forth in Rule .0540(2) and (5) of this Section.

(B) The investigation shall provide detailed and localized data of the hydrogeologic characteristics of the uppermost aquifer for the proposed phase of C&DLF development and any leachate management systems to design an effective water quality monitoring system.

(2) The Design Hydrogeologic Report shall provide the following information:

(A) the information required in Subparagraphs (a)(4) through (a)(12) of this Rule;

(B) any technical information that is necessary to determine the design of the monitoring system as required by Rule .0544(b) of this Section;

(C) any technical information that is necessary to determine the relevant point of compliance as required by Rule .0544(b)(1)(B) of this Section;

(D) for sites located in the piedmont or mountain regions, rock cores of no

less than the upper 10 feet of the bedrock to provide an understanding of the fractured bedrock conditions and groundwater flow characteristics of the area of investigation. Testing for the rock corings shall provide rock types, recovery values, rock quality designation (RQD) values, saturated hydraulic conductivity and secondary porosity values, and rock descriptions, including fracturing and jointing patterns;

(E) a groundwater contour map based on the estimated long-term seasonal high groundwater table that is superimposed on a topographic map and includes the location of all borings and rock cores and the water table elevations or potentiometric data at each location used to generate the groundwater contours;

(F) for sites located in piedmont or mountain regions, a bedrock contour map illustrating the contours of the upper surface of the bedrock that is superimposed on a topographic map and includes the location of all borings and rock cores and the top of rock elevations used to generate the upper surface of bedrock contours;

(G) a three-dimensional groundwater flow net or several hydrogeologic cross-sections that characterize the vertical groundwater flow regime for this area;

(H) a report on the groundwater flow regime for the area including groundwater flow paths for both horizontal and vertical components of groundwater flow, horizontal and vertical gradients, flow rates, and groundwater recharge and discharge areas;

(I) a report on the soils in the four feet immediately underlying the waste with relationship to properties of the soil. Soil testing cited in Subparagraph (a)(4) of this Rule shall be used as a basis for this discussion; and

(J) if required by G.S. 89E, a certification by a licensed geologist that all borings that intersect the water table at the site have been constructed and maintained as permanent monitoring wells in accordance with 15A NCAC 02C .0108, or that the borings and temporary piezometers will be abandoned prior to landfill construction in accordance with the procedures for permanent abandonment of wells as delineated in 15A NCAC 02C .0113, except that at the time of abandonment, all piezometers within the C&DLF unit footprint area shall be overdrilled to the full depth of the boring or to the top of bedrock, whichever is encountered first, prior to grout placement. The level of the grout within the boring shall not exceed in height the elevation of the proposed base grade.

History Note: Authority G.S. 130A-294;
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Pending Delayed Eff. Date.

15A NCAC 13B .0539 ENGINEERING PLAN FOR C&DLF FACILITIES

(a) Purpose. The engineering plan that is required to be submitted in accordance with Rule .0535 of this Section shall incorporate the detailed plans and specifications relative to the design and performance of the C&DLF's containment and environmental control systems. The engineering plan shall set forth the design parameters and construction requirements for the components of the C&DLF's systems, shall meet the requirements of this Rule, and shall establish the responsibilities of the design engineer. The engineered components shall be described in Rule .0540 of this Section. (b) Responsibilities of the design engineer. The engineering plan shall be prepared by a licensed professional engineer if required by G.S. 89C. The design engineer shall incorporate a statement certifying this fact and bearing his or her seal of registration.

(c) Scope. An engineering plan shall be prepared for the proposed area of development that provides no less than five years of operating capacity and no more than the total facility capacity, consistent with the development phases and design criteria defined in the facility plan. The engineering plan shall contain a report and a set of drawings that represent the engineering design in accordance with Paragraphs (d) and (e) of this Rule.

(d) An engineering report shall contain:

(1) A summary of the facility design that includes:

(A) a discussion of the analytical methods used to evaluate the design;

(B) definition of the aspects and conditions of the facility design evaluated by the design engineer and assumptions made;

(C) a list of technical references used in the evaluation; and

(D) completion of any applicable location restriction demonstrations in accordance with Rule .0536 of this Section.

(2) A description of the materials and construction practices that conforms to the requirements set forth in Rule .0540 of this Section.

(e) Engineering drawings shall illustrate:

(1) existing conditions: site topography, features, existing disposal areas, roads, and buildings;
(2) grading plans: proposed limits of excavation, subgrade elevations, and intermediate grading for partial construction;
(3) location and feature details of any stormwater segregation systems;
(4) cap system: base and top elevations, landfill gas devices, infiltration barrier, surface water removal, protective and vegetative cover, and details;
(5) temporary and permanent sedimentation and erosion control plans;
(6) vertical separation requirement estimates including:
(A) Cross-sections, showing borings, which indicate existing ground surface elevations, base grades, seasonal high groundwater table, estimated long-term seasonal high groundwater level in accordance with Rule .0538(b)(2)(E) of this Section, and bedrock level in accordance with Rule .0538(b)(2)(F) of this Section; and
(B) A map showing the existing ground surface elevation and base grades. The map shall include labeled boring locations which indicate seasonal high groundwater level, estimated long term high groundwater level in accordance with Rule .0538(b)(2)(E) of this Section, and bedrock level in accordance with Rule .0538(b)(2)(F) of this Section.

(f) The engineering plan shall also describe and illustrate additional engineering features and details including the cap system, leachate collection system, and base liner system, if present. A leachate collection system and a liner system shall be required pursuant to G.S. 130A-295.6 in accordance with the effective dates and applicability requirements in S.L. 2007-550 s. 9.(b) and S.L. 2013-413 s. 59.1 as amended by S.L. 2013-410 s. 47.6. Cap systems, leachate collection systems, leachate storage, and base liner systems shall be in accordance with Rules .1620 and .1621 of this Subchapter.

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15A NCAC 13B .0540 CONSTRUCTION REQUIREMENTS FOR C&DLF FACILITIES

This Rule shall establish the performance standards and criteria for designing and constructing a C&DLF unit. Additional standards for the cap system are described in Rule .0543 of this Section.

(1) Horizontal separation requirements.
(a) Property line buffer. C&DLF unit(s) permitted after January 1, 2007 shall have a buffer of no less than 200 feet between the C&DLF unit and all property lines for monitoring purposes. Existing operating units shall maintain existing upgradient buffers of 50 feet or more.
(b) Offsite residential structures and wells. C&DLF units shall have a buffer of no less than 500 feet between the C&DLF unit and residential structures and wells existing at the time that the Division issues a notification of site suitability in accordance with Rule .0536(a)(1) of this Section.
(c) Surface waters. C&DLF units shall have a buffer of no less than 50 feet between the C&DLF unit and any stream, river, lake, pond, or other waters of the State as defined in G.S. 143-212.
(d) Other landfill units. A buffer shall be established between a proposed C&DLF unit and any existing landfill units to establish a groundwater monitoring system to allow monitoring of each unit separately as set forth in Rule .0544 of this Section.
(e) C&DLF units shall meet the horizontal separation requirements of G.S. 130A-295.6(b) and (d) in accordance with the effective dates and applicability requirements of S.L. 2007-550 s. 9.(b) and S.L. 2013-413 s. 59.1 as amended by S.L. 2013-410 s. 47.6, and S.L. 2007-543.
(2) Vertical separation requirements.
(a) C&DLF units shall be constructed so that the post-settlement bottom elevation of waste is no less than four feet above the seasonal high groundwater table and the bedrock datum plane contours established in the Design Hydrogeological Report prepared in accordance with Rule .0538(b) of this Section. C&DLF units shall meet the vertical separation requirements of G.S. 130A-295.6(f) in accordance with the effective date and applicability requirements of S.L. 2007-550 s. 9.(b).
(b) In-situ or modified soils making up the upper two feet of separation as required by Sub-Item (a) of this Item, shall consist of the following: SC, SM, ML, CL, MH, or CH soils per Unified Soil Classification System or as specified in the approved construction plan.

(3) Survey control. One permanent benchmark of known elevation measured from a U.S. Geological Survey benchmark shall be established and maintained for each 50 acres of developed landfill, or part thereof, at the landfill facility. This benchmark shall be the reference point for establishing vertical elevation control. Any survey performed pursuant to this Sub-Item shall be performed by a licensed professional land surveyor if required by G.S. 89C. Latitude and longitude, expressed in decimal degrees, shall be indicated at the approximate center of the facility.

(4) Location coordinates. The North Carolina State Plane (NCSP) coordinates shall be established and one of its points shall be the benchmark of known NCSP coordinates.

(5) Landfill subgrade. The landfill subgrade is the in-situ or modified soil layer(s), constructed embankments, and select fill providing the foundation for construction of the unit. The landfill subgrade shall be graded in accordance with the engineering plan prepared in accordance to Rule .0539 of this Section, which is incorporated into the permit to construct in accordance with Rule .0534(b)(1) of this Section, and as follows:

(a) The owner or operator of the C&DLF unit shall have the subgrade inspected by a qualified geologist or engineer when excavation is completed.

(b) The owner or operator of the C&DLF unit shall notify the Division via email no less than 24 hours before subgrade inspection.

(c) Compliance with the requirements of Sub-Item (2)(b) of this Rule shall be in accordance with Rule .0538(b) of this Section or by placement of soil in accordance with this Sub-Item and verified in accordance with Rule .0541 of this Section.

(6) Other engineering structures. The design of any liners, cap systems, leachate collection systems, and stormwater segregation systems, if required in accordance with the effective dates and applicability of S.L. 2007-550, s. 9.(b) and S.L. 2013-413, s. 59.1, as amended by S.L. 2013-410, s. 47.6, and any other engineering structures proposed by the applicant shall be specified in the engineering plan. Material, construction, and certification requirements necessary to ensure that the structure is constructed in accordance with the design and acceptable engineering practices and the rules of this Section shall be included in the plans prepared in accordance with Rule .0539 of this Section.

(7) Sedimentation and erosion control. Structures and measures shall be designed and maintained to manage the rainwater that drains over land from or onto any part of the facility or unit generated by the 24-hour, 25-year storm event, and conform to the requirements of the Sedimentation Control Law (15A NCAC 04) and any required NPDES permits.

(8) Construction quality assurance (CQA) report. A CQA report shall be submitted in accordance with Rule .0541 of this Section.

(9) Maximum capacity, disposal area, and height for applications submitted on or after August 2007. Landfills shall meet the requirements of G.S. 130A-295.6(i) regarding maximum allowed capacity, disposal area and height in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b).

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15A NCAC 13B .0541 CONSTRUCTION QUALITY ASSURANCE FOR C&DLF FACILITIES

(a) The construction quality control and quality assurance (CQA) plan shall describe the observations and tests that will be used before, during, and upon completion of construction to ensure that the construction and materials meet the design specifications and the construction and certification requirements set forth in Rule .0540 of this Section. The CQA plan shall also describe the procedures to ensure that the integrity of the landfill systems will be maintained prior to waste placement.

(b) For construction of each cell, the CQA plan shall include the following information:

(1) The designation of responsibilities for the construction management organization shall be included in the CQA plan. A pre-construction meeting shall be conducted prior to beginning construction of the initial cell unless otherwise indicated in the permit. The meeting shall include a discussion of the construction management organization, respective duties during construction, and periodic reporting requirements for test results and construction activities.

(2) A description of all field observations, tests, equipment, and calibration procedures for field testing equipment that will be used to ensure that the construction meets or exceeds all design criteria established in accordance with Rules .0539, .0540, and .0543 of this Section shall be included in the CQA plan.

(3) A description of all sampling protocols, sample size, methods for determining sample locations, and frequency of sampling shall be included in the CQA plan.

(4) A description of reporting required by the rules of this Section for CQA activities shall be included in the CQA plan.

(5) A description of planned progress and troubleshooting meetings, including the frequency, shall be included in the CQA plan. The meetings shall occur no less than twice per week, and the proceedings of the meetings shall be documented.

(c) Purpose of the CQA report. The CQA report shall contain the results of all the construction quality assurance and construction quality control testing including documentation of any failed test results, descriptions of procedures used to correct the improperly installed material, and results of all retesting performed. The CQA report shall contain as-built drawings noting any deviation from the approved engineering plans, and shall also contain a comprehensive narrative including daily reports from the project engineer, a series of color photographs of major project features, and documentation of proceedings of all progress and troubleshooting meetings.

(d) For construction of each cell, the CQA report shall be submitted:

(1) after completion of landfill construction to qualify the constructed C&DLF unit for a permit to operate;

(2) after completion of construction of the cap system in accordance with the requirements of Rule .0543 of this Section; and

(3) in accordance with the reporting schedule developed in accordance with Paragraph (b) of this Rule.

(e) The CQA report shall include a statement by the project engineer that construction was completed in accordance with the CQA plan, the conditions of the permit to construct, and the requirements of the rules of this Section. If required by G.S. 89C, the statement shall be certified and bear the seal of the project engineer.

(f) The Division shall review the CQA report within 30 days of a complete submittal to ensure that the report meets the requirements of this Rule.

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15A NCAC 13B .0542 OPERATION PLAN AND REQUIREMENTS FOR C&DLF FACILITIES

(a) The owner or operator of a C&DLF unit shall maintain and operate the facility in accordance with the operation plan prepared in accordance with this Rule.

(b) Operation Plan. The owner or operator of a C&DLF unit shall prepare an operation plan for each proposed area of landfill development consistent with the engineering plan submitted in accordance with Rule .0539 of this Section. The operation plan shall be submitted in accordance with Rule .0535 of this Section and shall include the following:

(1) Operation drawings. Drawings shall be prepared for each proposed area of landfill development. The drawings shall be consistent with the engineering plan and shall illustrate the following:

(A) existing conditions including the known limits of existing disposal areas;

(B) progression of operation including initial waste placement, daily operations, yearly contour transitions, and final contours;

(C) any stormwater controls for active and inactive subcells, if included in the engineering plan;

(D) special waste handling areas, such as any asbestos disposal area, within the C&DLF unit;

(E) buffer zones, noting restricted use;

(F) stockpile and borrow operations; and

(G) other solid waste activities, such as tire disposal or storage, yard waste storage, white goods storage, and recycling pads.

(2) Operation report. The report shall provide a narrative discussion of the operation drawings and contain a description of the facility operation that conforms to the requirements of Paragraphs (c) through (o) of this Rule.

(c) Waste Acceptance and Disposal Requirements.

(1) A C&DLF shall accept only those solid wastes that it is permitted to receive. The landfill owner or operator shall notify the Division within 24 hours of attempted disposal of any waste the C&DLF is not permitted to receive, including waste from outside the area the C&DLF is permitted to serve.

(2) Owners or operators of C&DLF units shall develop and implement a waste screening plan as required by G.S. 130A-295.6(g) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b).

(3) Asbestos waste shall be managed in accordance with 40 CFR 61(M). Asbestos waste shall be covered upon receipt, with soil or compacted waste, to prevent airborne conditions. Asbestos waste shall be disposed of using methods that prevent unintended exposure of asbestos by future land-disturbing activities, such as disposal in a marked area separate and apart from other solid wastes or recording the latitude and longitude coordinates of the asbestos area within the existing landfill footprint. The disposal methods shall be described in the operations plan required by Paragraph (b) of this Rule.

(d) Wastewater treatment sludge shall not be accepted for disposal. If it is stated in the permit, wastewater treatment sludge may be accepted for utilization as a soil conditioner and incorporated into or applied onto the vegetative growth layer. The

wastewater treatment sludge shall neither be applied at greater than agronomic rates nor to a depth greater than six inches.

(e) Waste Exclusions. The following wastes shall not be disposed of in a C&DLF unit:

(1) containers such as tubes, drums, barrels, tanks, cans, and bottles unless they are empty and perforated to ensure that no liquid waste, hazardous waste, or municipal solid waste is contained therein;

(2) garbage;

(3) hazardous waste, including hazardous waste from very small quantity generators as defined by 40 CFR 260.10, incorporated by reference at 15A NCAC 13A .0102(b);

(4) industrial solid waste unless a demonstration has been made and approved by the Division that the landfill meets the requirements of Rule .0503 of this Section;

(5) liquid wastes;

(6) medical waste;

(7) municipal solid waste;

(8) polychlorinated biphenyl (PCB) wastes as defined in 40 CFR 761.3;

(9) wastes containing radioactive material as defined in G.S. 104E-5(14);

(10) septage;

(11) sludge;

(12) special wastes;

(13) white goods;

(14) yard trash; and

(15) the following wastes shall not be received if separate from C&DLF waste: lamps or bulbs including halogen, incandescent, neon, or fluorescent; lighting ballast or fixtures; thermostats and light switches; batteries including those from exit and emergency lights and smoke detectors; lead pipes; lead roof flashing; transformers; capacitors; and copper chrome arsenate (CCA) and creosote treated woods.

(16) Waste accepted for disposal in a C&DLF unit shall be identifiable as C&D waste and shall not have been shredded, pulverized, or processed to such an extent that the composition of the original waste cannot be ascertained except as specified in Subparagraph (17) of this Paragraph.

(17) C&D waste that has been shredded, pulverized, or otherwise processed may be accepted for disposal from a facility that has received a permit from a State or local government regulatory authority which specifies such activities are inspected by the authority, and whose primary purpose is recycling and reuse of the C&D material. A waste screening plan and waste acceptance plan shall be made available to the Division upon request.

(18) The owner or operator of a C&DLF shall not knowingly dispose any type or form of C&D waste that is generated within the boundaries of a unit of local government that by ordinance:

(A) prohibits generators or collectors of C&D waste from disposing that type or form of C&D waste; or

(B) requires generators or collectors of C&D waste to recycle that type or form of C&D waste.

(f) Compaction and cover material requirements. Solid waste shall be managed within the disposal area throughout the life-of-site and post-closure care period to prevent the escape of waste and the attraction of vectors and scavenging, and to minimize fires and the generation of odors. The owner or operator shall comply with this requirement using the following compaction and cover procedures:

(1) The owner or operator shall compact the solid waste.

(2) Except as provided in Subparagraph (4) of this Paragraph, the owners and operators of all C&DLF units shall cover the solid waste with six inches of earthen material when the waste disposal area exceeds one-half acre and no less than once weekly. Cover shall be placed at more frequent intervals if necessary to prevent the escape of waste and the attraction of vectors and scavenging, and to minimize fires and the generation of odors. A notation of the date and time of the cover placement shall be recorded in the operating record as specified in Paragraph (n) of this Rule.

(3) Areas that will not have additional wastes placed on them for three months or more, but where final termination of disposal operations has not occurred, shall be covered and stabilized with vegetative ground cover or other stabilizing material as provided for in Subparagraph (4) of this Paragraph.

(4) Alternative materials or an alternative thickness of cover are allowed with prior approval of the Division if the owner or operator demonstrates that the alternative material or thickness prevents the escape of waste and the attraction of vectors and scavenging, and minimizes fires and the generation of odors without presenting a threat to human health and the environment. Alternative materials that have been approved by the Division for use at any C&DLF may be used at all C&DLFs in accordance with G.S. 130A-295.6(h1).

(g) Windblown waste requirements. Methods such as fencing and diking shall be provided within the area to confine solid waste that is subject to be blown by the wind. At the conclusion of each operating day, all windblown material resulting from the operation shall be collected and disposed of by the owner or operator.

(h) Vector control. Owners or operators of all C&DLF units shall prevent or control on-site populations of vectors.

(i) Air Criteria and Fire Control.

(1) Owners or operators of C&DLF units shall ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the U.S. EPA Administrator pursuant to Section 110 of the Clean Air Act, as amended.

(2) Open burning, as defined in 15A NCAC 02D .1900, of solid waste, except for the approved burning of land clearing debris generated on-site or debris from emergency clean-up operations, is prohibited at all C&DLF facilities. Prior to any burning, a request shall be sent to the Division for review. The Division shall approve the burning if the Division determines that the burning is one of the two types of burning described in this Subparagraph. A notation of the date of approval and the name of the Division personnel who approved the burning shall be included in the operating record.

(3) C&DLF units shall maintain equipment on site to control accidental fires and arrangements shall be made with the local fire protection agency to provide fire-fighting services.

(4) Fires and explosions that occur at a C&DLF require verbal notice to the Division within 24 hours and written notification within 15 days. Written notification shall include the suspected cause of fire or explosion, the response taken to manage the incident, and the action(s) to be taken to prevent the future occurrence of fire or explosion.

(j) Access and safety requirements.

(1) The C&DLF shall be secured to prevent unauthorized entry by means such as gates, chains, berms, fences, or natural barriers such as rivers.

(2) In accordance with G.S. 130A-309.25, an individual trained in landfill operations shall be on duty at the site while the C&DLF is open for public use and at all times during active waste management operations at the C&DLF to ensure compliance with operational requirements.

(3) The access road to the C&DLF shall be of all-weather construction and maintained to allow access by Department vehicles or vehicles containing waste. The access roads or paths to monitoring locations shall be maintained to allow access by the Department.

(4) Fugitive dust emissions generated by site operations shall comply with 15A NCAC 02D .0540.

(5) Signs providing information on disposal procedures, the hours during which the site is open for public use, the permit number, and any information specified in the permit conditions to be included on the sign shall be posted at the site entrance.

(6) Signs shall be posted stating the types of waste that shall not be accepted at the C&DLF unit, such as liquid waste, hazardous waste, and municipal solid waste.

(7) Traffic signs or markers shall be provided to direct traffic to and from the discharge area to minimize traffic congestion.

(8) The removal of solid waste from a C&DLF unit is prohibited unless the operational plan includes a recycling program. The general public is prohibited from removal activities on the working face.

(k) Erosion and sedimentation control requirements. Erosion control measures consisting of vegetative cover, materials, structures, or other devices shall be utilized to prevent silt from leaving the site and to prevent on-site erosion, and shall comply with 15A NCAC 04, which is incorporated by reference including subsequent amendments and editions.

(l) Drainage control and water protection requirements.

(1) Surface water shall be diverted from the operational area.

(2) Surface water shall not be impounded over or in waste.

(3) Solid waste shall not be disposed of in water.

(4) Leachate shall be contained on-site or treated prior to discharge. A National Pollutant Discharge Elimination System (NPDES) permit may be required in accordance with 15A NCAC 02B prior to the discharge of leachate to surface waters.

(5) C&DLF units shall not:

(A) cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including the NPDES requirements, pursuant to Section 402 of the Clean Water Act; or

(B) cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act, as amended.

(m) Survey for Compliance. Within 60 days of the permittee's receipt of the Division's written request for a survey, the permittee shall have a survey conducted of active or closed portions of the facility to determine whether operations are being conducted in accordance with the approved design and operational plans. The permittee shall report the results of such survey, including a map produced by the survey, to the Division within 90 days of receipt of the Division's request.

(1) A survey may be required by the Division: if there is reason to believe that operations are being conducted in a manner that deviates from

the plans included in the effective permit, or no more than once per year as a verification that operations are being conducted in accordance with the plans included in the effective permit.

(2) If required by G.S. 89C, any survey performed pursuant to this Paragraph shall be performed by a licensed professional land surveyor.

(n) Operating Record and Recordkeeping requirements.

(1) The owner and operator of a C&DLF unit shall record and retain at the facility or in an alternative location stated in the permit an operating record that shall contain the following information:

(A) records of random waste inspections, monitoring results, certifications of training required by G.S. 130A-309.25, and documentation of training required by Rule .0544(e)(3) of this Section;

(B) amounts by weight of solid waste received at the facility including county of generation consistent with G.S. 130A-309.09D;

(C) any demonstration, certification, finding, monitoring, testing, or analytical data required by Rules .0544 through .0545 of this Section;

(D) any closure or post-closure monitoring, testing, or analytical data as required by Rule .0543 of this Section;

(E) any cost estimates and financial assurance documentation required by Rule .0546 of this Section and Section .1800 of this Subchapter.

(F) notation of date and time of placement of cover material; and

(G) all audit records, compliance records, and inspection reports.

(2) All information contained in the operating record shall be furnished to the Division according to the permit, or shall be made available for review by the Division at the time and place of an inspection of the C&DLF or upon request. The information contained in the operating record shall be recorded and retained in a format that is accessible and viewable by the Division.

(3) The operating record shall also include:

(A) a copy of the approved operation plan required by this Rule and the engineering plan required by Rule .0539 of this Section;

(B) a copy of the current permit to construct and permit to operate; and

(C) a copy of the monitoring plan, in accordance with Rule .0544 of this Section, included as appendices to the operation plan.

(o) Leachate Management Plan. The owner or operator of a C&DLF unit designed with a leachate collection system shall establish and maintain a leachate management plan that includes the following:

(1) periodic maintenance of the leachate collection system;

(2) maintaining records for the amount of leachate generated;

(3) annual leachate quality sampling and analysis;

(4) approval documentation for final leachate disposal; and

(5) a contingency plan for extreme operational conditions.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Pending Delayed Eff. Date.

15A NCAC 13B .0543 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR C&DLF FACILITIES

(a) Purpose. This Rule shall establish criteria for the closure of all C&DLF units and subsequent requirements for post-closure compliance. The owner and operator shall develop specific plans for the closure and post-closure of the C&DLF facility or units that comply with this Rule and submit them to the Division for review and approval.

(b) Scope.

(1) This Rule shall establish standards for the scheduling and documenting of closure of all C&DLF units and design of the cap system. Construction requirements for the cap system shall incorporate requirements from Rules .0540 and .0541 of this Section.

(2) This Rule shall establish standards for the monitoring and maintenance of the C&DLF unit(s) following closure.

(c) Closure criteria.

(1) A C&DLF unit shall have a cap system installed that shall be designed and constructed to:

(A) have a permeability less than or equal to soils underlying the landfill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than 1.0×10^{-5} cm/sec, whichever is less;

(B) minimize infiltration through the closed C&DLF unit by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and

(C) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains no less than 18 inches of earthen material that is capable of sustaining native plant growth.

(2) Construction of the cap system for all C&DLF units shall conform to the plans prepared in

accordance with Rules .0539 and .0541 of this Section and the following requirements:

(A) post-settlement surface slopes shall be a minimum of five percent and a maximum of 25 percent; and

(B) a gas venting or collection system shall be installed below the low-permeability barrier to minimize pressures exerted on the barrier.

(3) The owner or operator may submit a request for an alternative cap system or alternative post-settlement slopes in the closure and post-closure care plan required to be submitted by Rule .0535 of this Section. The request shall include a demonstration of the following:

(A) the alternative cap system will achieve a reduction in infiltration equivalent to or greater than the low-permeability barrier specified in Subparagraph (1) of this Paragraph;

(B) the erosion layer will provide protection equivalent to or greater than the erosion layer specified in Subparagraph (1) of this Paragraph; and

(C) the alternative post-settlement slopes will be stable, encourage runoff, be safe to operate, and be safe to construct during operation and closure activities.

(4) Prior to beginning closure of each C&DLF unit as specified in Subparagraph (5) of this Paragraph, an owner or operator shall notify the Division in writing that a notice of the intent to close the unit has been placed in the operating record.

(5) The owner or operator shall begin closure activities for that portion of each C&DLF unit meeting one or more of the following requirements, unless an extension has been granted by the Division:

(A) no later than 30 days after the date on which the C&DLF unit receives the known final receipt of wastes;

(B) no later than 30 days after the date that a 10 acre or greater area of waste is within 15 feet of final design grades; or

(C) no later than one year after the most recent receipt of wastes, if the C&DLF unit has remaining capacity.

Extensions beyond the deadline for beginning closure may be granted by the Division if the owner or operator demonstrates that the portion of the C&DLF unit has the capacity to receive additional wastes and the owner or operator has and will continue to prevent threats to human health and the environment from the unclosed C&DLF unit.

(6) The owner and operator of all C&DLF units shall complete closure activities of each C&DLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in Subparagraph (5) of this Paragraph. Extensions of the closure period may be granted by the Division if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and they have and will continue to prevent threats to human health and the environment from the unclosed C&DLF unit.

(7) Following closure of each C&DLF unit, the owner or operator shall notify the Division that a certification, signed by the project engineer verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(8) Recordation. Following closure of all C&DLF units, the owner or operator shall record a notice for the landfill facility property at the local county Register of Deeds office; and notify the Division that the notice has been recorded and a copy has been placed in the operating record. The notice may be a notation on the deed to the landfill facility property, or may be some other instrument such as a declaration of restrictions on the property that is discoverable during a title search for the landfill facility property. The notice shall notify any potential purchaser of the property that the land has been used as a landfill facility and future use is restricted under the closure plan approved by the Division. The owner or operator may request approval from the Division to remove the notice. The Division shall approve removal of the notice if all wastes are removed from the landfill facility property.

(d) Closure plan contents. The owner and operator shall prepare a written closure plan that describes the steps necessary to close all C&DLF units at any point during their active life in accordance with the cap system requirements in Paragraph (c) of this Rule. The closure plan shall include the following information:

(1) a description of the cap system and the methods and procedures to be used to install the cap that conforms to the requirements set forth in Paragraph (c) of this Rule;

(2) an estimate of the largest area of the C&DLF unit requiring the specified cap system at any time during the active life that is consistent with the drawings prepared for the operation plan for an existing C&DLF unit, or the engineering plan or facility plan for a lateral expansion or new C&DLF unit;

(3) an estimate of the maximum inventory of wastes on-site over the active life of the landfill facility;

(4) a schedule for completing all activities necessary to satisfy the closure criteria set forth in Paragraph (c) of this Rule; and

(5) the cost estimate for closure activities as required under Section .1800 of this Subchapter.

(e) Post-closure criteria.

(1) Following closure of each C&DLF unit, the owner and operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years, except as provided under Subparagraph (2) of this Paragraph, and consist of the following:

(A) maintaining the integrity and effectiveness of any cap system including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing rainwater that drains over land from or onto any part of the facility or unit from eroding or damaging the cap system;

(B) monitoring the surface water and groundwater in accordance with the requirements of Rules .0544 and .0545 of this Section and maintaining the groundwater monitoring system;

(C) maintaining and operating the gas monitoring system in accordance with the requirements of Rule .0544 of this Section; and

(D) maintaining, operating, and decommissioning the leachate collection system, if present, in accordance with the requirements of Rule .0544 of this Section. The owner and operator may submit a request to stop managing leachate in writing to the Division. The request shall include a demonstration with supporting documentation that the operation and maintenance of leachate management systems during the active life, closure, and any post-closure care period of the C&DLF unit complied with the permit including the plans incorporated into the permit, the rules of this Subchapter, and 15A NCAC 02B and 02L; and that the current and projected volume of leachate generated and the results of leachate sample analysis during the post-closure care period indicate that the leachate no longer poses a threat to human health and the environment. The demonstration shall also include the certifications required by Subparagraph (3) of this Paragraph. The Division shall consider the information required to be submitted in the demonstration and the owner or operator's compliance history to make a determination on approval of the request.

(2) The length of the post-closure care period may be:

(A) decreased by the Division if the owner or operator demonstrates that the reduced period is protective of human health and the environment and this demonstration is approved by the Division; or

(B) increased by the Division if the Division determines that the lengthened period is necessary to protect human health and the environment.

(3) Every five years during the post-closure care period and following completion of the post-closure care period for each C&DLF unit, the owner or operator shall notify the Division that a certification verifying that post-closure care has been conducted in accordance with the post-closure plan, has been placed in the operating record. If required by G.S. 89C, the certification shall be signed by a licensed professional engineer.

(f) Post-closure plan contents. The owner and operator of all C&DLF units shall submit a written post-closure plan to the Division that includes the following information:

(1) a description of the monitoring and maintenance activities required for each C&DLF unit, and the frequency at which these activities shall be performed;

(2) name, address, and telephone number of the person or office responsible for the facility during the post-closure period;

(3) a description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in Rules .0531 through .0546 of this Section. The owner or operator may submit a request in writing to the Division for a disturbance. The request shall include a demonstration that disturbance of the cap system, base liner system, or other component of the containment system, including any removal of waste, will not increase the potential for fires, vector attraction, damage to these systems, or the release of dust, odors, waste, or leachate to the environment; and

(4) the cost estimate for post-closure activities required under Section .1800 of this Subchapter.

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15A NCAC 13B .0544 MONITORING PLANS AND REQUIREMENTS FOR C&DLF FACILITIES

(a) The owner or operator of a C&DLF unit shall submit a water quality monitoring plan to the Division in the application for the permit to construct in accordance with Rule .0535(a)(1) of this Section that shall apply to all C&DLF units. The water quality monitoring plan shall be prepared in accordance with this Rule, and shall include information on the proposed groundwater monitoring systems, surface water sampling locations, sampling and analysis requirements, and detection monitoring requirements provided in Paragraphs (b) and (c) of this Rule.

(b) Groundwater monitoring shall be as follows:

(1) A groundwater monitoring system shall be installed that consists of no less than one background and three downgradient wells installed at locations and depths that yield groundwater samples from the uppermost aquifer that:

(A) represent the quality of the background groundwater that has not been affected by leakage from the unit. Determination of background water quality shall be based on sampling of a well or wells that are hydraulically upgradient of the waste management area. However, the determination of background water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where hydrogeologic conditions do not allow the owner and operator to determine which wells are hydraulically upgradient, or hydrogeologic conditions do not allow the owner and operator to place a well in a hydraulically upgradient location, or sampling at other wells will provide an indication of background groundwater quality that is as representative as that provided by the upgradient well(s); and

(B) represent the quality of groundwater passing the relevant point of compliance as approved by the Division. The downgradient monitoring system shall be installed at the relevant point of compliance to ensure detection of groundwater contamination in the uppermost aquifer. The relevant point of compliance shall be established no more than 250 feet from a waste boundary, or shall be at least 50 feet within the facility property boundary, whichever point is closer to the waste boundary. In determining the relevant point of compliance, the Division shall consider recommendations made by the owner and operator based upon consideration of at least the hydrogeologic characteristics of the facility and surrounding land; the quantity, quality, and direction of flow of the groundwater; the proximity and withdrawal rate of the groundwater users; the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or expected to be used for drinking water; public health, safety, and welfare effects; and practicable capability of the owner and operator.

(C) A water quality monitoring plan shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells. The plan shall include procedures and techniques for sample collection; sample preservation and shipment; chain-of-custody control; and quality assurance and quality control.

(D) The detection groundwater monitoring program shall include sampling and analytical methods for groundwater sampling that accurately measure target constituents and other monitoring parameters in groundwater samples. Detection monitoring shall be conducted at C&DLF units at all groundwater monitoring wells that are part of the detection monitoring system as established in the approved water quality monitoring plan. The detection groundwater monitoring program shall include monitoring for the constituents listed in Appendix I of 40 CFR 258, and the following constituents: mercury, chloride, manganese, sulfate, iron, specific conductance, pH, temperature, alkalinity, and total dissolved solids. The monitoring frequency for all detection monitoring constituents shall be no less than annual during the active life of the facility, and during closure and the post-closure period. To establish baseline, no less than four independent samples from each

background and downgradient monitoring well shall be collected within a twelve-month period and analyzed for the constituents required in this Paragraph, with no less than one sample collected from each new monitoring well before waste placement in each new cell or phase. The water quality monitoring plan shall include a description of the procedures used to establish baseline at the C&DLF unit. No less than one sample from each background and downgradient monitoring well shall be collected and analyzed during subsequent annual sampling events. C&DLF units shall comply with the groundwater quality standards and interim maximum allowable concentrations (IMACs) set forth in 15A NCAC 02L .0202 and the groundwater protection standards established in Rule .0545(c) of this Section.

(E) The sampling procedures and frequency shall be protective of human health and the environment.

(2) Each time groundwater is sampled, elevations shall be measured in each well prior to purging. Groundwater elevations in wells which monitor the same waste management area shall be measured within a 24 hour period of time to avoid temporal variations in groundwater flow that could preclude accurate determination of groundwater flow rate and direction. In order to determine accurate groundwater elevations for each monitoring well, the wells shall have been surveyed by a licensed professional land surveyor if required by G.S. 89C. The survey of the wells shall conform to the following levels of accuracy: horizontal location to the nearest 0.1 foot, vertical control for the ground surface elevation to the nearest 0.01 foot, and vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 foot. In order to determine the rate of groundwater flow, the owner or operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.

(3) The owner or operator shall establish existing conditions of groundwater quality in hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in Part (1)(D) of this Paragraph. Statistical analysis used to establish existing conditions of groundwater quality shall be in accordance with Subparagraphs (4) and (5) of this Paragraph and the minimum number of samples required by the statistical method used shall be met.

(4) Should the owner or operator choose to perform statistical analysis of groundwater quality data for the purpose of establishing background concentrations or to determine if there is an exceedance of the groundwater quality standards and IMACs established in 15A NCAC 02L .0202 or the groundwater protection standards established in Rule .0545(c) of this Section, the owner or operator shall select one of the following statistical methods to be used in evaluating groundwater monitoring data for each constituent of concern. The statistical test chosen shall be conducted separately for each constituent of concern in each well.

(A) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(B) A parametric analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(C) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(D) A control chart approach that gives control limits for each constituent.

(E) Another statistical test method that meets the performance standards of this Rule. The owner or operator shall submit a justification for an alternative test method to the Division for approval to determine compliance with this Rule. The justification shall demonstrate that the alternative statistical test method meets the performance standards in Subparagraph (5) of this Paragraph. If approved, the owner or operator shall place a copy of the justification for an

alternative test method in the operating record.

(5) Any statistical method chosen to evaluate groundwater monitoring data shall comply with the following performance standards:

(A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or constituents of concern. If the distribution of the chemical parameters or constituents of concern is shown by the owner or operator or the Division to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method shall be considered.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05. However, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined by the analyst after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(D) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined by the analyst after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(6) Within 120 days of completing a groundwater sampling event, the owner or operator shall submit to the Division a monitoring report in an electronic format that is accessible and viewable by the Division that includes information from the sampling event including field observations relating to the condition of the monitoring wells; field data; a summary of the laboratory analytical data report; statistical analysis (if utilized), field sampling methods and quality assurance and quality control data; information on groundwater flow direction; calculations of groundwater flow rate; and for each well, any constituents that exceed groundwater quality standards and IMACs set forth in 15A NCAC 02L .0202 or the groundwater protection standards established in Rule .0545(c) of this Section.

(7) If the owner or operator determines upon evaluation of laboratory data or by a verification sampling event that there is an exceedance of the groundwater quality standards and IMACs established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .0545(c) of this Section for one or more of the constituents being monitored at any monitoring well, the owner or operator:

(A) shall, within 14 days of this finding, report to the Division and place a notice in the operating record indicating which constituents have exceeded groundwater quality standards and IMACs established in accordance with 15A NCAC 02L .0202, or the groundwater protection

standards established in accordance with Rule .0545(c) of this Section;

(B) shall establish an assessment monitoring program in accordance with Rule .0545 of this Section except as provided for in Part (C) of this Subparagraph; and

(C) may demonstrate that a source other than a C&DLF unit caused the exceedance, or the exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be submitted to the Division for review. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010 respectively, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] A copy of this report shall also be placed in the operating record. If a successful demonstration is made, documented, and approved by the Division, the owner or operator may continue detection monitoring. If after 90 days of the initial determination of exceedance, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring program as required by Rule .0545 of this Section.

(8) Monitoring wells shall be designed and constructed in accordance with 15A NCAC 02C.

(A) Owners and operators shall obtain approval from the Division for the design, installation, development, and decommission of any monitoring well or piezometer. Documentation shall be placed in the operating record and provided to the Division.

(B) The monitoring wells and piezometers shall be operated, maintained, and accessible so that they perform to design specifications throughout the life of the monitoring program.

(9) The number, spacing, and depths of groundwater monitoring points shall be determined based upon site-specific technical information that shall include an investigation of:

(A) aquifer thickness, groundwater flow rate, and groundwater flow direction, including seasonal and temporal fluctuations in groundwater flow; and

(B) thickness, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities of the saturated and unsaturated geologic units, including fill materials, overlying and comprising the uppermost aquifer,

(10) In addition to groundwater monitoring wells, the use of alternative monitoring systems may be:

(A) required by the Division at sites where the owner or operator does not control the property from any landfill unit to the groundwater discharge features; or

(B) allowed by the Division at sites with hydrogeologic conditions favorable to detection monitoring by alternative methods.

(11) Owners and operators of C&DLF units shall comply with the groundwater monitoring, assessment, and corrective action requirements under Rules .0544 and .0545 of this Section according to the following schedule:

(A) new C&DLF units shall be in compliance with the requirements before waste can be placed in the unit; and

(B) lateral expansions to existing C&DLF units shall be in compliance with the requirements before waste can be placed in the expansion area.

(12) Groundwater quality standards and IMACs established under 15A NCAC 02L .0202 and groundwater protection standards established in accordance with Rule .0545(c) of this Section shall not be exceeded.

(c) Surface water monitoring shall meet the following criteria:

(1) The monitoring shall include sample collection from surface water features on or bordering the facility property and include no less than one upstream and one downstream sampling location. Surface water samples shall be analyzed for constituents that include those listed in Part (b)(1)(D) of this Rule. The monitoring frequency shall be no less than annual during the active life of the facility, and no less than annual during the closure and post-closure care period.

(2) Responsibility for sample collection and analysis shall be defined as a part of the monitoring plan.

(3) Information used for the development of the surface water monitoring system shall include:

(A) drainage patterns and other hydrological conditions in the area;
(B) proximity of surface water to the facility;
(C) uses that are being or may be made of any surface water that may be affected by the facility; and
(D) any other factors that relate to the potential for surface water impacts from the facility.

(4) The C&DLF unit shall not cause an exceedance of the surface water standards established under 15A NCAC 02B .0200.

(d) The owner or operator of a C&DLF unit shall submit a landfill gas monitoring plan to the Division prepared in accordance with this Rule that shall apply to all C&DLF units. Landfill gas monitoring shall be as follows:

(1) Owners and operators of C&DLF units shall ensure that:
(A) the concentration of explosive gases generated by the facility does not exceed 25 percent of the lower explosive limit in on-site facility structures, excluding gas control or recovery system components; and
(B) the concentration of explosive gases does not exceed the lower explosive limit at the facility property boundary.

(2) Owners and operators of all C&DLF units shall implement a routine landfill gas monitoring program to ensure that the standards of Subparagraph (1) of this Paragraph are met as follows:
(A) The type of monitoring shall be determined based on soil conditions, the hydrogeologic conditions under and surrounding the facility, the hydraulic conditions on and surrounding the facility, the location of facility structures and property boundaries, and the location of all off-site structures adjacent to property boundaries.
(B) The concentration of methane in landfill gas shall be monitored. The monitoring shall be conducted at a frequency of no less than quarterly.
(C) The Division may also require quarterly monitoring of landfill gas for explosive gases other than methane, such as hydrogen sulfide, if it is necessary to ensure compliance with Subparagraph (1) of this Paragraph. If the Division requires monitoring of additional explosive gases, the Division shall provide written notice to the facility of the requirement.

(3) If explosive gas levels exceeding the limits specified in Subparagraph (1) of this Paragraph are detected, the owner and operator shall:
(A) upon discovery of detection, notify the Division and take any steps that may be necessary to ensure protection of human health, such as evacuation or monitoring of offsite structures for explosive gases;
(B) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and
(C) within 60 days of detection, implement a remediation plan for the explosive gas releases, place a copy of the plan in the operating record, and notify the Division that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(4) The owner or operator may submit a request in writing to the Division for an extension or alternate schedule for compliance with Parts (3)(B) and (3)(C) of this Paragraph, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:
(A) the justification submitted by the owner or operator;
(B) actions taken by the owner or operator upon discovery of the exceedances;
(C) the explosive gas levels measured and reported; and
(D) the circumstances and use of properties surrounding the facility.

(e) Owners or operators of C&DLF units shall develop and implement a waste screening plan as required by G.S. 130A-295.6(g) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b). The plan shall meet the same requirements as municipal solid waste landfills set forth in 40 CFR 258.20 and shall include screening for the wastes prohibited by Rule .0542(e) of this Section. Owners and operators of MSWLF units that are not subject to G.S. 130A-295.6(g) shall develop and implement a waste screening plan that shall comply with 40 CFR 258.20, and shall include screening and a contingency plan for the wastes prohibited by Rule .0542(e) of this Section.

(f) The water quality monitoring plan shall include any other monitoring plan or program which is necessary according to the operating plan or the effective permit.

(g) Water quality monitoring plans and landfill gas monitoring plans shall be prepared under the charge of and bear the seal of a licensed professional engineer or licensed geologist if required by G.S. 89C or 89E, respectively.

(h) Water quality monitoring plans and landfill gas monitoring plans shall be capable of providing detection of any release of

monitored constituents from any point in a disposal cell or leachate surface impoundment to the uppermost aquifer, air, surface waters, or proximal area.

(i) Water quality monitoring plans and landfill gas monitoring plans shall be submitted to the Division for review. The Division shall date and stamp the water quality monitoring plan and landfill gas monitoring plan "approved" if they meet the requirements of this Rule. A copy of the approved monitoring plan shall be placed in the operating record.

(j) Once established at a C&DLF facility, all monitoring shall be conducted throughout the active life and post-closure care period for all C&DLF units.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Pending Delayed Eff. Date.

15A NCAC 13B .0545 ASSESSMENT AND CORRECTIVE ACTION PROGRAM FOR C&DLF FACILITIES AND UNITS

(a) Assessment Program. Assessment monitoring shall be required if, in any sampling event, one or more constituents being monitored in any monitoring well are detected above the groundwater quality standards or interim maximum allowable concentrations (IMACs) established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (c) of this Rule. The owner and operator shall

(1) Within 30 days of obtaining the results of any sampling event, notify all persons who own land or reside on land that directly overlies any part of the plume of contamination if contaminants have migrated off-site or are thought to have migrated off site;

(2) Within 90 days of triggering an assessment monitoring program in accordance with this Paragraph, the owner and operator shall submit an assessment monitoring work plan for Division review. The Division shall date and stamp the assessment monitoring plan "approved" if the requirements in Paragraph (b) of this Rule are met. The owner and operator shall place the approved program in the operation record, and notify appropriate local government officials, such as the county manager, city manager, and county health department.

(b) Assessment Monitoring Work Plan. The assessment monitoring work plan shall be in accordance with the following:

(1) Install additional wells downgradient of the compliance wells where exceedances have been detected to characterize the nature and extent of the contamination. The additional wells shall include no less than one additional groundwater monitoring well or methane gas monitoring well at the facility's property boundary or the compliance boundary, as defined in 15A NCAC 02L .0102, in the direction of contaminant migration most likely to show impact based on the established geology and hydrogeology. The additional monitoring wells shall characterize the nature and extent of the release by determining the following factors:

(A) lithology of the aquifer and unsaturated zone;

(B) hydraulic conductivity of the aquifer and unsaturated zone;

(C) groundwater flow rates;

(D) horizontal and vertical extent of the release;

(E) resource value of the aquifer; and

(F) nature, fate, and transport of any detected constituents.

(2) No less than one sample from each monitoring well, including any well installed in accordance with Subparagraph (1) of this Paragraph, shall be collected and analyzed for the constituents listed in 40 CFR 258 Appendix II during the initial sampling event for assessment monitoring. After the initial sampling event, for any constituent detected in the downgradient wells as the result of the Appendix II analysis, no less than three additional independent samples from each background and downgradient monitoring well shall be collected and analyzed to establish a baseline for the new detected constituents. Once determined, baseline data for the new detected constituents shall be reported to the Division.

(c) For constituents that do not have a groundwater quality standard or IMAC established in accordance with 15A NCAC 02L .0202, the Division shall establish a groundwater protection standards as follows:

(1) The groundwater protection standard shall be the most protective of the following:

(A) for constituents for which a maximum contaminant level (MCL) has been promulgated under 40 CFR 141, the MCL for that constituent;

(B) for constituents for which a public water quality standard has been established under 15A NCAC 18C, the public water quality standard for that constituent;

(C) for constituents for which no MCLs or public water quality standards have been promulgated, the background concentration for the constituent established from the monitoring wells required in accordance with Rule .0544(b)(1)(A), (b)(4), and (b)(5) of this Section; or

(2) The Division may establish an alternative groundwater protection standard for constituents for which no MCL or water quality standard have been established. These groundwater protection standards shall be

health-based levels that satisfy the following criteria:

(A) The level is derived in a manner consistent with U.S. E.P.A. guidelines provided in 40 CFR 258.55(i)(1) for assessing the health risks of environmental pollutants;

(B) The level is based on scientifically valid studies conducted in accordance with 40 CFR 792, or equivalent;

(C) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level due to continuous lifetime exposure of 1 x 10-6;

(D) For systemic toxicants, the level represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For the purposes of this Rule, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(3) In establishing groundwater protection standards under this Paragraph the Division may consider the following:

(A) multiple contaminants in the groundwater;

(B) exposure threats to sensitive environmental receptors; and

(C) other site-specific exposure or potential exposure to groundwater.

(4) The owner or operator may request the Division approve a background level for the unit that is higher than the standard established in 15A NCAC 02L .0202, or the standard established in Subparagraph (1) of this Paragraph, or health-based levels identified under Subparagraph (2) of this Paragraph. The background level shall be established in accordance with Rule .0544(b)(1)(A), (b)(4), and (b)(5) of this Section. The approved background level shall be the established groundwater protection standard.

(d) Assessment Monitoring. After obtaining the results from the initial sampling event required in Subparagraph (b)(2) of this Rule, the owner and operator shall perform assessment monitoring in accordance with the following:

(1) For each assessment monitoring event, including the sampling required in Subparagraph (b)(2) of this Rule, the owner or operator shall submit an assessment monitoring report to the Division that complies with Rule .0544(b)(6) of this Section. If required by G.S. 89E, the report shall be certified by a licensed geologist.

(2) Within 14 days of receipt of analytical results, the owner or operator shall submit notice to the Division in writing and place the notice in the operating record identifying the 40 CFR 258 Appendix II constituents that have not previously been detected and reported to the Division.

(3) Within 90 days, and no less than semiannually thereafter until the Division approves a return to detection monitoring in accordance with Subparagraphs (6) or (7) of this Paragraph, the owner or operator shall sample all of the monitoring wells for the unit in the detection monitoring system established in Rule .0544 of this Section for all constituents listed in 40 CFR 258 Appendix I and for those constituents in Appendix II not listed in Appendix I that have been detected. Any well with a reported groundwater standard exceedance shall be sampled for all constituents in 40 CFR 258 Appendix II at least annually unless otherwise approved in accordance with Subparagraphs (4) or (5) of this Paragraph. A report from each sampling event shall be submitted to the Division as specified in Subparagraph (1) of this Paragraph and placed in the facility operating record.

(4) The Division may approve a subset of wells to be sampled and analyzed during assessment monitoring if the owner or operator demonstrates that the proposed wells to be sampled meet the requirements for assessment monitoring in accordance with this Paragraph. The Division may remove any of the additional monitoring parameters not listed in Rule .0544(b)(1)(D) of this Section from the monitoring list for a C&DLF unit if the owner or operator can show that the constituents proposed for removal are not expected to be in or derived from the waste contained in the unit.

(5) The Division may approve an alternate frequency or subset of wells for repeated sampling and analysis for 40 CFR 258 Appendix II constituents, not listed in Appendix I, required during the active life and post-closure care of the unit considering all of the following factors:

(A) lithology of the aquifer and unsaturated zone;

(B) hydraulic conductivity of the aquifer and unsaturated zone;

(C) groundwater flow rates;

(D) minimum distance between the upgradient edge of the C&DLF unit and the downgradient monitor well screened interval;

(E) resource value of the aquifer; and

(F) nature, fate, and transport of any detected constituents.

(6) During assessment monitoring, the owner or operator may demonstrate, in accordance with Rule .0544(b)(7) of this Section for any constituent not previously reported to have a groundwater standard exceedance, that a source other than a C&DLF caused the exceedance of the groundwater quality standards and IMACs established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Paragraph (c) of this Rule, or that the exceedance resulted from error in sampling, analysis, or natural variation in groundwater quality. If a successful demonstration is made for each exceedance, the owner or operator shall continue the existing assessment monitoring that was required by this Paragraph unless and until the requirements of Subparagraph (7) of this Paragraph are met.

(7) The Division shall give approval to the owner or operator to return to detection monitoring in accordance with Rule .0544(b)(1)(D) of this Section if all of the following are met:

(A) for two consecutive sampling events, the concentrations of the constituents are shown to be at or below groundwater quality standards and IMACs established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (c) of this Rule;

(B) the plume is not migrating horizontally or vertically; and

(C) the plume has not exceeded the compliance boundary.

(8) After completion of Paragraphs (a) and (b) of this Rule and if one or more constituents are detected for two consecutive semiannual sampling events above background, the groundwater quality standards established in 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (c) of this Rule, the owner or operator shall initiate within 90 days an Assessment of Corrective Measures in accordance with Paragraph (e) of this Rule, and shall continue to monitor in accordance with the approved assessment monitoring program.

(e) Assessment of Corrective Measures. If the assessment of corrective measures is required in accordance with Subparagraph (d)(8) of this Rule, the assessment of corrective measures shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under this Rule. An assessment of corrective measures document shall be completed within 120 days, or as approved by the Division, and shall address the following:

(1) the performance, reliability, ease of implementation, and potential impacts of potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) the time required to begin and to complete the remedy;

(3) the costs of remedy implementation; and

(4) the institutional requirements such as State and local permit requirements or other environmental or public health requirements that may affect implementation of the remedy(s).

(f) Within 120 days of completion of the assessment of corrective measures in accordance with Paragraph (e) of this Rule, the owner and operator shall discuss the results of the assessment of corrective measures, prior to the selection of the remedy, in a public meeting with interested and affected parties. The owner and operator shall provide a public notice of the meeting at least 30 days prior to the meeting. The notice shall include the time, place, date, and purpose of the public meeting. A copy of the public notice shall be forwarded to the Division at least five days prior to publication. The owner and operator shall mail a copy of the public notice to those persons requesting notification. Public notice shall be in accordance with Rule .0533(c)(4) of this Section.

(g) Selection of Remedy. Based on the results of the Assessment of Corrective Actions, the owner and operator shall select a remedy as follows:

(1) Within 30 days of selecting a remedy, the permittee shall submit an application to modify the permit describing the selected remedy to the Division for evaluation and approval. The application shall be subject to the processing requirements set forth in Rule .0533(c) of this Section. The application shall include the demonstrations necessary to comply with the financial assurance requirements in accordance with Rule .0546 of this Section and Section .1800 of this Subchapter.

(2) Remedies shall:

(A) be protective of human health and the environment;

(B) attain the approved groundwater protection standards in accordance with Rule .0544(b)(12) of this Section;

(C) control the source(s) of releases to reduce or eliminate, to the maximum extent practicable, further releases of 40 CFR 258 Appendix II constituents into the environment; and

(D) comply with standards for management of wastes as specified in Paragraph (n) of this Rule.

(3) In selecting a remedy that meets the standards of Subparagraph (2) of this Paragraph, the owner and operator shall consider the following factors:

(A) The long-term and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy

will prove successful based on consideration of the magnitude of reduction of existing risks; magnitude of residual risks in terms of likelihood of further releases due to wastes remaining following implementation of a remedy; the type and degree of long-term management required, including monitoring, operation, and maintenance; short-term risks that might be posed to the community, to workers, or to the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment; time until full protection is achieved; potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment; long-term reliability of the engineering and institutional controls; and potential need for replacement of the remedy.

(B) The effectiveness of the remedy in controlling the source to reduce further releases, based on consideration of the extent to which containment practices will reduce further releases, and the extent to which treatment technologies may be used.

(C) The ease or difficulty of implementing a potential remedy, based on consideration of the degree of difficulty associated with constructing the technology; the expected operational reliability of the technologies; the need to coordinate with and obtain necessary approvals and permits from other agencies; the availability of necessary equipment and specialists; and available capacity and location of needed treatment, storage, and disposal services.

(D) The practicable capability of the owner and operator, including a consideration of the technical and economic capability.

(4) The owner and operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities included in a corrective action plan. This schedule shall be submitted to the Division for review and approval to determine compliance with this Rule. The owner and operator shall consider the following factors in determining the schedule of remedial activities:

(A) nature and extent of contamination;

(B) practical capabilities of remedial technologies in achieving compliance with the approved groundwater protection standards and other objectives of the remedy;

(C) availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(D) desirability of utilizing technologies that are not currently available, but which may offer advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(E) potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(F) resource value of the aquifer, including current and future uses; proximity and withdrawal rate of users; groundwater quantity and quality; the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to contaminants; the hydrogeologic characteristics of the facility and surrounding land; groundwater removal and treatment costs; the costs and availability of alternative water supplies; and

(G) practical capability of the owner and operator.

(h) The Division may determine that active remediation of a release of any detected constituent from a C&DLF unit is not necessary if the owner or operator demonstrates to the Division that:

(1) the groundwater is contaminated by substances that have originated from a source other than a C&DLF unit and those substances are present in concentrations such that active cleanup of the release from the C&DLF unit would provide no reduction in risk to actual or potential receptors; or

(2) the constituent or constituents are present in groundwater that is not currently or expected to be a source of drinking water and is not hydraulically connected with water to which the constituents are migrating or are likely to migrate in concentrations that would exceed the approved groundwater protection standards;

(3) remediation of the release is technically impracticable; or

(4) remediation results in unacceptable cross-media impacts.

(i) A determination by the Division pursuant to this Paragraph shall not affect the authority of the State to require the owner and operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate groundwater to concentrations that are technically practicable and reduce threats to human health or the environment.

(j) Implementation of the Corrective Action Program. Based on the approved schedule for initiation and completion of remedial activities, the owner and operator shall:

(1) within 120 days after the approval of the selected remedy or as approved by the Division, submit a corrective action plan that establishes and implements a corrective action groundwater monitoring program that:
  (A) meets the requirements of an assessment monitoring program under Paragraphs (a), (b), and (d) of this Rule;
  (B) indicates the effectiveness of the corrective action remedy; and
  (C) demonstrates compliance with groundwater quality standards or IMACs established in accordance with 15A NCAC 02L .0202 and groundwater protection standards established in accordance with Paragraph (c) of this Rule, pursuant to Paragraph (o) of this Rule.

(2) implement the approved corrective action remedy; and

(3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner and operator in determining whether interim measures are necessary:
  (A) time required to develop and implement a final remedy;
  (B) actual or potential exposure of nearby populations or environmental receptors to constituents;
  (C) actual or potential contamination of drinking water supplies or sensitive ecosystems;
  (D) further degradation of the groundwater that may occur if remedial action is not initiated;
  (E) weather conditions that may cause constituents of concern to migrate or be released;
  (F) risks of fire or explosion, or potential for exposure to constituents of concern resulting from an accident or failure of a container or handling system; and
  (G) other situations that may pose threats to human health or the environment.

(k) The owner or operator shall submit a corrective action evaluation report to the Division in an electronic format that is accessible and viewable by the Division no less than once every five calendar years until the owner and operator are released from the corrective action program in accordance with Paragraph (q) of this Rule. The report shall contain a description of the corrective measure remedies that have been implemented or completed since the initiation of the corrective action program; and an evaluation of the effectiveness of the corrective action program. The owner or operator may request to submit the corrective action evaluation report to the Division on an alternate schedule. The owner or operator shall submit the request in writing to the Division, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:

(1) the schedules for corrective action established in the corrective action plan and changes to corrective actions;
(2) the justification submitted by the owner or operator;
(3) the size, direction, and rate of travel of the contaminant plume;
(4) the circumstances and use of properties, groundwater, and surface water downgradient of the contaminant plume; and
(5) whether the alternate schedule complies with Article 9 of Chapter 130A of the General Statutes and the rules adopted thereunder.

(l) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Subparagraph (f)(2) of this Rule are not being achieved through the remedy selected. In such cases, the owner and operator shall implement other methods or techniques to comply with Paragraph (g) of this Rule unless the Division determines that active remediation is not necessary in accordance with Paragraph (h) of this Rule.

(m) If the owner or operator determines that compliance with requirements of Subparagraph (g)(2) of this Rule cannot be achieved with any currently available methods, the owner and operator shall:

(1) obtain certification of a licensed professional engineer or licensed geologist, if required by G.S. 89C or 89E, and approval from the Division that compliance with the requirements under Subparagraph (g)(2) of this Rule cannot be achieved with any currently available methods;
(2) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;
(3) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices,

or structures that are technically practicable and consistent with the overall objective of the remedy; and

(4) submit a report justifying the alternative measures to the Division for review. The Division shall date and stamp the report "approved" if the conditions of this Paragraph are satisfied. The approved report shall be placed in the operating record prior to implementing the alternative measures.

(n) All solid wastes that are managed pursuant to a remedy required under Paragraph (g) of this Rule, or an interim measure required under Paragraph (g) of this Rule, shall be managed in a manner that is protective of human health and the environment, and that complies with applicable State and federal requirements.

(o) Remedies selected pursuant to Paragraph (g) of this Rule shall be considered complete when:

(1) the owner and operator complies with the groundwater quality and groundwater protection standards at all points within the plume of contamination that lie beyond the relevant point of compliance;

(2) compliance with the groundwater quality and groundwater protection standards has been achieved by demonstrating that concentrations of constituents have not exceeded these standards for a period of three consecutive years, consistent with performance standards in Subparagraph (g)(2) of this Rule; and

(3) all actions required to complete the remedy have been satisfied.

(p) Upon completion of the remedy, the owner and operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (o) of this Rule. If required by G.S. 89C or 89E, a licensed professional engineer or licensed geologist shall prepare and sign these documents. This report shall also be signed by the owner or operator. Upon approval by the Division, this report shall be placed in the operating record.

(q) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (o) of this Rule, the owner and operator shall be released from the requirements for financial assurance for the corrective action program under Rule .0546 of this Section and Section .1800 of this Subchapter. Nothing in this Paragraph shall release the owner or operator from the requirements for financial assurance for closure, post-closure care, or potential assessment and corrective action in accordance with Rule .0546 of this Section and Section .1800 of this Subchapter.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .0547 EXISTING C&DLF UNITS AS OF JANUARY 1, 2007

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Pending Delayed Eff. Date.

15A NCAC 13B .1601 PURPOSE AND APPLICABILITY

(a) The rules of this Section shall govern the permitting procedures, siting, design, construction, performance standards, operation, closure, and post-closure of all municipal solid waste landfill (MSWLFs) facilities and units.

(b) Owners and operators of landfill facilities that include a MSWLF unit shall conform to the requirements of this Section as follows:

(1) MSWLF units that stopped receiving waste before October 9, 1993 are exempt from the rules of this Section and shall comply with the solid waste permit and Rule .0510 of this Subchapter.

(2) MSWLF units that receive waste on or after October 9, 1993 shall comply with the rules of this Section.

(c) In addition to the requirements of G.S. 130A-295.3, owners and operators of a MSWLF facility shall comply with local laws, ordinances, rules, regulations, and orders that are applicable to the location and operation of the MSWLF facility, including zoning and property requirements, floodplain requirements, wetland requirements, sedimentation and erosion control requirements, and mining requirements.

(d) Incorporation by Reference. References to Title 40 of the U.S. Code of Federal Regulations (CFR) in this Section are incorporated by reference including subsequent amendments or editions and can be obtained free of charge at www.ecfr.gov.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Temporary Amendment Eff. October 9, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. April 1, 1994;
Pending Delayed Eff. Date.

15A NCAC 13B .1602 DEFINITIONS

The definitions in Article 9 of Chapter 130A of the General Statutes, the definitions in Rule .0101 of this Subchapter, and the following definitions shall apply to the rules of this Section.

(1) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with Rule .1627 of this Section.

(2) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with Rule .1627 of this Section.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding groundwater.

(4) "Areas susceptible to mass movement" means those areas characterized as having an active or substantial possibility of mass movement where the movement of earth material at, beneath, or adjacent to the MSWLF unit(s), because of

natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement may include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(5) "Base liner system" means the liner system installed on the MSWLF unit's foundation to control the flow of leachate.

(6) "Cap system" means a liner system installed over the MSWLF unit to minimize infiltration of precipitation and contain the wastes.

(7) "Gas condensate" means the liquid generated as a result of gas recovery processes at a MSWLF unit.

(8) "Groundwater" means water below the land surface in a zone of saturation.

(9) "Household waste" means any solid waste derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(10) "Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes may include sinkholes, sinking streams, caves, large springs, and blind valleys.

(11) "Landfill facility" means all contiguous land and structures, waste management unit(s), other appurtenances, and improvements on the land within the legal description of the site included in or proposed for the permit issued in accordance with this Section.

(12) "Landfill unit" means a discrete area of land or an excavation that receives a particular type of waste such as construction and demolition, industrial, or municipal solid waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR 257.2. Such a landfill may be publicly or privately owned, and may be located at a municipal solid waste landfill facility, a construction and demolition solid waste landfill facility, an industrial solid waste landfill facility, or other waste management facility.

(13) "Liner system" means an engineered environmental control system which can incorporate filters, drainage layers, compacted soil liners, geomembrane liners, piping systems, and connected structures.

(14) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by EPA SW-846 Test Method 9095B (Paint Filter Liquids Test), which is incorporated by reference including subsequent amendments or editions; and can be obtained free of charge at the US EPA website at www.epa.gov/hw-sw846/sw-846-test-method-9095b-paint-filter-liquids-test.

(15) "Municipal solid waste landfill unit" or "MSWLF unit" means a discrete area of land or an excavation that receives household waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR 257.2. Such a landfill may be publicly or privately owned. A MSWLF unit may also be permitted to receive other types of non-hazardous solid waste.

(16) "Poor foundation conditions" means those areas where features exist that indicate that a natural or man-induced event may result in a loss or reduction of foundation support for the structural components of a MSWLF unit(s).

(17) "Project engineer" means a licensed professional engineer that represents the permittee and is responsible for observing, documenting, and certifying that activities related to the quality assurance of the construction of the solid waste management facility conform to the permit to construct, incorporated plans, and the rules of this Section. All certifications shall bear the seal and signature of a licensed professional engineer and the date of certification.

(18) "Seasonal high groundwater table" and "SHGT" means the highest level of the uppermost aquifer during a year with normal rainfall. SHGT may be determined in the field through identification of redoximorphic features in the soil profile, monitoring of the water table elevation, or modeling of predicted groundwater elevations.

(19) "Structural components" means liners, leachate collection systems, final covers, systems that manage rainwater that drains over land from or onto any part of the facility or unit, and any other component used in the construction and operation of the MSWLF facility.

(20) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

(21) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

History Note: *Authority G.S. 130A-294;*
Eff. October 9, 1993;

Readopted Eff. Pending Legislative Review.

15A NCAC 13B .1603 GENERAL APPLICATION REQUIREMENTS AND PROCESSING

(a) An owner or operator of a MSWLF unit or facility shall submit an application document as detailed in Rule .1617 of this Section in accordance with the following criteria and scheduling requirements:

(1) New permit. An applicant for a new permit as defined by G.S. 130A-294(a3)(1) shall submit a site study and subsequently an application for a permit to construct as set forth in Rule .1617(a) of this Section. The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter. An application for a new permit is subject to the application fees set forth in G.S. 130A-295.8(d2).

(2) Amendment to the permit. The owner or operator shall submit an application to amend the permit to construct in accordance with Rule .1617(c) of this Section for the following circumstances:

(A) A subsequent stage of landfill development. A permit to construct issued in accordance with Paragraph (c) of this Rule approves the life-of-site development of the MSWLF unit indicated in the facility plan plus a set of plans, defined in Rule .1604(b)(1) of this Section as the Division approved plans submitted by the applicant for either the entire MSWLF unit or a portion of the MSWLF unit. For any subsequent stage of landfill development that the applicant has not included in the plans required by Rule .1604(b)(1) of this Section for any prior stage of landfill development, the owner or operator shall submit the amended permit application no less than 180 days prior to the date scheduled for commencing construction.

(B) A change in ownership or corporate structure of a permitted MSWLF facility in accordance with G.S. 130A-294(a3)(2)b. The owner or operator shall notify the Division in writing within 30 days of a change in ownership or corporate structure in accordance with G.S. 130A-295.2(g).

(3) Modifications to the permit. An owner or operator proposing changes to the plans approved in the permit shall request prior approval from the Division in accordance with Rule .1617(d) of this Section.

(4) Permit for Closure and Post-Closure Care. The owner or operator shall submit an application for a closure and post-closure care permit to the Division when the facility reaches its final permitted elevations and prior to initiating closure activities for the final permitted MSWLF unit at the facility in accordance with Rule .1617(e) of this Section. Owners or operators that closed all MSWLF units at the facility prior to the readopted effective date of this Rule shall not be required to submit a permit application for closure and post-closure. The Division shall issue a permit for closure and post-closure for these facilities based on the most recent permit application submittal, if a closure and post-closure permit has not already been issued.

(b) Application format requirements. All applications and plans required by this Section shall be prepared in accordance with the following:

(1) The application shall:

(A) contain a cover sheet, stating the project title and location, the applicant's name, and the engineer's name, address, signature, date of signature, and seal;

(B) contain a statement defining the purpose of the submittal signed and dated by the applicant;

(C) contain a table of contents or index outlining the body of the application and the appendices;

(D) be paginated consecutively; and

(E) identify any revised text by noting the date of revision on the page.

(2) Drawings. The engineering drawings for all landfill facilities shall be submitted using the following format:

(A) the cover sheet shall include the project title, applicant's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal; and

(B) maps and drawings shall be prepared at a scale that illustrates the subject requirements, and that is legible if printed at a size of 22 inches by 34 inches.

(3) Number of copies. An applicant shall submit one copy of the application to the Division in an electronic format that is accessible and viewable by the Division. The Division may request that the applicant submit up to three paper copies of the application in three-ring binders.

(c) Permitting and public information procedures.

(1) Purpose and Applicability.

(A) Purpose. During the permitting process, the Division shall provide for public review of and input to permit documents containing the applicable

design and operating conditions. The Division shall provide for consideration of comments received and notification to the public of the permit design as set forth in Subparagraph (4) of this Paragraph.

(B) Applicability. Applications for a new permit as defined in G.S. 130A-294(a3)(1), or for a modification to the permit involving corrective remedy selection required by Rule .1636 of this Section shall be subject to the requirements of this Paragraph. Applications submitted in accordance with Subparagraphs (a)(2), (a)(3), and (a)(4) of this Rule are not subject to the requirements of this Paragraph.

(2) Draft Permits.

(A) The Division shall review all permit applications for compliance with the rules of this Section and Rule .0203 of this Subchapter. Once an application is complete, the Division shall either issue a notice of intent to deny the permit to the applicant or prepare a draft permit.

(B) If the Division issues a notice of intent to deny the permit to the applicant, the notice shall include the reasons for permit denial in accordance with Rule .0203(e) of this Subchapter and G.S. 130A-294(a)(4)c.

(C) If the Division prepares a draft permit, the draft permit shall contain all applicable terms and conditions for the permit.

(D) All draft permits shall be subject to the procedures of Subparagraphs (3) through (9) of this Paragraph, unless otherwise specified in those Subparagraphs.

(3) Fact Sheets. The Division shall prepare a fact sheet for every draft permit, and shall send this fact sheet to the applicant and post the fact sheet on the Division website. The fact sheet shall include:

(A) a description of the type of facility or activity that is the subject of the draft permit;

(B) a description of the area to be served, the volume and characteristics of the waste stream, and a projection of the useful life of the landfill;

(C) a summary of the basis for the draft permit conditions, including references to statutory or regulatory provisions and supporting references to the permit application;

(D) the beginning and ending dates of the comment period under Subparagraph (4) of this Paragraph;

(E) the address where comments will be received;

(F) the name, phone number, and e-mail address of a person to contact for additional information;

(G) the procedures for requesting a public hearing; and

(H) other procedures by which the public may provide comments during the comment period under Subparagraph (4) of this Paragraph, such as social media or a web-based meeting, if the Division or the applicant elects to use such procedures.

(4) Public Notice of Permit Actions and Public Hearings.

(A) The Division shall give public notice of each of the following: a draft permit has been prepared; a public hearing has been scheduled under Subparagraph (6) of this Paragraph; or a notice of intent to deny a permit has been prepared under Part (2)(B) of this Paragraph.

(B) No public notice is required when a request for a permit modification is denied.

(C) The Division shall give written notice of denial to the applicant.

(D) Public notices may describe more than one permit or permit action.

(E) Public notice of the preparation of a draft permit or a notice of intent to deny a permit shall allow at least 45 days for public comment.

(F) The Division shall give public notice of a public hearing at least 15 days before the hearing; and the notice shall contain the date, time, and place of the public hearing; a description of the nature and purpose of the public hearing, including the applicable rules and procedures; and a statement of the issues raised by the persons requesting the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(G) Public notice of activities described in Part (A) of this Subparagraph shall be given by publication on the Division website, by posting in the post office and public places of the municipalities nearest the site under consideration, or publication by a local news organization. The Division may also

provide notice by posting on other State or local government websites or social media to give actual notice of the activities to persons potentially affected.

(H) All public notices issued under this Subparagraph shall contain the name, address and phone number of the office processing the permit action for which notice is being given; name and address of the owner and the operator applying for the permit; a description of the business conducted at the facility or activity described in the permit application including the size and location of the facility and type of waste accepted; a description of the comment procedures required by Subparagraphs (5) and (6) of this Paragraph, including a statement of procedures to request a public hearing unless a hearing has already been scheduled, and other procedures by which the public may participate in the permit decision; the name, address, and telephone number of the Division contact from whom interested persons may obtain further information; and a description of the time frame and procedure for making an approval or disapproval decision of the application.

(5) Public Comments and Requests for Public Hearings. During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. The Division shall consider all comments in making a final permit decision. The Division shall respond to all comments as provided in Subparagraph (9) of this Paragraph.

(6) Public Hearings.

(A) The Division shall hold a public hearing on a draft permit(s) when a hearing is requested. The Division may also hold a public hearing whenever such a hearing might clarify one or more issues involved in the permit decision. Public hearings held pursuant to this Rule shall be at a location accessible to the residents of the municipality closest to the subject facility. Public notice of the hearing shall be given as specified in Subparagraph (4) of this Paragraph.

(B) Any person may submit oral or written statements and data concerning the draft permit. The Division may set the time allowed for oral statements; and may require the submission of statements in writing. The Division shall extend the public comment period under Subparagraph (4) of this Paragraph to the close of any public hearing under this Subparagraph. The Division may also extend the comment period by so stating at the hearing, when information is presented at the hearing which indicates the importance of extending the period to receive additional comments, to allow potential commenters to gather more information, to allow time for submission of written versions of oral comments made at the hearing, or to allow time for rebuttals of comments made during the hearing. The Division shall publish the end date of the extended comment period on the Division's website prior to the end of the existing public comment period.

(C) The Division shall make available to the public a recording or written transcript of the hearing upon request.

(7) Reopening of the Public Comment Period.

(A) In response to data, information, or arguments received during the public comment period, the Division may prepare a revised draft permit under Subparagraph (2) of this Paragraph; prepare revised fact sheet under Subparagraph (3) of this Paragraph, and reopen or extend the comment period under Subparagraph (4) of this Paragraph.

(B) Comments filed during the reopened comment period shall be limited to the information that was revised in the draft permit following the original comment period. The public notice shall be in accordance with Subparagraph (4) of this Paragraph and shall define the scope of the reopening.

(8) Permit Decision.

(A) After the close of the public comment period under Subparagraph (4) of this Paragraph on a draft permit or a notice of intent to deny a permit, the Division shall issue a permit decision. The Division shall notify the applicant and each person who has submitted a written request for notice of the permit

decision. For the purposes of this Subparagraph, a permit decision means a decision to issue, deny, or modify a permit in accordance with Paragraph (d) of this Rule.

(B) A permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.

(9) Response to Comments.

(A) At the time that a permit decision is issued under Subparagraph (8) of this Paragraph, the Division shall issue a response to comments. This response shall specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change. The response shall also describe and respond to all comments pertaining to the requirements in the draft permit raised during the public comment period, or during any public hearing.

(B) The Division shall publish the response to comments on the Division website upon request.

(d) Permit approval or denial. The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .1604 GENERAL REQUIREMENTS FOR MSWLF FACILITIES

(a) Permits issued by the Division for MSWLF facilities and units shall be subject to the general requirements set forth in this Rule.

(b) Terms of the Permit. The Solid Waste Management Permit shall incorporate requirements necessary to comply with this Subchapter and the North Carolina Solid Waste Management Act including the provisions of this Paragraph.

(1) Division Approved Plans. Permits issued after March 9, 1993 shall incorporate the Division approved plans.

(A) The scope of the Division approved plans shall include the information necessary to comply with the requirements set forth in Rule .1617 of this Section.

(B) The Division approved plans shall be subject to and may be limited by the conditions of the permit.

(C) The Division approved plans for an MSWLF facility shall be described in the permit and shall include the Facility Plan required by Rule .1619 of this Section, the Engineering Plan required by Rule .1620 of this Section, the Construction Quality Assurance Plan required by Rule .1621 of this Section, the Design Hydrogeologic Report and Monitoring Plans required by Rule .1623(b) of this Section, the Operation Plan required by Rule .1625 of this Section, and the Closure and Post-Closure Plan required by Rule .1629 of this Section.

(2) Permit provisions. All MSWLF facilities and units shall conform to the specific conditions set forth in the permit and the following general provisions.

(A) Duty to Comply. The permittee shall comply with all conditions of the permit.

(B) Duty to Mitigate. In the event of noncompliance with the permit, the permittee shall minimize the release of waste, leachate, or contaminants to the environment; and shall prevent adverse impacts on human health or the environment.

(C) Duty to Provide Information. The permittee shall furnish to the Division any information which the Division may request to determine whether cause exists for modifying or suspending the permit, or to determine compliance with the permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept under the conditions of this permit.

(D) Recordation Procedures. The permittee shall comply with the requirements of G.S. 130A-301 for a new permit to be effective.

(E) Need to Halt or Reduce Activity. It shall not be a defense for a permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of the permit.

(F) Permit Actions. A permit may be modified, reissued, revoked, suspended, or terminated in accordance with G.S. 130A-23. The filing of a request by the permittee for a permit modification, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.

(G) Not Transferable. A permit for a solid waste management facility is transferable only with prior approval of the Department in accordance with G.S. 130A-294(a1).

(H) Construction. If construction does not commence within 18 months from the issuance date of the permit to construct, or an amendment to the permit, then the permittee shall obtain written approval from the Division prior to construction and comply with any conditions of the approval. In determining whether to approve construction, the Division shall consider length of time elapsed since issuance of permit, any changes in applicable State and federal statutes and rules since issuance of the permit, and any changes in financial qualifications or environmental compliance status of the holder of the permit in accordance with G.S. 130A-295.2 and G.S. 130A-295.3.

(I) Proper Operation and Maintenance. The permittee shall at all times operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee in compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures, in accordance with the conditions of the permit. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(J) Inspection. The permittee shall allow the Department to enter the permittee's premises where a regulated unit or activity is located or conducted, or where records are kept under the conditions of the permit. The Department shall have access to copy any records required to be kept under the conditions of the permit. The permittee shall allow the Department to inspect any facilities, equipment including practices, operations, or monitoring and control equipment that are required or regulated by the facility permit or the rules of this Subchapter. The permittee shall allow the Department to take photographs for documenting items of compliance or noncompliance at permitted facilities. At the request of the Department, the permittee shall take such photographs and submit them to the Department.

(K) Monitoring. Samples and measurements taken for monitoring shall be representative of the monitored activity. For the purpose of assuring that monitoring compliance with the permit or with Chapters 113A, 130A, and 143 of the General Statutes and the rules adopted under the authority of those General Statutes, the permittee shall allow the Department to sample or monitor, at any location under the operation or control of the permittee, any materials, substances, wastes, leachate, soil, groundwater, surface water, gases, gas condensates, or ambient air to the extent authorized by Chapters 113A, 130A, and 143 of the General Statutes and the rules adopted under the authority of those General Statutes. The Department may allow the permittee to split samples with the Department. If the Department allows the permittee to split samples, the permittee and the Department shall collect the samples on a schedule that allows the permittee and the Department to obtain sample containers and equipment prior to sampling.

(L) Records. The permittee shall retain records of all monitoring information required by the permit for the active life of the facility and for the post-closure care period. Records of monitoring information shall include: the date, place, and time of sampling or measurements; the individual(s) who performed the sampling or measurements; the date(s) analyses were performed; the individual(s) who performed the analyses; the analytical techniques, methods, and equipment used; and the results of such analyses.

(M) Reporting Requirements. The permittee shall give notice to the Division of any planned physical alterations or additions to the permitted facility prior to making the alterations or additions. Results of environmental monitoring required in accordance with this Subchapter shall be reported at the intervals specified in the permit. The permittee shall give notice to the Division via telephone or e-mail within 24 hours from the time the permittee becomes aware of the

circumstances of any release or discharge outside the liner, collection system or other containment component, any fire, or explosion from the permitted landfill facility. Where the permittee becomes aware that it failed to submit all relevant facts and corrected information in a permit application, or submitted incorrect information in a permit application or in any report to the Division, the permittee shall submit the corrected facts or information to the Division.

(N) Survey for Compliance. Within 60 days of the permittee's receipt of the Division's written request for a survey, the permittee shall have a survey conducted of active or closed portions of the facility to determine whether operations are being conducted in accordance with the approved design and operational plans. The permittee shall report the results of such survey, including a map produced by the survey, to the Division within 90 days of receipt of the Division's request. A survey may be required by the Division if there is reason to believe that operations are being conducted in a manner that deviates from the plans included in the effective permit, or no more than once per year as a verification that operations are being conducted in accordance with the plans included in the effective permit. If required by G.S. 89C, any survey performed pursuant to this Part shall be performed by a licensed professional land surveyor. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, by resolution dated March 31, 2011 that preparation of survey pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.

(O) Additional Solid Waste Management Facilities. Construction and operation of additional solid waste management facilities at the landfill facility shall not impede operation or monitoring of the MSWLF units. Any proposed additional activities shall be submitted to the Division for review, approval, and permitting, as applicable, before construction and operation.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. May 1, 2011;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .1617 APPLICATION REQUIREMENTS FOR MSWLF FACILITIES

(a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new MSWLF permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .1618 of this Section prior to submitting an application for a permit to construct.

(1) Permit to Construct. A complete application for a permit to construct for a new permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:
  (A) a facility plan that describes comprehensive development of the MSWLF facility prepared in accordance with Rule .1619 of this Section;
  (B) an engineering plan that is prepared for the initial phase of landfill development prepared in accordance with Rule .1620 of this Section;
  (C) a construction quality assurance plan prepared in accordance with Rule .1621 of this Section;
  (D) an operation plan prepared in accordance with Rule .1625 of this Section;
  (E) a closure and post-closure plan prepared in accordance with Rule .1629 of this Section;
  (F) the design hydrogeologic report and monitoring plans prepared in accordance with Rule .1623(b) of this Section;
  (G) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
  (H) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(2) Permit to Operate. The owner or operator shall meet the pre-operative requirements of the permit to construct to qualify the constructed MSWLF unit for a permit to operate.

(b) New permit as defined in G.S. 130A-294(a3)(1)b. A complete application for a new MSWLF permit as defined in G.S. 130A-294(a3)(1)b shall contain:

(1) a facility plan that describes the comprehensive development of the MSWLF facility prepared in accordance with Rule .1619 of this Section;
(2) local government approval in accordance with Rule .1618(c)(6) of this Section;
(3) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
(4) for an applicant that is not a federal, State, or local government, an organization chart

showing the ownership structure of the applicant.

(c) Amendment to the permit. An application for an amendment to the permit shall contain:

(1) an updated engineering plan prepared in accordance with Rule .1620 of this Section;

(2) an updated construction quality assurance plan prepared in accordance with Rule .1621 of this Section;

(3) an updated operation plan prepared in accordance with Rule .1625 of this Section;

(4) an updated closure and post-closure plan prepared in accordance with Rule .1629 of this Section;

(5) an updated design hydrogeologic report and monitoring plans prepared in accordance with Rule .1623(b) of this Section;

(6) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(7) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.

(d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved in accordance with the requirements set forth in this Section. A complete application shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance with the rules of this Section.

(e) A permit for closure and post-closure. An application for closure and post-closure shall contain:

(1) an updated engineering plan prepared in accordance with Rule .1620 of this Section;

(2) an updated construction quality assurance plan prepared in accordance with Rule .1621 of this Section;

(3) an updated closure plan and updated post-closure plan prepared in accordance with Rule .1629 of this Section; and

(4) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .1618 SITE STUDY FOR MSWLF FACILITIES

(a) Purpose. As required under Rule .1617 of this Section, the owner and operator shall prepare a site study that meets the requirements of this Rule. The Division shall review the site study for a proposed new facility prior to consideration of an application for a permit to construct to determine if the site is suitable for establishing a MSWLF unit because nothing would prevent the MSWLF unit from being able to be constructed and operated in accordance with Article 9 of Chapter 130A of the General Statutes, the rules of this Subchapter, and the Federal Resource Conservation and Recovery Act, as amended. Following review of the site study, the Division shall notify the applicant that either:

(1) the site is deemed suitable for establishing a MSWLF unit and the applicant is authorized to prepare an application for a permit to construct in accordance with Rule .1617 of this Section and the site-specific conditions and design requirements stated in the notification, if any; or

(2) the site is deemed unsuitable for establishing a MSWLF unit and shall specify the reasons which would prevent the MSWLF facility from being constructed and operated in accordance with Article 9 of Chapter 130A of the General Statutes, the rules of this Subchapter, and the Federal Resource Conservation and Recovery Act, as amended.

(b) Scope. The site shall be the land that is proposed for the landfill facility. The site study shall present a characterization of the land, incorporating various investigations and requirements pertinent to suitability of a MSWLF facility. The scope of the site study shall include criteria associated with the public health, public welfare, and the environment. The economic feasibility of a proposed site shall not be within the scope of this study. The information in the site study shall represent site characteristics and, if required by G.S. 89C, 89E, or 89F and not under the purview of another licensed profession, shall be prepared by licensed professional engineers, licensed geologists, licensed soil scientists, or licensed professional land surveyors. An MSWLF unit shall comply with the location restrictions set forth in Rule .1622 of this Section. To demonstrate compliance with specific criteria for each of the respective location restrictions, documentation or approval by agencies other than the Division of Waste Management, Solid Waste Section may be required. The scope of demonstrations including design and construction performance shall be addressed in the site study.

(c) The site study prepared for a MSWLF facility shall include the information required by this Paragraph.

(1) Regional characterization study. The regional study area includes the landfill facility and a two-mile perimeter measured from the proposed boundary of the landfill facility. The study shall include a report and a regional map identifying the following:

(A) general topography and features as illustrated on the most recent U.S.G.S. topographic map, 7.5 Minute Series, horizontal scale of at least one inch equals 2,000 feet;

(B) proposed landfill facility location;

(C) public water supply wells, surface water intakes, and service areas;

(D) residential subdivisions;

(E) waste transportation routes; and

(F) public use airports and runways.

(2) Local characterization study. The local study area includes the landfill facility and a 2,000-foot perimeter measured from the proposed

boundary of the landfill facility. The study shall include an aerial photograph taken within one year of the original submittal date, a report, and a local map. The map and photograph shall be at a scale of at least one inch equals 400 feet. The study shall identify the following:

(A) the entire property proposed for the disposal site and any on-site easements;

(B) existing land use and zoning;

(C) the location of private residences and schools;

(D) the location of commercial and industrial buildings, and other potential sources of contamination;

(E) the location of potable wells and available documentation regarding well completion and production rate;

(F) historic sites; and

(G) the existing topography and features of the disposal site including: general surface water drainage patterns and watersheds, 100-year floodplains, perennial and intermittent streams, rivers, and lakes.

(3) Proposed Facility Plan. A conceptual plan for the development of the facility including drawings and a report shall be prepared which incorporates the summary findings of the geologic and hydrogeologic report as set forth in Rule .1623(a)(13) of this Section and includes the drawings and reports described in Rule .1619(d)(1), (d)(2), (e)(1), (e)(2), (e)(3), (e)(5), (e)(6), and (e)(7) of this Section.

(4) Site Hydrogeologic Report. The study shall be prepared in accordance with the requirements set forth in Rule .1623(a) of this Section.

(5) Location Restrictions. A report shall be prepared demonstrating compliance with the criteria in Rule .1622 of this Section; and the report shall incorporate the proposed facility plan and, if applicable, discuss planned compliance with design and construction standards referenced in Rule .1622(2), (3), (4)(a), (5)(a), and (6) of this Section.

(6) Local government approvals for MSWLFs.

(A) If the permit applicant is a unit of local government and the proposed MSWLF unit is located within the permit applicant's jurisdiction, the approval of the local governing board shall be required. Approval may be in the form of either a resolution or a vote on a motion. A copy of the resolution or the minutes of the meeting where the vote was taken shall be submitted to the Division as part of the site study. Prior to issuance of approval, the jurisdictional local government where the MSWLF unit is to be located shall hold at least one public meeting to inform the community of the proposed waste management activities as described in the proposed facility plan prepared in accordance with Subparagraph (3) of this Paragraph. The local government where the MSWLF unit is to be located shall provide a public notice of the meeting at least 30 days prior to the meeting, shall place the proposed facility plan in a location accessible by the public, and shall make the location known in the public notice.

(B) A permit applicant other than the unit of local government with jurisdiction over the proposed MSWLF unit shall obtain a franchise in accordance with G.S. 130A-294(b1). A copy of the franchise shall be submitted to the Division as part of the site study. Prior to issuance of a franchise, the jurisdictional local government where the MSWLF unit is to be located shall conduct a public hearing in accordance with the public notification requirements of G.S. 130A-294(b1)(3) and in accordance with the publication and documentation requirements of Parts (C) and (D) of this Subparagraph.

(C) Public notice required by this Subparagraph shall be given by publication on the jurisdictional local government website, publication by a local news organization, and by other methods that the Division may request, such as posting in the post office and public places of the municipalities nearest the site under consideration, or posting on social media or mass mailings, if it is necessary to give actual notice of the activities to potentially affected persons. Public notice shall include time, place, and purpose of the meetings required by this Subparagraph.

(D) Public notice shall be documented in the site study. A recording or a written transcript of the meeting, all written material submitted representing community concerns, and all other written material distributed or used at the meeting pertaining to the proposed MSWLF unit shall be submitted as part of the site study.

(E) A letter from the unit of local government having zoning jurisdiction over the site which states that the proposal meets all the requirements of the local zoning ordinance, or that the site is not zoned shall be submitted to the Division with the site study.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Pending Delayed Eff. Date.

15A NCAC 13B .1619 FACILITY PLAN

(a) Purpose. A permit applicant shall prepare a facility plan that meets the requirements of this Rule.

(b) Scope.

(1) The facility plan shall define the comprehensive development of the property proposed for permit or described in the permit of an existing facility. The plan shall include a set of drawings and a report that present the long-term, general design concepts related to construction, operation, and closure of the MSWLF unit(s), including leachate management. The scope of the plan shall span the active life of the MSWLF unit(s). Additional solid waste management facilities located at the MSWLF facility shall be identified in the plan and shall meet the requirements of this Subchapter. The facility plan shall define the waste stream proposed for management at the MSWLF facility. If different types of landfill units or non-disposal activities are included in the facility design, the plan shall describe general waste acceptance procedures.

(2) The areal limits of the MSWLF unit(s), total capacity of the MSWLF unit(s), and the proposed waste stream shall be consistent with the Division's approval in accordance with Rule .1618(a)(1) of this Section for a new facility.

(c) Use of Terms. The terminology used in describing areas of the MSWLF unit shall be defined as follows and shall be used consistently throughout a permit application.

(1) "phase" means an area constructed with a base liner system that describes approximately five years of operating capacity. An applicant may request a permit to construct for any number of phases up to the entire extent of the disposal boundary for the life-of-site.

(2) "cell" means a subdivision of a phase which describes modular or partial construction.

(3) "subcell" means a subdivision of a cell which describes leachate and stormwater management for active or inactive areas of the constructed MSWLF.

(d) Facility Drawings. The facility plan shall include the following drawings:

(1) Site Development. The two drawings that plot site development shall be prepared on topographic maps representative of existing site conditions; and the maps shall locate or delineate the physical features referenced in Rule .1622 of this Section and shall incorporate a survey locating all property boundaries for the proposed landfill facility certified by a licensed professional land surveyor, if required by G.S. 89C.

(A) Landfill units and leachate facilities. This drawing shall delineate the areal limits of all landfill units and leachate facilities and incorporate the buffer requirements set forth in Rule .1624(b)(3) of this Section and the maximum allowed disposal area set forth in Rule .1624(b)(17) of this Section.

(B) All facilities. This drawing shall locate all solid waste management facilities and facility infrastructure, including landfill units and leachate facilities.

(2) Landfill Construction. All on-site grading activities related to the construction and operation of the MSWLF unit(s) shall be illustrated in facility drawings which:

(A) delineate the limits of grading, including borrow and stockpile areas;

(B) define phases of development in increments of five years of operating capacity, up to the entire extent of the disposal boundary for the life-of-site;

(C) propose base grades for the MSWLF unit(s);

(D) delineate the location of access roads, sedimentation basins, leachate pipeline and storage or treatment facilities and other structures related to the operation of the MSWLF unit; and

(E) propose final contours for the MSWLF unit(s) and facility features for closure that comply with the maximum allowed height requirement of Rule .1624(b)(17) of this Section.

(3) Landfill Operation. The following information related to the long-term operation of the MSWLF units shall be included in facility drawings:

(A) general grade and flow direction for the drainage layer component of the leachate collection system;

(B) size, location, and general grade for the leachate piping system, including on-site pipelines to leachate management facilities;

(C) proposed transitional contours for each phase of development, including operational grades for existing

phase(s) and construction grading for the new phase; and

(D) if included in the design, stormwater segregation features and details for inactive landfill subcells.

(e) Facility Report. The facility plan shall include the following information:

(1) Waste stream. A discussion of the characteristics of the wastes received at the facility and facility specific management plans shall incorporate:

(A) the types of waste specified for disposal;

(B) average monthly disposal rates and estimated variance;

(C) the area served by the facility;

(D) procedures for segregated management at different on-site facilities; and

(E) equipment requirements for operation of the MSWLF unit.

(2) Landfill Capacity. An analysis of landfill capacity and soil resources shall be performed.

(A) The data and assumptions used in the analysis shall be included with the facility drawings and disposal rates specified in the facility plan; and representative of operational requirements and conditions.

(B) The conclusions shall provide accurate volumetric estimates of total operating capacity that does not exceed the maximum allowed capacity defined in Rule .1624(b)(17) of this Section; operating capacity for each stage of development; in-place ratio of waste to soil; available soil resources from on-site or specific off-site sources; required quantities of soil for landfill construction, operation, and closure; and the estimated operating life of all MSWLF units in years.

(3) Containment and environmental control systems. A general description of the systems designed for proper landfill operation, system components, and corresponding functions shall be provided.

(4) Leachate Management. An analysis of the leachate management requirements and plans for the MSWLF facility shall incorporate the information required under this Subparagraph.

(A) The performance of and design concepts for the leachate collection system within active areas of the MSWLF unit and any storm water segregation included in the engineering design shall be described.

(B) Normal operating conditions. Normal operating conditions shall be defined and shall consider surge volumes generated by storm events; and average monthly values for leachate generation representative of the landfill's environment and operation using empirically derived estimates, or for landfill expansions, actual leachate generation data from the existing landfill.

(C) Leachate management system. A description of the leachate management system components and their engineered function shall be provided, and shall include leachate pipeline operating capacity; capacity of the storage and if applicable, the treatment facilities; and final disposal plans and applicable discharge limits, including documented prior approval of the waste water treatment plant which may be designated in the plan.

(D) A contingency plan shall be prepared for storm surges or other considerations exceeding design parameters for the storage or treatment facilities.

(5) Special engineering features. A description of any special engineering features specific to the landfill that the applicant is proposing shall be provided.

(6) Traffic study. A traffic study and NC Department of Transportation certification shall be prepared as required by G.S. 130A-295.5 and in accordance with the effective date and applicability set forth in S.L. 2007-550, s. 8.(b).

(7) Study of Environmental Impacts. A study of environmental impacts shall be conducted as required by G.S. 130A-295.6(a) and in accordance with the effective dates and applicability requirements in S.L. 2007-550, s. 9.(b) and S.L. 2013-413, s. 59.1 as amended by S.L. 2013-410, s. 47.6.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Pending Delayed Eff. Date.

15A NCAC 13B .1620 ENGINEERING PLAN

(a) Purpose. The engineering plan that is required to be submitted in accordance with Rule .1617 of this Section shall incorporate the detailed plans and specifications relative to the design and performance of the MSWLF's containment and environmental control systems. The engineering plan shall set forth the design parameters and construction requirements for the components of the MSWLF's systems, shall meet the requirements of this Rule, and shall establish the responsibilities of the design engineer. The engineered components shall be described in Rule .1624 of this Section.

(b) Responsibilities of the design engineer. The engineering plan shall be prepared by a licensed professional engineer if required by G.S. 89C. The design engineer shall incorporate a statement certifying this fact and bearing his or her seal of registration.
(c) Scope. An engineering plan shall be prepared for the proposed area of development that provides no less than five years of operating capacity and no more than the total facility capacity, consistent with the development phases and design criteria defined in the facility plan. The engineering plan shall incorporate the design of leachate management and other environmental control facilities. The engineering plan shall contain a report and a set of drawings that represent the engineering design in accordance with Paragraphs (d) and (e) of this Rule.
(d) An engineering report shall contain:
(1) An analysis of the facility design that conforms to:
(A) the standards for the foundation and the base liner system set forth in Rule .1624 of this Section;
(B) the standards for the cap system set forth in Rule .1627(c) of this Section; and
(C) the standards for the leachate storage facilities set forth in Rule .1680 of this Section.
(2) A summary of the facility design that includes:
(A) a discussion of the analytical methods used to evaluate the design;
(B) definition of the aspects and conditions of the design evaluated by the design engineer and assumptions made;
(C) a list of technical references used in the evaluation; and
(D) completion of any applicable location restriction demonstrations in accordance with Rule .1622 of this Section.
(3) A description of the materials and construction practices that conforms to the requirements set forth in Rule .1624 of this Section, and is consistent with the analysis of the facility design prepared in accordance with this Paragraph.
(e) Engineering drawings shall illustrate:
(1) existing conditions: site topography, features, existing disposal areas, roads, and buildings;
(2) grading plans: proposed limits of excavation, subgrade elevations, boring locations, and intermediate grading for partial construction;
(3) base liner system: grades for top of composite liner, slopes, anchor configuration, and liner penetration locations and details;
(4) leachate collection system: base elevations, piping system grade and inverts, cleanouts, valves, sumps, top of protective cover elevations, and details;
(5) location and feature details of any stormwater segregation systems;
(6) cap system: base and top elevations, landfill gas devices, infiltration barrier, surface water removal, protective and vegetative cover, and details;
(7) temporary and permanent sedimentation and erosion control plans;
(8) vertical separation requirements incorporating boring locations, cross sections, the maps prepared in accordance with Rule .1623(b)(2)(E) and (F) of this Section, and the grading plans; and
(9) additional engineering features and details if present.

History Note: Authority G.S, 130A-294;
Eff. October 9, 1993;
Pending Delayed Eff. Date.

15A NCAC 13B .1621 CONSTRUCTION QUALITY ASSURANCE PLAN

(a) The construction quality control and quality assurance (CQA) plan shall describe the observations and tests that will be used before, during, and upon completion of construction to ensure that the construction and materials meet the design specifications and the construction and certification requirements set forth in Rule .1624 of this Section. The CQA plan shall also describe the procedures to ensure that the integrity of the landfill systems will be maintained prior to waste placement.
(b) For construction of each cell, the CQA plan shall include the following information:
(1) The designation of responsibilities for the construction management organization shall be included in the CQA plan. A pre-construction meeting shall be conducted prior to beginning construction of the base liner system for a new cell. The meeting shall include a discussion of the construction management organization, respective duties during construction, and periodic reporting requirements for test results and construction activities.
(2) A description of all field observations, tests, equipment, and calibration procedures for field testing equipment that will be used to ensure that the construction and installation meets or exceeds all design criteria established in accordance with Rules .1620 and .1624 of this Section shall be included in the CQA plan.
(3) A description of all sampling protocols, sample size, methods for determining sample locations, and frequency of sampling shall be included in the CQA plan.
(4) A description of reporting required by the rules of this Section for CQA activities shall be included in the CQA plan.
(5) A description of planned progress and troubleshooting meetings, including the frequency, shall be included in the CQA Plan. The meetings shall occur no less than twice per

week, and the proceedings of the meetings shall be documented.

History Note: *Authority G.S. 130A-294;*
Eff. October 9, 1993;
Pending Delayed Eff. Date.

15A NCAC 13B .1622 LOCATION RESTRICTIONS FOR MSWLF FACILITY SITING

MSWLF units shall comply with the siting criteria set forth in this Rule. Documentation of approval by agencies other than the Division of Waste Management may be required to demonstrate compliance with specific criteria. The scope of demonstrations including design and construction performance shall be discussed in a site study and completed in the permit application.

(1) An MSWLF unit shall comply with 40 CFR 258.10.

(2) Floodplains. An MSWLF unit shall meet the floodplain requirements of G.S. 130A-295.6(c)(1) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b). MSWLF units that are not subject to the requirements of G.S. 130A-295.6(c)(1) shall not be located in 100-year floodplains unless the owners or operators demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in the carrying away of solid waste by flood waters.

(3) Wetlands. For purposes of this Rule, "wetland" or "wetlands" mean those areas that are defined in 40 CFR 232.2(r). MSWLF units shall meet the requirements of G.S. 130A-295.6(c)(2) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b). MSWLF units that are not subject to G.S. 130A-295.6(c)(2) shall not be located in wetlands, unless the owner or operator demonstrates the following for Division approval.

(a) Where applicable under Section 404 of the Clean Water Act or G.S. 113A, 130A, or 143, the presumption that a practicable alternative to the proposed landfill facility is available which does not involve wetlands is rebutted.

(b) The construction and operation of the MSWLF unit shall not cause or contribute to violations of any applicable State water quality standard, or violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act.

(c) The construction and operation of the MSWLF unit shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, or violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary.

(d) The construction and operation of the MSWLF unit shall not cause or contribute to degradation of wetlands.

(e) The owner or operator shall demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(i) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the MSWLF unit;

(ii) erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(iii) the volume and chemical nature of the waste managed in the MSWLF unit;

(iv) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) the potential effects of release of waste to the wetland and the resulting impacts on the environment; and

(vi) any additional factors to demonstrate that ecological resources in the wetland are protected to the extent required under Section 404 of the Clean Water Act and G.S. 113A, 130A, and 143.

(f) The owner or operator shall demonstrate that steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by avoiding impacts to wetlands as required by Subitems (a) through (d) of this Item, and offsetting remaining unavoidable wetland impacts through compensatory mitigation actions such as restoration of existing degraded wetlands or creation of man-made wetlands.

(g) The Division may request additional information if it is necessary to determine compliance with this Item.

(4) Fault Areas.

(a) MSWLF units shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the Division that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(b) For the purposes of this Item:

(i) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(iii) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

(5) Seismic Impact Zones.

(a) MSWLF units shall not be located in seismic impact zones, unless the owner or operator demonstrates to the Division that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(b) For the purposes of this Item:

(i) "Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(ii) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(iii) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(6) Unstable Areas. Owners or operators of MSWLF units proposed for location in an unstable area shall demonstrate that the MSWLF unit's design ensures that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator shall consider the following factors when determining whether an area is unstable:

(a) on-site or local soil conditions that may result in differential settling;

(b) on-site or local geologic or geomorphologic features; and

(c) on-site or local human-made features or events, both surface and subsurface.

(7) Cultural Resources. A MSWLF unit shall not damage or destroy property of natural or historical significance that has been listed on the National Register of Historic Places or included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300, which are incorporated by reference including subsequent amendments and editions. A letter from the State Historic Preservation Office within the Department of Natural and Cultural Resources stating whether the proposed use of the property will impact properties of archaeological or historical significance shall be included in the site study.

(8) State Nature and Historic Preserve. The location, access, size, and operation of the MSWLF unit shall not damage, destroy, or degrade any lands included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10. A letter from the Natural Heritage Program Office within the Department of Natural and Cultural Resources stating whether the proposed use of the property will damage, destroy, or degrade state nature and historic

preserve locations shall be included in the site study.

(9) Water Supply Watersheds.

(a) At the time that an MSWLF unit receives the first permit approval to construct, an MSWLF unit shall not be located in the critical area of a water supply watershed or in the watershed for a stream segment classified as WS-I, or in watersheds of other water bodies which indicate that no new landfills are allowed in accordance with 15A NCAC 02B .0200.

(b) An MSWLF unit that proposes to discharge leachate to surface waters shall obtain a National Pollution Discharge Elimination System (NPDES) Permit from the Department pursuant to Section 402 of the United States Clean Water Act.

(c) At the time that an MSWLF unit receives the first permit approval to construct, an MSWLF unit that proposes to discharge leachate to surface waters shall not be located within watersheds classified as WS-II or WS-III, or in watersheds of other water bodies which indicate that no new discharging landfills are allowed, in accordance with 15A NCAC 02B .0200.

(10) Endangered and Threatened Species. A MSWLF unit shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended.

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15A NCAC 13B .1623 GEOLOGIC AND HYDROGEOLOGIC INVESTIGATIONS FOR MSWLF FACILITIES

(a) Site Hydrogeologic Report. In accordance with Rule .1618(c)(4) of this Section, a permit applicant shall conduct a hydrogeologic investigation and prepare a report. An investigation shall assess the geologic and hydrogeologic characteristics of the parcel on which the MSWLF unit is proposed to be constructed (hereinafter "site") to determine the suitability of the site for solid waste management activities; which areas of the site are most suitable for MSWLF units; and the general groundwater flow paths and rates for the uppermost aquifer. The report shall provide an understanding of the relationship of the site groundwater flow regime to local and regional hydrogeologic features with special emphasis on the relationship of MSWLF units to groundwater receptors such as drinking water wells, and to groundwater discharge features. Additionally, the scope of the investigation shall include the general geologic information necessary to address compliance with the location restrictions described in Rule .1622 of this Section. The Site Hydrogeologic Report shall provide the following information:

(1) A report on local and regional geology and hydrogeology as defined in Rule .1618(c)(1) and (2) of this Section based on research of available literature for the area. This information is to be used in planning the field investigation. For sites located in piedmont or mountain regions, this report shall include a fracture trace analysis and Rose Diagram, based on an evaluation of structurally controlled features identified on a topographic map of the area.

(2) A report on field observations of the site that includes information on the following:

(A) topographic setting, springs, streams, drainage features, existing or abandoned wells, rock outcrops including trends in strike and dip, and other features that may affect site suitability or the ability to effectively monitor the site;

(B) groundwater discharge features. For a proposed site where the owner or operator does not control the property from any landfill unit boundary to the controlling, downgradient, groundwater discharge features, additional borings, geophysical surveys, or other hydrogeological investigations shall be required to characterize the nature and extent of groundwater flow; and

(C) the hydrogeological properties of the bedrock, if the water table of the uppermost aquifer on any portion of the site is in the bedrock. For the purpose of this Rule, "bedrock" means material below auger refusal.

(3) Borings for which the numbers, locations, and depths provide an understanding of the subsurface conditions and groundwater flow regime of the uppermost aquifer at the site. The number and depths of borings required shall depend on the hydrogeologic characteristics of the site. There shall be no less than an average of one boring for each 10 acres of the proposed landfill facility. All borings intersecting the water table shall be converted to piezometers or monitoring wells in accordance with 15A NCAC 02C .0108. Boring logs, field logs and notes, and well construction records for all onsite borings, wells, and piezometers shall be placed in the operating record, and shall also be provided to the Division upon request. Field

logs and notes shall be legible; and may be typewritten.

(4) A testing program for the borings that describes the frequency, distribution, and type of samples taken and the methods of analysis, such as ASTM Standards provided at https://www.astm.org, used to obtain the following information:
  (A) standard penetration - resistance using a method such as ASTM D 1586;
  (B) particle size analysis using a method such as ASTM D 6913;
  (C) soil classification: Unified Soil Classification System using a method such as such as ASTM D 2487;
  (D) formation descriptions; and
  (E) saturated hydraulic conductivity, porosity, and effective porosity for each lithologic unit of the uppermost aquifer including the vadose zone.

(5) In addition to borings, other investigation techniques may be used to obtain an understanding of the subsurface conditions at the site, including geophysical well logs, surface geophysical surveys, and tracer studies.

(6) Stratigraphic cross-sections identifying hydrogeologic and lithologic units, and stabilized water table elevations.

(7) Water table information, including:
  (A) tabulations of water table elevations measured at the time of boring, 24 hours, and stabilized readings for all borings, measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow direction and rate;
  (B) tabulations of stabilized water table elevations over time to develop an understanding of seasonal fluctuations in the water table;
  (C) an estimation of the long-term seasonal high groundwater table based on stabilized water table readings, hydrographs of wells in the area, precipitation and other meteorological and climatological data, and any other information available; and
  (D) a discussion of any natural or man-made activities that have the potential for causing water table fluctuations, including tidal variations, river stage changes, flood pool changes of reservoirs, high volume production wells, and injection wells.

(8) The horizontal and vertical dimensions of groundwater flow, including flow directions, rates, and gradients.

(9) Groundwater contour map(s) to show the occurrence and direction of groundwater flow in the uppermost aquifer, and any other aquifers identified in the hydrogeologic investigation. The groundwater contours shall be superimposed on a topographic map. The location of all borings and rock cores and the water table elevations or potentiometric data at each location used to generate the groundwater contours shall be shown on the groundwater contour map(s).

(10) A topographic map of the site locating soil borings with accurate horizontal and vertical control which are tied to a permanent onsite benchmark.

(11) Information for public potable wells and public water supply surface water intakes, within the local study area in accordance with Rule .1618(c)(2) of this Section, including:
  (A) available information and records for well construction, number and location served by wells, and production rates for public potable water wells; and
  (B) available information for all surface water intakes, including location, use, and production rate.

(12) Identification of other geologic and hydrologic considerations, including slopes, streams, springs, gullies, trenches, solution features, karst terranes, sinkholes, dikes, sills, faults, mines, groundwater discharge features, and groundwater recharge and discharge areas.

(13) A report summarizing the geological and hydrogeological evaluation of the site that includes the following:
  (A) a description of the relationship between the uppermost aquifer of the site to local and regional geologic and hydrogeologic features;
  (B) a discussion of the groundwater flow regime of the site focusing on the relationship of MSWLF units to groundwater receptors and to groundwater discharge features;
  (C) a discussion of the overall suitability of the proposed site for solid waste management activities and which areas of the site are most suitable for MSWLF units; and
  (D) a discussion of the groundwater flow regime of the uppermost aquifer at the site and the ability to monitor the MSWLF units to ensure early detection of any release of monitored constituents to the uppermost aquifer.

(b) Design Hydrogeologic Report. A geological and hydrogeological report shall be submitted in the application for

the permit to construct in accordance with Rule .1617(a)(1) of this Section, and shall meet the following criteria.

(1) The number and depths of borings required to characterize the geologic and hydrogeologic conditions of the site shall be based on the site-specific geologic and hydrogeologic characteristics of the site, and there shall be no less than an average of one boring for each acre of the area of investigation. The area of investigation shall be defined by the Division's review of the site study submitted in accordance with Rule .1618 of this Section. The scope and purpose of the investigation shall be as follows:

(A) The investigation shall provide information to demonstrate compliance with the vertical separation and foundation standards set forth in Rule .1624(b)(4) and (b)(7) of this Section, and Rule .1680(e) of this Section.

(B) The investigation shall provide detailed and localized data of the hydrogeologic characteristics of the uppermost aquifer for the proposed phase of MSWLF development and any leachate management systems to design an effective water quality monitoring system.

(2) The Design Hydrogeologic Report shall provide the following information:

(A) the information required in Subparagraphs (a)(4) through (a)(12) of this Rule;

(B) any technical information that is necessary to determine the design of the monitoring system as required by Rule .1631(c) of this Section;

(C) any technical information that is necessary to determine the relevant point of compliance as required by Rule .1631(a)(2) of this Section;

(D) for sites located in the piedmont or mountain regions, rock cores of no less than the upper 10 feet of the bedrock to provide an understanding of the fractured bedrock conditions and groundwater flow characteristics of the area of investigation. Testing for the rock corings shall provide rock types; recovery values; rock quality designation (RQD) values; saturated hydraulic conductivity and secondary porosity values; and rock descriptions, including fracturing and jointing patterns;

(E) a groundwater contour map based on the estimated long-term seasonal high groundwater table that is superimposed on a topographic map and includes the location of all borings and rock cores and the water table elevations or potentiometric data at each location used to generate the groundwater contours;

(F) for sites located in piedmont or mountain regions, a bedrock contour map illustrating the contours of the upper surface of the bedrock that is superimposed on a topographic map and includes the location of all borings and rock cores and the top of rock elevations used to generate the upper surface of bedrock contours;

(G) a three-dimensional groundwater flow net or several hydrogeologic cross-sections that characterize the vertical groundwater flow regime for this area;

(H) a report on the groundwater flow regime for the area including groundwater flow paths for both horizontal and vertical components of groundwater flow, horizontal and vertical gradients, flow rates, and groundwater recharge areas and discharge areas; and

(I) if required by G.S. 89E, a certification by a licensed geologist that all borings that intersect the water table at the site have been constructed and maintained as permanent monitoring wells in accordance with 15A NCAC 02C .0108, or that the borings and temporary piezometers will be abandoned prior to landfill construction in accordance with the procedures for permanent abandonment of wells as delineated in 15A NCAC 02C .0113, except that at the time of abandonment, all piezometers within the MSWLF unit footprint area shall be overdrilled to the full depth of the boring or to the top of bedrock, whichever is encountered first, prior to grout placement. The level of the grout within the boring shall not exceed in height the elevation of the proposed base grade.

(3) A water quality monitoring plan shall be submitted in the application for the permit to construct in accordance with Rule .1617(a)(1) of this Section, and shall include:

(A) information on the proposed groundwater monitoring systems, sampling and analysis requirements, and detection monitoring requirements provided in Rules .1630 through .1637 of this Section. In

addition to groundwater monitoring wells, the use of alternative monitoring systems may be required by the Division at sites where the owner or operator does not control the property from any landfill unit to the groundwater discharge features; or allowed by the Division at sites with hydrogeologic conditions favorable to detection monitoring by alternative methods. The number, spacing, and depths of groundwater monitoring points shall be determined based upon site-specific technical information that shall include an investigation of aquifer thickness, groundwater flow rate, and groundwater flow direction, including seasonal and temporal fluctuations in groundwater flow; and the thickness, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities of the saturated and unsaturated geologic units, including fill materials, overlying and comprising the uppermost aquifer; and

(B) information on the surface water monitoring including:

(i) sample locations for surface water features on or bordering the facility property, including no less than one upstream and one downstream sample location;

(ii) sampling and analytical methods for surface water samples;

(iii) surface water samples shall be analyzed for constituents listed in Rule .1633(a) of this Section;

(iv) the monitoring frequency shall be no less than semiannual during the active life of the facility, and no less than semiannual during the closure and post-closure periods; and

(v) information used for the development of the surface water monitoring system shall include drainage patterns and other hydrological conditions in the area; proximity of surface water to the facility; uses that are being or may be made of any surface water that may be affected by the facility; any other factors that relate to the potential for surface water impacts from the facility.

(4) The MSWLF unit shall not cause an exceedance of the surface water standards established under 15A NCAC 02B .0200.

(5) the final water quality monitoring plan shall be effective in providing early detection of any release of monitored constituents from any point in a MSWLF unit or leachate surface impoundment to the uppermost aquifer or surface waters, to be protective of public health and the environment; and

(6) the final water quality monitoring plan shall be prepared under the charge of and bear the seal of a licensed professional engineer or licensed geologist, if required by G.S. 89C or 89E.

History Note: Authority G.S. 130A-294;
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15A NCAC 13B .1624 CONSTRUCTION REQUIREMENTS FOR MSWLF FACILITIES

(a) This Rule shall establish the performance standards and criteria for designing and constructing an MSWLF unit. Additional standards for the cap system are described in Rule .1627 of this Section.

(b) MSWLF units shall comply with the following design and construction criteria:

(1) Base liner system description. The base liner system is constructed on the landfill subgrade and shall be designed to contain, collect and remove leachate generated by the MSWLF unit. The components of the liner system shall consist of the following.

(A) A Base Liner. The base liner shall consist of one of the following designs. The design described in Subpart (i) of this Part is the standard composite liner. If a landfill owner or operator proposes to utilize one of the alternative composite liner designs described in Subparts (ii) and (iii) of this Part the owner or operator shall demonstrate through a model that the proposed design shall ensure that maximum contaminant levels (MCL) promulgated under 40 CFR 141 shall not be exceeded in the uppermost aquifer at the relevant point of compliance as established in Rule .1631(a)(2) of this Section. For these two designs, the Division may waive the site-specific modeling requirement if it can be demonstrated that a previous site for which a model was approved had similar hydrogeologic characteristics, climatic factors, and

volume and physical and chemical leachate characteristics. If an alternative liner design other than Subparts (ii) and (iii) of this Part is proposed, the Division shall require site-specific, two-phase modeling as described in Subpart (iv) of this Part.

(i) A composite liner utilizing a compacted clay liner (CCL). The composite liner is one liner that consists of two components; a geomembrane liner installed above and in direct and uniform contact with a compacted clay liner with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1.0×10^{-7} cm/sec. The composite liner shall be designed and constructed in accordance with Subparagraphs (8) and (10) of this Paragraph.

(ii) A composite liner utilizing a geosynthetic clay liner (GCL). The composite liner is one liner that consists of three components: a geomembrane liner installed above and in uniform contact with a GCL overlying a compacted clay liner with a minimum thickness of 18 inches (0.46 m) and a permeability of no more than 1.0×10^{-5} cm/sec. The composite liner shall be designed and constructed in accordance with Subparagraphs (8), (9), and (10) of this Paragraph.

(iii) A composite liner utilizing two geomembrane liners. The composite liner consists of three components; two geomembrane liners each with an overlying leachate drainage system designed to reduce the maximum predicted head acting on the lower membrane liner to less than one inch. The lower membrane liner shall overlie a compacted clay liner with a minimum thickness of 12 inches (0.31m) and a permeability of no more than 1.0×10^{-5} cm/sec. The composite liner system shall be designed and constructed in accordance with Subparagraphs (8) and (10) of this Paragraph.

(iv) An alternative base liner. An alternative base liner system may be approved by the Division if the owner or operator demonstrates through a two-phase modeling approach that the alternative liner design meets the following criteria: the rate of leakage through the alternative liner system will be less than or equal to the composite liner system defined in Subpart (i) of this Part; and the design shall ensure that maximum contaminant levels (MCL), promulgated under 40 CFR 141, will not be exceeded in the uppermost aquifer at the relevant point of compliance as established in Rule .1631(a)(2) of this Section.

(B) A leachate collection system (LCS). The LCS shall be constructed on top of the base liner to establish a zone of protection between the base liner and the waste. The LCS shall be designed and constructed to collect and remove leachate from the MSWLF unit in accordance with Subparagraphs (2), (11), (12) and (13) of this Paragraph.

(2) Leachate collection system design and operation.

(A) The leachate collection system shall be hydraulically designed to remove leachate from the landfill and ensure that the leachate head on the composite liner does not exceed one foot. A means of quantitatively assessing the performance of the leachate collection system shall be provided in the engineering plan. The performance analysis shall evaluate the flow capacities of the drainage network necessary to convey leachate to the storage facility or off-site transport location. The engineering evaluation shall incorporate the following criteria:

(i) The geometry of the landfill and the leachate collection system shall be designed to control and contain the

volume of leachate generated by the 24-hour, 25-year storm.

(ii) The performance analysis shall evaluate the leachate collection system for the flow capacities during conditions when the maximum impingement rate occurs on the LCS. The LCS flow capacity shall be designed to reduce the head on the liner system generated by the 24-hour, 25-year storm to less than one foot within 72 hours after the storm event.

(B) The leachate collection system shall be designed to provide a zone of protection of no less than 24 inches separating the composite liner from landfilling activities, or shall be subject to approval from the Division upon a demonstration of equivalent protection for the liner system.

(C) The leachate collection system shall be designed to resist clogging and promote leachate collection and removal from the landfill.

(D) The leachate collection system shall be operated to remove leachate from the landfill in a way that ensures the leachate head on the composite liner does not exceed one foot under normal operating conditions.

(3) Horizontal separation requirements.

(A) Property line buffer. MSWLF units shall have a buffer of no less than 300 feet between the MSWLF unit and all property lines.

(B) Private residences and wells. MSWLF units shall have a buffer of no less than 500 feet between the MSWLF unit and private residences and wells existing at the time that the Division issues a notification of site suitability in accordance with Rule .1618(a)(1) of this Section.

(C) Surface waters. MSWLF units shall have a buffer of no less than 50 feet between the MSWLF unit and any stream, river, lake, pond, or other waters of the State as defined in G.S. 143-212 unless the owner or operator can demonstrate to the Division that the alternative management of the water and any discharge shall be as protective to waters of the State as a 50-foot buffer; and that the construction activities will conform to the requirements of Sections 404 and 401 of the Clean Water Act.

(D) Other landfill units. A buffer shall be established between a proposed MSWLF unit and any existing landfill units to establish a groundwater monitoring system to allow monitoring of each unit separately as set forth in Rule .1631 of this Section.

(E) MSWLF units shall meet the horizontal separation requirements of G.S. 130A-295.6(b) and (d) in accordance with the effective dates and applicability requirements of S.L. 2007-550, s. 9.(b) and S.L. 2013-413, s. 59.1, as amended by S.L. 2013-410, s. 47.6, and S.L. 2007-543.

(4) Vertical separation requirements. A MSWLF unit shall be constructed so that the post-settlement bottom elevation of the base liner system is no less than four feet above the seasonal high groundwater table and the bedrock datum plane contours established in the Design Hydrogeological Report prepared in accordance with Rule .1623(b) of this Section. MSWLF units shall meet the vertical separation requirements of G.S. 130A-295.6(f) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b).

(5) Survey control. One permanent benchmark of known elevation measured from a U.S. Geological Survey benchmark shall be established and maintained for each 50 acres of developed landfill, or part thereof, at the landfill facility. This benchmark shall be the reference point for establishing vertical elevation control. Any survey performed pursuant to this Subparagraph shall be performed by a licensed professional land surveyor if required by G.S. 89C. Latitude and longitude, expressed in decimal degrees, shall be indicated at the approximate center of the facility.

(6) Location coordinates. The North Carolina State Plane (NCSP) coordinates shall be established and one of its points shall be the benchmark of known NCSP coordinates.

(7) Landfill subgrade. The landfill subgrade is the in-situ soil layer(s), constructed embankments, and select fill providing the foundation for construction of the unit. A foundation analysis shall be performed to determine the structural integrity of the subgrade to support the loads and stresses imposed by the weight of the landfill and to support overlying facility components and maintain their integrity of the components. Minimum post-settlement slope for the subgrade shall be two percent. Safety

factors shall be specified for facilities located in seismic impact zones.

(A) Materials required. The landfill subgrade shall be free of organic material and consist of in-situ soils or a select fill approved by the Division in accordance with the performance standards contained in this Subparagraph.

(B) Construction requirements.

(i) The landfill subgrade shall be graded in accordance with the approved plans and specifications that are incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(ii) The owner or operator of the MSWLF units shall notify the Division via e-mail no less than 24 hours before conducting the subgrade inspection required by Part (C) of this Subparagraph.

(C) Certification requirements. The subgrade surface shall be inspected in accordance with the following requirements:

(i) Before beginning construction of the base liner system, the project engineer shall visually inspect the exposed surface to evaluate the suitability of the subgrade and document that the surface is properly prepared and that the elevations are consistent with the approved engineering plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(ii) The subgrade shall be proof-rolled using procedures and equipment specified by the design or project engineer.

(iii) The subgrade shall be tested for density and moisture content at a minimum frequency as specified in the plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(8) Compacted clay liner. "Compacted clay liner" means a low permeability barrier designed to control fluid migration in a cap liner system or base liner system. A compacted clay liner shall meet the following requirements:

(A) Materials required. The soil materials used in constructing a compacted clay liner may be obtained from sources either on-site, or from off-site, or a combination of the two sources. If the native soil materials found at the source do not meet the permeability requirements, the soil materials shall be conditioned with bentonite so that they meet the permeability requirements. The soil material shall be free of particles greater than three inches in any dimension.

(B) Construction requirements. Construction methods for the compacted clay liner shall be based upon the type and quality of the borrow source and shall be verified in the field by constructing test pads. The project engineer shall ensure that the compacted clay liner installation conforms with the Division approved plans including the following requirements:

(i) A test pad shall be constructed prior to beginning installation of the compacted clay liner and whenever there is a change in soil material properties. The area and equipment, liner thickness, and subgrade slope and conditions shall be representative of full-scale construction. Acceptance and rejection criteria shall be verified for the tests specified in accordance with Part (C) of this Subparagraph. For each lift, a minimum of three test locations shall be established for testing moisture content, density, and a composite sample for recompacted lab permeability. At least one shelby tube sample for lab permeability testing, or another in-situ test that is approved by the Division as equivalent for permeability determination shall be obtained per lift.

(ii) Soil conditioning, placement, and compaction shall be maintained within the range identified in the moisture-

density-permeability relation developed in accordance with Part (C) of this Subparagraph.

(iii) The final compacted thickness of each lift shall be a maximum of six inches.

(iv) Prior to placement of successive lifts, the surface of the lift in place shall be scarified or otherwise conditioned to eliminate lift interfaces.

(v) The final lift shall be protected from environmental degradation.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of all quality assurance and quality control testing required in this Subparagraph. The testing procedures and protocols shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the Division approved plans including the following requirements:

(i) The quality control testing for accepting materials prior to and during construction of a compacted clay liner shall include particle size distribution analysis, Atterberg limits, triaxial cell laboratory permeability, moisture content, percent bentonite admixed with soil, and the moisture-density-permeability relation. The project engineer shall certify that the materials used in construction were tested according to the Division approved plans.

(ii) The quality assurance testing for evaluating each lift of the compacted clay liner shall include moisture content and density, and permeability testing. For each location the moisture content and density shall be compared to the appropriate moisture-density-permeability relation. The project engineer shall certify that the liner was constructed using the methods and acceptance criteria consistent with test pad construction and tested in accordance with the plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(iii) Any tests resulting in the penetration of the compacted clay liner shall be repaired using bentonite or as approved by the Division.

(9) Geosynthetic clay liner. "Geosynthetic clay liner" means a geosynthetic hydraulic barrier manufactured in sheets and installed by field seaming techniques. A geosynthetic clay liner shall meet the following requirements:

(A) Materials required. Geosynthetic clay liners shall consist of natural sodium bentonite clay or equivalent, encapsulated between two geotextiles or adhered to a geomembrane. The liner material and any seaming materials shall have chemical and physical properties that are resistant to change, damage, or degradation from environmental exposure, waste placement, leachate generation, and subgrade moisture composition. Accessory bentonite, used for seaming, repairs and penetration seaming shall be made from the same sodium bentonite as used in the geosynthetic clay liner or as recommended by the manufacturer. The type of geosynthetic clay liner shall be approved by the Division according to the criteria set forth in this Part. Reinforced geosynthetic clay liners shall be used on all slopes greater than 10H:IV. The geosynthetic clay liner material shall have a demonstrated hydraulic conductivity of not more than 5×10^{-9} cm/sec under the anticipated confining pressure.

(B) Design and Construction requirements. The design engineer shall ensure that the design of the geosynthetic clay liner installation conforms to the requirements of the manufacturer's recommendations and the Division approved plans. The

Division approved plans shall provide for and include the following provisions:

(i) the surface of the supporting soil upon which the geosynthetic clay liner will be installed shall be free of stones, organic matter, protrusions, loose soil, and any abrupt changes in grade that could damage the geosynthetic clay liner;

(ii) materials placed on top of the GCL shall be placed in accordance with the plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section. Equipment used to install additional geosynthetics shall be specified by the design engineer and as recommended by the manufacturer. A minimum of 12 inches of separation between the application equipment and the geosynthetic clay liner shall be provided when applying soil materials;

(iii) materials that become prematurely hydrated shall be removed, repaired, or replaced, as specified by the project engineer and in accordance with the plans incorporated into the permit to construct prepared in accordance with Rule .1604(b) of this Section;

(iv) field seaming preparation and methods, general orientation criteria, and restrictive weather conditions;

(v) anchor trench design;

(vi) critical tensile forces and slope stability, including seismic design;

(vii) protection from environmental damage; and

(viii) physical protection from the materials installed on top of the geosynthetic clay liner.

(C) Certification requirements.

(i) Before beginning installation of the geosynthetic clay liner, the project engineer shall visually inspect the exposed surface to evaluate the suitability of the subgrade and document that the surface is prepared in accordance with and the elevations are consistent with the approved engineering plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(ii) The project engineer shall ensure that the geosynthetic clay installation conforms to the requirements of the manufacturer's recommendations and the plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(iii) The project engineer shall include in the construction quality assurance report a discussion of quality assurance and quality control testing to document that material is placed in accordance with plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(iv) The project engineer shall include in the construction quality assurance report a discussion of the approved data resulting from the quality assurance and quality control testing required in this Subparagraph.

(v) The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division.

(vi) The results of all testing shall be included in the construction quality assurance report, including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and performance documentation

of all retesting, in accordance with the plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section, including quality control testing of the raw materials and manufactured product; field and independent laboratory destructive testing of geosynthetic clay liner samples; and documentation prepared by the project engineer in accordance with Subpart (i) of this Part.

(10) Geomembrane liner. "Geomembrane liner" means a geosynthetic hydraulic barrier manufactured in sheets and installed by field seaming techniques. A geomembrane liner shall comply with the following requirements:

(A) Materials required. The liner material and any seaming materials shall have chemical and physical properties that are resistant to change, damage, or degradation from environmental exposure, waste placement, and leachate generation. The type of geomembrane shall be approved by the Division according to the criteria set forth in this Part. High density polyethylene geomembrane liners shall have a thickness of no less than 60 mils. The minimum thickness of any geomembrane approved by the Division shall be greater than 30 mils.

(B) Construction requirements. The project engineer shall ensure that the geomembrane installation conforms to the requirements of the manufacturer's recommendations and the Division approved plans including the following:

(i) the surface of the supporting soil upon which the geomembrane will be installed shall be reasonably free of stones, organic matter, protrusions, loose soil, and any abrupt changes in grade that could damage the geomembrane;

(ii) field seaming preparation and methods, general orientation criteria, and restrictive weather conditions;

(iii) anchor trench design;

(iv) critical tensile forces and slope stability;

(v) protection from environmental damage; and

(vi) physical protection from the materials installed on top of the geomembrane.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the approved data resulting from the quality assurance and quality control testing required in this Subparagraph. The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section, including the following:

(i) quality control testing of the raw materials and manufactured product;

(ii) test seams shall be made upon each start of work for each seaming crew, upon every four hours of continuous seaming, every time seaming equipment is changed or if there are changes in geomembrane temperature or weather conditions that have the potential to affect seaming operations;

(iii) nondestructive testing of all seams;

(iv) field and independent laboratory destructive testing of seam samples; and

(v) evaluation of the entire liner for leaks as required by G.S. 130A-295.6(h)(1) using technology such as electronic leak detection.

(11) Leachate collection pipes. A leachate collection pipe network shall be a component of the leachate collection system and shall be hydraulically designed to convey leachate from the MSWLF unit to a leachate storage or treatment facility that is able to contain the

leachate generated, or a point of off-site transport. Leachate collection piping shall comply with the following requirements:

(A) Materials required.

(i) The leachate collection piping shall have a minimum nominal diameter of six inches.

(ii) The chemical properties of the pipe and any materials used in installation shall be resistant to change, damage, or degradation from waste placement or leachate generated by the landfill.

(iii) The physical properties of the pipe shall provide adequate structural strength to support the maximum static and dynamic loads and stresses imposed by the overlying materials and any equipment used in construction and operation of the landfill. Specifications for the pipe shall be submitted in the engineering report.

(B) Construction requirements.

(i) Leachate collection piping shall be installed according to the plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section.

(ii) The location and grade of the piping network shall provide access for periodic cleaning and inspection in accordance with G.S. 130A-295.6(h)(3).

(iii) The bedding material for the leachate collection pipe shall consist of a coarse aggregate installed in direct contact with the pipe. The aggregate shall be chemically compatible with the leachate generated and shall be placed to provide adequate support to the pipe. The bedding material for main collector lines shall be extended to and in direct contact with the waste layer or a graded soil or granular filter.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the material is placed according to the approved plans. The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with plans incorporated into the permit to construct in accordance with Rule .1604(b) of this Section, including the following:

(i) All leachate piping installed from the MSWLF unit to the leachate storage or treatment facility shall be watertight or provide dual containment in accordance with G.S. 130-295.6(h)(4) at landfill facilities permitted by the Division after August 1, 2007.

(ii) The seal where the piping system penetrates the geomembrane shall be inspected and tested for leakage. The testing shall not damage or destroy the seal, the piping, or the geomembrane.

(12) Drainage layers. Any soil, granular, or geosynthetic drainage nets used in the leachate collection system shall comply with the following requirements:

(A) Materials required.

(i) The chemical properties of the drainage layer materials shall be resistant to change, damage, or degradation from waste placement or leachate generated by the landfill.

(ii) The physical and hydraulic properties of the drainage layer materials shall promote lateral drainage of leachate through a zone of relatively high permeability or transmissivity under the predicted loads imposed by overlying materials.

(B) Construction requirements.

(i) The drainage layer materials shall be placed in accordance

with the approved plans prepared in accordance with Rule .1604(b) of this Section and in a manner that prevents equipment from working directly on the geomembrane.

(ii) The drainage layer materials shall be stable on the slopes specified on the engineering drawings.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the drainage layer material is placed according to the approved plans. The testing procedures and protocols for field installation shall be submitted in accordance with of Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the approved plans prepared in accordance with Rule .1604(b) of this Section.

(13) Filter layer criteria. All filter collection layers used in the leachate collection system shall be designed to prevent the migration of fine soil particles into a courser grained material, and permit water or gases to freely enter a drainage medium such as a pipe or drainage layer without clogging. A filter layer shall comply with the following requirements:

(A) Materials required.

(i) Graded cohesionless soil filters. The granular soil material used as a filter shall have no more than five percent by weight passing the No. 200 sieve and no soil particles larger than three inches in any dimension.

(ii) Geosynthetic filters. Geosynthetic filter materials shall demonstrate adequate permeability and soil particle retention, and chemical and physical resistance which is not adversely affected by waste placement, any overlying material or leachate generated by the landfill.

(B) Construction requirements. All filter layers shall be installed in accordance with the engineering plan and specifications incorporated into the permit to construct prepared in accordance with Rule .1604(b) of this Section. Geosynthetic filter materials shall not be wrapped around leachate collection piping in any way that impedes the flow of leachate into the piping.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the filter layer material is placed according to the approved plans. The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the approved plans prepared in accordance with Rule .1604(b) of this Section.

(14) Other engineering structures. Engineering structures incorporated in the design and necessary to comply with the requirements of this Section and any other engineering structures proposed by the applicant shall be specified in the engineering plan. Material, construction, and certification requirements necessary to ensure that the structure is constructed according to the design and acceptable engineering practices shall be included in the Division approved plan.

(15) Sedimentation and erosion control. Structures and measures shall be designed and maintained to manage the rainwater that drains over land from or onto any part of the facility or unit generated by the 24-hour, 25-year storm event, and conform to the requirements of the Sedimentation Control Law (15A NCAC 04) and any required NPDES permits.

(16) Construction quality assurance (CQA) report.

(A) A CQA report shall be submitted:

(i) after completing landfill construction to qualify the

constructed MSWLF unit for a permit to operate;

(ii) after completing construction of the cap system in accordance with the requirements of Rule .1629 of this Section; and

(iii) according to the reporting schedule developed in accordance with Rule .1621 of this Section.

(B) The CQA report shall include the information prepared in accordance with the requirements of Rule .1621 of this Section containing results of all construction quality assurance and construction quality control testing required in this Rule including documentation of any failed test results, descriptions of procedures used to correct the improperly installed material and results of all retesting performed. The CQA report shall contain as-built drawings noting any deviation from the approved engineering plans, and shall also contain a comprehensive narrative including daily reports from the project engineer, a series of color photographs of major project features, and documentation of proceedings of all progress and troubleshooting meetings.

(C) The CQA report shall include a statement by the project engineer that construction was completed in accordance with the CQA plan, the conditions of the permit to construct, and the requirements of the rules of this Section. If required by G.S. 89C, the statement shall be certified and bear the seal of the project engineer.

(D) The Division shall review the CQA report within 30 days of a complete submittal to ensure that the report meets the requirements of this Subparagraph.

(17) Maximum capacity, disposal area, and height for landfills permitted after August 2007. MSWLF units shall meet the requirements of G.S. 130A-295.6(i) regarding maximum allowed capacity, disposal area and height in accordance with the effective date and applicability of S.L. 2007-550, s. 9.(b).

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Temporary Amendment Eff. July 8, 1998;
Amendment Eff. April 1, 1999;
Pending Delayed Eff Date.

15A NCAC 13B .1625 OPERATION PLAN FOR MSWLF FACILITIES

(a) The owner or operator of a MSWLF unit shall maintain and operate the facility in accordance with the operation plan prepared in accordance with this Rule.

(b) Operation Plan. The owner or operator of a MSWLF unit shall prepare an operation plan for each proposed area of landfill development consistent with the engineering plan submitted in accordance with Rule .1620 of this Section. The operation plan shall be submitted in accordance with Rule .1617 of this Section and shall include the following:

(1) Operation drawings. Drawings shall be prepared for each proposed area of landfill development. The drawings shall be consistent with the engineering plan and shall illustrate the following:

(A) existing conditions, including the known limits of existing disposal areas;

(B) progression of construction cells for incremental or modular construction;

(C) progression of operation, including initial waste placement, daily operations, transition contours, and final contours;

(D) leachate and stormwater controls for active and inactive subcells;

(E) special waste handling areas, such as any asbestos disposal area, within the MSWLF unit;

(F) buffer zones, noting restricted use;

(G) stockpile and borrow operations; and

(H) other solid waste activities, such as tire disposal or storage, yard waste storage, white goods storage, and recycling pads.

(2) Operation report. The report shall provide a narrative discussion of the operation drawings and contain a description of the facility operation that conforms to the requirements of Rule .1626 of this Section.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Pending Delayed Eff. Date.

15A NCAC 13B .1626 OPERATIONAL REQUIREMENTS FOR MSWLF FACILITIES

The owner or operator of any MSWLF unit shall maintain and operate the facility in accordance with the requirements set forth in this Rule and the operation plan as described in Rule .1625 of this Section.

(1) Waste Acceptance and Disposal Requirements.

(a) A MSWLF shall accept only those solid wastes that it is permitted to receive. The landfill owner or operator shall notify the Division within 24

hours of attempted disposal of any waste the MSWLF is not permitted to receive, including waste from outside the area the MSWLF is permitted to serve.

(b) The following wastes are prohibited from disposal at a MSWLF unit:
  (i) hazardous waste, including hazardous waste from very small quantity generators as defined by 40 CFR 260.10, incorporated by reference at 15A NCAC 13A .0102(b);
  (ii) polychlorinated biphenyl (PCB) wastes as defined in 40 CFR 761.3; and
  (iii) liquid wastes unless they are managed in accordance with Item (9) of this Rule.

(c) Spoiled foods, animal carcasses, abattoir waste, hatchery waste, and other animal waste delivered to the disposal site shall be covered upon receipt.

(d) Asbestos waste shall be managed in accordance with 40 CFR 61(M). Asbestos waste shall be covered upon receipt, with soil or compacted waste to prevent airborne conditions. Asbestos waste shall be disposed of using methods that prevent unintended exposure of asbestos by future land-disturbing activities, such as disposal in a marked area separate and apart from other solid wastes, or recording the latitude and longitude coordinates of the asbestos area within the existing landfill footprint. The disposal methods shall be described in the operations plan required by Rule .1625 of this Section.

(e) Wastewater treatment sludges may only be accepted for disposal in accordance with the following conditions:
  (i) if it is used as a soil conditioner and incorporated into or applied onto the vegetative growth layer at no more than six inches in depth; or
  (ii) if it is being co-disposed if the facility meets all design requirements contained within Rule .1624 of this Section, and approved within the permit, or has been previously approved as a permit condition.

(f) Owners or operators of MSWLF units shall develop and implement a waste screening plan as required by G.S. 130A-295.6(g) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b). The plan shall comply with 40 CFR 258.20 and shall include screening for the wastes prohibited by Sub-Item (1)(b) of this Rule. Owners and operators of MSWLF units that are not subject to G.S. 130A-295.6(g) shall develop and implement a waste screening plan that shall comply with 40 CFR 258.20 and shall include screening and a contingency plan for the wastes prohibited by Sub-Item (1)(b) of this Rule.

(g) Waste placement at MSWLF units shall be within the areal limits of the base liner system and in compliance with the effective permit.

(2) Compaction and cover material requirements. Solid waste shall be managed within the disposal area throughout the life-of-site and post-closure care period to prevent the escape of waste and the attraction of vectors and scavenging, and to minimize fires and the generation of odors. The owner or operator shall comply with this requirement using the following compaction and cover procedures:
  (a) The owner or operator shall compact the solid waste.
  (b) Except as provided in Sub-Item (c) of this Item, the owners or operators of all MSWLF units shall cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary to prevent the escape of waste and the attraction of vectors and scavenging, and to minimize fires and the generation of odors.
  (c) Alternative materials or an alternative thickness of cover (other than at least six inches of earthen material) are allowed with prior approval of the Division if the owner or operator demonstrates that the alternative material or thickness prevents the escape of waste and the attraction of vectors and scavenging, and minimizes fires and the generation of odors without presenting a threat to human health and the environment, in accordance with 40 CFR 258.21. Alternative materials that have been approved for use at any MSWLF by the Division may be used at all

MSWLFs in accordance with G.S. 130A-295.6(h1).

(d) Areas that will not have additional wastes placed on them for 12 months or more, but where final termination of disposal operations has not occurred, shall be covered with a no less than one foot of intermediate cover.

(3) Vector control. Owners or operators of all MSWLF units shall prevent or control on-site populations of vectors.

(4) Explosive gases control.

(a) Owners or operators of MSWLF units shall ensure that:

(i) the concentration of explosive gases generated by the facility does not exceed 25 percent of the lower explosive limit in on-site facility structures, excluding gas control or recovery system components; and

(ii) the concentration of explosive gases does not exceed the lower explosive limit at the facility property boundary.

(b) Owners or operators of MSWLF units shall implement a routine landfill gas monitoring program to ensure that the standards of Sub-item (a) of this Item are met as follows:

(i) The type of monitoring shall be determined based on soil conditions, the hydrogeologic conditions surrounding the facility, the hydraulic conditions surrounding the facility, and the location of facility structures and property boundaries.

(ii) The concentration of methane in landfill gas shall be monitored. The monitoring shall be conducted at a frequency of no less than quarterly.

(iii) The Division may also require quarterly monitoring of landfill gas for explosive gases other than methane, such as hydrogen sulfide, if it is necessary to ensure compliance with Sub-item (a) of this Item. If the Division requires monitoring of additional explosive gases, the Division shall provide written notice to the facility of the requirement.

(c) If explosive gas levels exceeding the limits specified in Sub-item (a) of this Item are detected, the owner or operator shall:

(i) upon discovery of detection, notify the Division and take any steps that may be necessary to ensure protection of human health, such as evacuation or monitoring of offsite structures for explosive gases;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan for the explosive gas releases, place a copy of the plan in the operating record, and notify the Division that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(d) The owner or operator may submit a request in writing to the Division for an extension or alternate schedule for compliance with Sub-Item (c)(ii) and (iii) of this Item, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:

(i) the justification submitted by the owner or operator;

(ii) actions taken by the owner or operator upon discovery of the exceedances;

(iii) the explosive gas levels measured and reported; and

(iv) the circumstances and use of properties surrounding the facility.

(5) Air Criteria and Fire Control.

(a) Owners or operators of MSWLF units shall ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved

or promulgated by the U.S. EPA Administrator pursuant to Section 110 of the Clean Air Act, as amended.

(b) Open burning, as defined in 15A NCAC 02D .1900, of solid waste, except for the approved burning of land clearing debris generated on site or debris from emergency clean-up operations, as provided for in 40 CFR 258.24, is prohibited at all MSWLF facilities. Prior to any burning, a request shall be sent to the Division for review. The Division shall approve the burning if the Division determines that the burning is one of the two types of burning described in this Sub-Item. A notation of the date of approval and the name of the Division personnel who approved the burning shall be included in the operating record.

(c) MSWLF units shall maintain equipment on site to control accidental fires and arrangements shall be made with the local fire protection agency to provide fire-fighting services.

(d) Fires and explosions that occur at a MSWLF require verbal notice to the Division within 24 hours and written notification within 15 days. Written notification shall include the suspected cause of fire or explosion, the response taken to manage the incident, and the action(s) to be taken to prevent the future occurrence of fire or explosion.

(6) Access and safety requirements.

(a) The MSWLF shall be secured to prevent unauthorized entry by means such as gates, chains, berms, fences, or natural barriers such as rivers.

(b) In accordance with G.S. 130A-309.25, an individual trained in landfill operations shall be on duty at the site while the MSWLF is open for public use and at all times during active waste management operations at the MSWLF to ensure compliance with operational requirements.

(c) The access road to the MSWLF shall be of all-weather construction and maintained to allow access by Department vehicles or vehicles containing waste. The access roads or paths to monitoring locations shall be maintained to allow access by the Department.

(d) Fugitive dust emissions generated by site operations shall comply with 15A NCAC 02D .0540.

(e) Signs providing information on disposal procedures, the hours during which the site is open for public use, the permit number, and any information specified in the permit conditions to be included on the sign shall be posted at the site entrance.

(f) Signs shall be posted stating the types of waste that shall not be accepted at the MSWLF unit, such as hazardous waste or liquid waste.

(g) Traffic signs or markers shall be provided to direct traffic to and from the discharge area to minimize traffic congestion.

(h) The removal of solid waste from a MSWLF is prohibited unless the owner or operator approves and the removal is not performed on the working face.

(i) Barrels and drums shall not be disposed of unless they are empty and perforated so that no liquid or hazardous waste can be contained therein, except fiber drums containing asbestos.

(7) Erosion and sedimentation control requirements. Erosion control measures consisting of vegetative cover, materials, structures, or other devices shall be utilized to prevent silt from leaving the site and to prevent on-site erosion, and shall comply with 15A NCAC 04, which is incorporated by reference including subsequent amendments and editions.

(8) Drainage control and water protection requirements.

(a) Surface water shall be diverted from the operational area.

(b) Surface water shall not be impounded over or in waste.

(c) Solid waste shall not be disposed of in water.

(d) Leachate shall be contained within a lined disposal cell or leachate collection and storage system. All leachate shall be treated, as required by the receiving facility, prior to discharge. A National Pollutant Discharge Elimination System (NPDES) permit may be required prior to the discharge of leachate to surface waters, as provided by 40 CFR 258.26 and 258.27.

(e) MSWLF units shall not:

(i) cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean

Water Act, including the NPDES requirements, pursuant to Section 402 of the Clean Water Act; or

(ii) cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act, as amended.

(9) Liquids restrictions.

(a) Bulk or non-containerized liquid waste shall not be placed in MSWLF units unless:

(i) the waste is household waste other than septic waste and waste oil; or

(ii) the waste is leachate or gas condensate derived from the MSWLF unit, the MSWLF unit is designed with a composite liner and leachate collection system as described within Rule .1624 of this Section, and the design and procedures for returning the leachate or gas condensate to the MSWLF unit are described in the permit conditions or plans incorporated into the permit.

(b) Containers holding liquid wastes shall not be placed in the MSWLF unit unless they meet the criteria set forth in 40 CFR 258.28(b)(1) through (3).

(10) Operating Record and Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit shall record and retain at the facility or in an alternative location stated in the permit an operating record that shall contain the following information:

(i) inspection records, waste determination records, certifications of training required by G.S. 130A-309.25, and documentation of training required by Sub-item (1)(f) of this Rule;

(ii) amounts by weight of solid waste received at the facility including county of generation consistent with G.S. 130A-309.09D;

(iii) gas monitoring results and any remediation plans required by Item (4) of this Rule;

(iv) any demonstration, certification, finding, monitoring, testing, or analytical data required by Rules .1630 thru .1637 of this Section;

(v) any monitoring, testing, or analytical data as required by Rule .1627 of this Section; and

(vi) any cost estimates and financial assurance documentation required by Rule .1628 of this Section and Section .1800 of this Subchapter.

(b) All information contained in the operating record shall be furnished to the Division according to the permit, or shall be made available for review by the Division at the time and place of an inspection of the MSWLF or upon request. The information contained in the operating record shall be recorded and retained in a format that is accessible and viewable by the Division.

(c) The owner or operator shall maintain a copy of the operation plan required by Rule .1625 of this Section at the facility.

(11) Windblown waste requirements. Methods such as fencing and diking shall be provided within the area to confine solid waste that is subject to be blown by the wind. At the conclusion of each operating day, all windblown material resulting from the operation shall be collected and disposed of by the owner or operator.

(12) Leachate management plan. The owner or operator of a MSWLF unit designed with a leachate collection system shall establish and maintain a leachate management plan that includes the following:

(a) periodic maintenance of the leachate collection system;

(b) maintaining records for the amounts of leachate generated;

(c) semi-annual leachate quality sampling;

(d) approval documentation for final leachate disposal; and

(e) a contingency plan for extreme operational conditions.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. May 1, 2011;
Readopted Eff. Pending Legislative Review.

15A NCAC 13B .1627 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR MSWLF FACILITIES

(a) Purpose. This Rule shall establish criteria for the closure of all MSWLF units and subsequent requirements for post-closure compliance. The owner or operator shall develop specific plans for the closure and post-closure of the MSWLF facility or units that comply with Rule .1629 of this Section, and submit them to the Division for review and approval.

(b) Scope.

(1) This Rule shall establish standards for the scheduling and documenting closure of all MSWLF units, and design of the cap system. Construction requirements for the cap system shall incorporate specific requirements from Rule .1624 of this Section.

(2) This Rule shall establish standards for the monitoring and maintenance of the MSWLF unit(s) following closure.

(c) Closure criteria.

(1) An MSWLF unit shall have a cap system installed that shall be designed and constructed to:

(A) have a permeability less than or equal to the permeability of any base liner system or the in-situ subsoils underlying the landfill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less;

(B) minimize infiltration through the closed MSWLF unit by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and

(C) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains no less than six inches of earthen material that is capable of sustaining native plant growth.

(2) The owner or operator may submit a request for an alternative cap system or alternative post-settlement slopes in the closure and post-closure care plan submitted in accordance with Rule .1629 of the Section. The request shall include a demonstration of the following:

(A) the alternative cap system will achieve a reduction in infiltration equivalent to or greater than the low-permeability barrier specified in Subparagraph (1) of this Paragraph; and

(B) the erosion layer will provide protection equivalent to or greater than the erosion layer specified in Subparagraph (3) of this Paragraph.

(3) Construction of the cap system for all MSWLF units shall conform to the requirements set forth in Rule .1624(b)(8), (b)(9), (b)(10), (b)(14), and (b)(15) of this Section and the following requirements:

(A) post-settlement surface slopes shall be a minimum of five percent and a maximum of 25 percent; and

(B) a gas venting or collection system shall be installed below the low-permeability barrier to minimize pressures exerted on the barrier.

(4) Prior to beginning closure of each MSWLF unit as specified in Subparagraph (5) of this Paragraph, an owner or operator shall notify the Division in writing that a notice of the intent to close the unit has been placed in the operating record.

(5) The owner or operator shall begin closure activities of each MSWLF unit no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes or no later than one year after the most recent receipt of wastes, if the MSWLF unit has remaining capacity. Extensions beyond the deadline for beginning closure may be granted by the Division if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has and will continue to prevent threats to human health and the environment from the unclosed MSWLF unit.

(6) The owner or operator of all MSWLF units shall complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in Subparagraph (5) of this Paragraph. Extensions of the closure period may be granted by the Division if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and they have and will continue to prevent threats to human health and the environment from the unclosed MSWLF unit.

(7) Following closure of each MSWLF unit, the owner or operator shall notify the Division that a certification, signed by the project engineer verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(8) Recordation. Following closure of all MSWLF units, the owner or operator shall record a notice for the landfill facility property at the local county Register of Deeds office; and notify the Division that the notice has been

recorded and a copy has been placed in the operating record. The notice may be a notation on the deed to the landfill facility property, or may be some other instrument such as a declaration of restrictions on the property that is discoverable during a title search for the landfill facility property. The notice shall notify any potential purchaser of the property that the land has been used as a landfill facility and future use is restricted under the closure plan approved by the Division. The owner or operator may request approval from the Division to remove the notice. The Division shall approve removal of the notice if all wastes are removed from the landfill facility property.

(d) Post-closure criteria.

(1) Following closure of each MSWLF unit, the owner or operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years, except as provided under Subparagraph (2) of this Paragraph, and consist of the following:

(A) maintaining the integrity and effectiveness of any cap system, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing rainwater that drains over land from or onto any part of the facility or unit from eroding or damaging the cap system;

(B) monitoring the surface water and groundwater in accordance with the requirements of Rules .1623(b)(3)(B) and .1630 through .1637 of this Section, and maintaining the groundwater monitoring system;

(C) maintaining and operating the gas monitoring system in accordance with the requirements of Rule .1626 of this Section; and

(D) maintaining, operating, and decommissioning the leachate collection system in accordance with the requirements in Rules .1624 and .1626 of this Section. The owner or operator may submit a request to stop managing leachate in writing to the Division. The request shall include a demonstration with supporting documentation that the operation and maintenance of leachate management systems during the active life, closure, and post-closure care period of the MSWLF unit complied with the permit including the plans incorporated into the permit, the rules of this Subchapter, and 15A NCAC 02B and 02L; and that the current and projected volume of leachate generated and the results of leachate sample analysis during the post-closure care period indicate that the leachate no longer poses a threat to human health and the environment. The demonstration shall also include the certifications required by Subparagraph (3) of this Paragraph. The Division shall consider the information required to be submitted in the demonstration and the owner or operator's compliance history to make a determination on approval of the request.

(2) The length of the post-closure care period may be:

(A) decreased by the Division if the owner or operator demonstrates that the reduced period is protective of human health and the environment and this demonstration is approved by the Division; or

(B) increased by the Division if the Division determines that the lengthened period is necessary to protect human health and the environment.

(3) Every five years during the post-closure care period and following completion of the post-closure care period for each MSWLF unit, the owner or operator shall notify the Division that a certification verifying that post-closure care has been conducted in accordance with the post-closure plan, has been placed in the operating record. If required by G.S. 89C, the certification shall be signed by a licensed professional engineer.

History Note: *Authority G.S. 130A-294;*
Eff. October 9, 1993;
Pending Delayed Eff Date.

15A NCAC 13B .1629 CLOSURE AND POST-CLOSURE PLAN

(a) Purpose. As required under Rule .1617 of this Section, the owner or operator shall submit to the Division closure and post-closure plans that meet the requirements of this Rule.

(b) Closure plan contents. The owner or operator shall prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during their active life in accordance with the cap system requirements in Rule .1627(c) of this Section. The closure plan shall include the following information:

(1) a description of the cap system and the methods and procedures to be used to install the cap that conforms to the requirements set forth in Rule .1627(c) of this Section;

(2) an estimate of the largest area of the MSWLF unit requiring the specified cap system at any

time during the active life that is consistent with the drawings prepared for the operation plan, for an existing MSWLF unit; or the engineering plan or facility plan, for a MSWLF unit;

(3) an estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility;

(4) a schedule for completing all activities necessary to satisfy the closure criteria set forth in Rule .1627(c) of this Section; and

(5) the cost estimate for closure activities as required under Section .1800 of this Subchapter.

(c) Post-closure plan contents. The owner or operator of all MSWLF units shall submit a written post-closure plan to the Division that includes the following information:

(1) a description of the monitoring and maintenance activities required in Rule .1627(d) of this Section for each MSWLF unit, and the frequency at which these activities shall be performed;

(2) name, address, and telephone number of the person or office responsible for the facility during the post-closure period;

(3) a description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this Section. The owner or operator may submit a request in writing to the Division for a disturbance. The request shall include a demonstration that disturbance of the cap system, base liner system, or other component of the containment system, including any removal of waste, will not increase the potential for fires, vector attraction, damage to these systems, or the release of dust, odors, waste, or leachate to the environment; and

(4) the cost estimate for post-closure activities required under Section .1800 of this Subchapter.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Pending Delayed Eff. Date.

15A NCAC 13B .1630 APPLICABILITY OF GROUNDWATER MONITORING REQUIREMENTS

(a) The groundwater monitoring, assessment, and corrective action requirements under Rules .1630 through .1637 of this Section shall apply to all MSWLF units that are subject to the rules of the Section in accordance with Rule .1601(b) of this Section.

(b) Owners or operators of MSWLF units shall comply with Rule .1631 of this Section before waste can be placed in the unit.

(c) Once established at a MSWLF unit, groundwater monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit.

(d) Water quality monitoring plans, assessment plans, and corrective action plans shall be prepared under the charge of and bear the seal of a licensed professional engineer or licensed geologist if required by G.S. 89C or 89E, respectively.

(e) The groundwater protection requirements of 15A NCAC 02L shall apply to MSWLFs.

History Note: Authority G.S. 130A-294;
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Pending Delayed Eff. Date.

15A NCAC 13B .1631 GROUNDWATER MONITORING SYSTEMS

(a) A groundwater monitoring system shall be installed that consists of no less than one background and three downgradient wells installed at locations and depths that yield groundwater samples from the uppermost aquifer that:

(1) Represent the quality of the background groundwater that has not been affected by leakage from the unit. Determination of background groundwater quality shall be based on sampling of a well or wells that are hydraulically upgradient of the waste management area. However, the determination of background water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; or

(B) hydrogeologic conditions do not allow the owner or operator to place a well in a hydraulically upgradient location; or

(C) sampling at other wells will provide an indication of background groundwater quality that is as representative as that provided by the upgradient well(s); and

(2) Represent the quality of groundwater passing the relevant point of compliance as approved by the Division. The downgradient monitoring system shall be installed at the relevant point of compliance to ensure detection of groundwater contamination in the uppermost aquifer. The relevant point of compliance shall be established no more than 250 feet from a waste boundary, and shall be at least 50 feet within the facility property boundary. In determining the relevant point of compliance, the Division shall consider recommendations made by the owner or operator based upon consideration of the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;
(B) the volume and physical and chemical characteristics of the leachate;
(C) the quantity, quality, and direction of groundwater flow;
(D) the proximity and withdrawal rate of the groundwater users;
(E) the availability of alternative drinking water supplies;
(F) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or expected to be used for drinking water;
(G) any potential effects on public health, safety, and welfare; and
(H) practicable capability of the owner or operator.

(b) Monitoring wells shall be designed and constructed in accordance with 15A NCAC 02C.

(1) Owner or operators shall obtain approval from the Division for the design, installation, development, and decommission of any monitoring well or piezometer. Documentation shall be placed in the operating record and provided to the Division in a timely manner.
(2) The monitoring wells and piezometers shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(c) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that shall include investigation of:

(1) aquifer thickness; groundwater flow rate; groundwater flow direction; and seasonal and temporal fluctuations in groundwater flow and water table; and
(2) unsaturated and saturated geologic units and any fill materials within the uppermost aquifer; including thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

(d) The proposed monitoring system and the water quality monitoring plan required in Paragraph (f) of this Rule shall be capable of providing detection of any release of monitored constituents from any point in a disposal cell or leachate surface impoundment to the uppermost aquifer. If required by G.S. 89C or 89E, the proposed monitoring system and water quality monitoring plan shall be certified by a licensed professional engineer or a licensed geologist.

(e) In addition to groundwater monitoring wells, the use of alternative monitoring systems may be:

(1) required by the Division at sites where the owner or operator does not control the property from any landfill unit to the groundwater discharge feature(s); or
(2) allowed by the Division at sites where hydrogeologic conditions are favorable for detection monitoring by alternative methods.

(f) The owner or operator shall submit a water quality monitoring plan for review and approval by the Division as required by Rules .1603 and .1617 of this Section. The Water Quality Monitoring Plan shall contain information on the groundwater monitoring system(s) and locations, surface water sampling locations, sampling and analysis requirements, and monitoring required under Rules .1630 through .1637 of this Section. The Division shall date and stamp the Water Quality Monitoring Plan "approved" if the plan meets the conditions of this Rule. Upon approval by the Division, a copy of the approved Water Quality Monitoring Plan shall be placed in the operating record.

(g) Groundwater standards and interim maximum allowable concentrations established under 15A NCAC 02L or groundwater protection standards established in accordance with Rule .1634(b) of this Section shall not be exceeded in the uppermost aquifer at the compliance boundary.

History Note: Authority G.S. 130A-294;
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15A NCAC 13B .1632 GROUNDWATER SAMPLING AND ANALYSIS REQUIREMENTS

(a) The owner or operator shall describe consistent sampling and analysis procedures designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells in the water quality monitoring plan approved in accordance with Rule .1631(f) of this Section. The plan shall include procedures and techniques for sample collection; sample preservation and shipment; analytical procedures; chain of custody control; and quality assurance and quality control.

(b) The groundwater monitoring program shall include sampling and analytical methods for groundwater sampling that measure monitored constituents and other monitoring parameters in groundwater samples.

(c) The sampling procedures and frequency shall be protective of human health and the environment.

(d) Each time groundwater is sampled, groundwater elevations shall be measured in each well prior to purging. The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells that monitor the same waste management area shall be measured within a 24-hour period of time to avoid temporal variations in groundwater flow that could preclude accurate determination of groundwater flow rate and direction. The owner or operator shall determine groundwater elevation and flow as follows:

(1) To determine accurate groundwater elevations for each monitoring well, the wells shall have been surveyed. If required by G.S. 89C, a licensed professional land surveyor shall survey the wells. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via a letter dated July 16, 2010, that the surveying pursuant to this Paragraph

constitutes practicing surveying under G.S. 89C.] The survey of the wells shall conform to the following levels of accuracy:

(A) the horizontal location to the nearest 0.1 foot;

(B) the vertical control for the ground surface elevation to the nearest 0.01 foot; and

(C) the vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 foot.

(2) To determine the rate of groundwater flow, the owner or operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.

(e) The owner or operator shall establish background groundwater quality in accordance with Rule .1631(a)(1) of this Section and Paragraphs (f) through (h) of this Rule for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit.

(f) The number of samples collected to establish groundwater quality data shall be consistent with the statistical procedures to be used, as provided for in Paragraph (g) of this Rule.

(g) Should the owner or operator choose to perform statistical analysis of groundwater quality data for the purpose of establishing background concentrations or to determine if there is an exceedance of the groundwater quality standards and interim maximum allowable concentrations (IMACs) established in 15A NCAC 02L or the groundwater protection standard established in Rule .1634(b) of this Section, the owner or operator shall select one of the following statistical methods to be used in evaluating groundwater monitoring data for each constituent of concern. The statistical test chosen shall be conducted separately for each constituent of concern in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) A parametric analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of this Rule. The owner or operator shall submit a justification for an alternative test method to the Division for approval to determine compliance with this Rule. The justification shall demonstrate that the alternative statistical test method meets the performance standards of this Rule. If approved, the owner or operator shall place a copy of the justification for an alternative test method in the operating record.

(h) Any statistical method chosen to evaluate groundwater monitoring data shall comply with the following performance standards:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or constituents of concern. If the distribution of the chemical parameters or constituents of concern is shown by the owner or operator, or by the Division, to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method shall be considered.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard shall not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined by the analyst after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined by the analyst after considering the number of samples in the background database, the data distribution, and

the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, as provided for in 40 CFR 258, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) Within 120 days from the date of sampling or as specified in the facility permit, whichever is less, the owner or operator shall submit to the Division a monitoring report in an electronic format that is accessible and viewable by the Division that includes information from the sampling event including field observations relating to the condition of the monitoring wells, field data, the laboratory analytical data report, statistical analysis (if utilized), field sampling methods and quality assurance and quality control data, information on groundwater flow direction, groundwater flow rate, and, for each well, any constituents that exceed groundwater quality standards and IMACs set forth in 15A NCAC 02L .0202 or the groundwater protection standards established in Rule .1634(b) of this Section.

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15A NCAC 13B .1633 DETECTION MONITORING PROGRAM

(a) Detection monitoring shall be conducted at MSWLF units at all groundwater monitoring wells that are part of the detection monitoring system as established in the approved water quality monitoring plan. As provided for in 40 CFR 258, the detection monitoring program shall include monitoring for the constituents listed in Appendix I of 40 CFR 258.

(b) The monitoring frequency for all Appendix I detection monitoring constituents shall be no less than semiannual during the active life of the facility and during closure and the post-closure period. To establish the baseline, no less than four independent samples from each background and downgradient monitoring well shall be collected within a six-month period and analyzed for constituents listed in Appendix I of 40 CFR 258, with no less than one sample collected from each new monitoring well before waste placement in each new cell or phase. No less than one sample from each background and downgradient monitoring well shall be collected and analyzed during subsequent semiannual sampling events.

(c) The Division may approve an alternate frequency, no less than annually, for repeated sampling and analysis for constituents required by Paragraph (b) of this Rule, during the active life and post-closure care of the unit considering the following factors:

(1) lithology of the aquifer and unsaturated zone;

(2) hydraulic conductivity of the aquifer and unsaturated zone;

(3) groundwater flow rates;

(4) minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well screened interval;

(5) resource value of the aquifer; and

(6) nature, fate, and transport of any detected constituents.

(d) If the owner or operator determines that there is an exceedance of the groundwater quality standards or interim maximum allowable concentrations (IMACs) established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .1634(b) of this Section for one or more of the constituents required to be monitored in Paragraph (a) of this Rule at any monitoring well, the owner or operator:

(1) shall, within 14 days of this determination, report to the Division and place a notice in the operating record indicating which constituents have exceeded groundwater quality standards or IMACs established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .1634(b) of this Section;

(2) shall establish an assessment monitoring program meeting the requirements of Rule .1634 of this Section within 90 days except as provided for in Subparagraph (3) of this Paragraph; and

(3) may demonstrate that a source other than a MSWLF unit caused the exceedance, or the exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be submitted to the Division for approval. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010 respectively, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] A copy of this report shall also be placed in the operating record. If a successful demonstration is made, documented, and approved by the Division, the owner or operator may continue detection monitoring. If after 90 days, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring

program as required by Rule .1634 of this Section.

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15A NCAC 13B .1634 ASSESSMENT MONITORING PROGRAM

(a) Assessment monitoring shall be required if, in any sampling event, one or more constituents listed in 40 CFR 258 Appendix I is detected above the groundwater quality standards or interim maximum allowable concentrations (IMACs) established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (b) of this Rule.

(b) Assessment Requirements. Within 90 days of triggering an assessment monitoring program in accordance with Rule .1633(d)(2) of this Section, the owner or operator shall conduct an assessment in accordance with the following:

(1) Install additional wells downgradient of the compliance wells where exceedances have been detected to characterize the nature and extent of the contamination. The additional wells shall include no less than one additional groundwater monitoring well at the facility's property boundary or the compliance boundary, as defined in 15A NCAC 02L .0102, in the direction of contaminant migration most likely to show impact based on the established geology and hydrogeology.

(2) Collect no less than one groundwater sample from each downgradient monitoring well, including any well installed in accordance with Subparagraph (1) of this Paragraph, and analyze for the constituents listed in 40 CFR 258 Appendix II. The Division may remove any of the 40 CFR 258 Appendix II constituents, not also listed in Appendix I, from the monitoring list for a MSWLF unit if the owner or operator can show that the constituents proposed for removal are not expected to be in or derived from the waste contained in the unit. After the initial sampling event, for any constituent detected in the downgradient wells as a result of the Appendix II analysis, no less than three additional independent samples from each downgradient monitoring well and no less than four independent samples from each background well shall be collected and analyzed to establish a baseline for the new detected constituents. Once determined, baseline data for the new detected constituents shall be reported to the Division.

(3) For constituents that do not have a groundwater quality standard or IMAC established in accordance with 15A NCAC 02L .0202, the Division shall establish a groundwater protection standard for each constituent detected in groundwater. The groundwater protection standard shall be the most protective of the following:

(A) for constituents for which a maximum contaminant level (MCL) has been promulgated under 40 CFR 141, the MCL for that constituent;

(B) for constituents for which a public water quality standard has been established under 15A NCAC 18C, the public water quality standard for that constituent; or

(C) for constituents for which no MCLs or public water quality standards have been promulgated, the background concentration for the constituent established from the monitoring wells required in accordance with Rules .1631(a)(1) and .1632 of this Section.

(4) The Division may establish an alternative groundwater protection standard for constituents for which no MCL or public water quality standard have been established. These groundwater protection standards shall be health-based levels that satisfy the following criteria:

(A) the level is derived in a manner consistent with U.S. E.P.A. guidelines provided in 40 CFR 258.55(i)(1) for assessing the health risks of environmental pollutants;

(B) the level is based on scientifically valid studies conducted in accordance with 40 CFR 792;

(C) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level due to continuous lifetime exposure of 1×10^{-6}; and

(D) for systemic toxicants, the level represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For the purposes of this Rule, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(5) In establishing groundwater protection standards under this Paragraph, the Division shall consider the following:

(A) multiple contaminants in the groundwater;

(B) exposure threats to sensitive environmental receptors; and

(C) other site-specific exposure or potential exposure to groundwater.

(6) The owner or operator may request that the Division approve a background level for the unit that is higher than the groundwater quality standard or IMAC established in 15A NCAC 02L .0202 or the groundwater protection standard established in Subparagraph (3) or (4) of this Paragraph. The background level shall be established in accordance with Rule .1632(e) of this Section. The approved background level shall be the established groundwater protection standard.

(c) Assessment Monitoring. After obtaining the results from the initial sampling event required in Subparagraph (b)(2) of this Rule, the owner or operator shall perform assessment monitoring in accordance with the following:

(1) For each assessment monitoring event, the owner or operator shall submit a monitoring report to the Division as required by Rule .1632(i) of this Section and, if required by G.S. 89E, the report shall be certified by a licensed geologist. Any monitoring report submitted during assessment shall contain a summary description of assessment activities conducted in accordance with Paragraph (b) of this Rule that have not previously been reported to the Division, including boring logs and well installation records.

(2) Within 30 days of obtaining the results of the sampling event, the owner or operator shall notify all persons who own land or reside on land that overlies any part of the plume of contamination if contaminants have migrated off-site.

(3) Within 14 days of receipt of the analytical results, the owner or operator shall submit notice to the Division in writing and place the notice in the operating record identifying the 40 CFR 258 Appendix II constituents that have not previously been detected and reported to the Division.

(4) Within 90 days, and no less than semiannually thereafter until the Division approves a return to detection monitoring in accordance with Paragraph (e) of this Rule, the owner or operator shall sample all of the monitoring wells for the unit in the monitoring system established in Rule .1633 of this Section and in Subparagraph (b)(1) of this Rule for all constituents listed in 40 CFR 258 Appendix I, and for those constituents in Appendix II not listed in Appendix I that have been detected. Any well with a reported groundwater standard exceedance shall be sampled for all constituents in 40 CFR 258 Appendix II no less than annually unless otherwise approved in accordance with Subparagraph (6) of this Paragraph or Subparagraph (b)(2) of this Rule. A report from each sampling event shall be submitted to the Division and placed in the facility operating record. No less than one sample from each background and downgradient monitoring well shall be collected and analyzed during each of these sampling events.

(5) The owner or operator shall establish and report to the Division the background or baseline concentrations for any constituents detected.

(6) The Division may approve an alternate frequency, no less than annually, or an alternate subset of wells for repeated sampling and analysis for constituents required by Paragraph (b) of this Rule, during the active life and post-closure care of the unit considering the following factors:

(A) lithology of the aquifer and unsaturated zone;

(B) hydraulic conductivity of the aquifer and unsaturated zone;

(C) groundwater flow rates;

(D) minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well screened interval;

(E) resource value of the aquifer; and

(F) nature, fate, and transport of any detected constituents.

(d) During assessment monitoring, the owner or operator may demonstrate, in accordance with Rule .1633(d)(3) of this Section for any constituent not previously reported to have a groundwater standard exceedance, that a source other than a MSWLF unit caused the exceedance of the groundwater quality standards and IMACs established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Paragraph (b) of this Rule, or that the exceedance resulted from error in sampling, analysis, or natural variation in groundwater quality. If a successful demonstration is made for each exceedance, the owner or operator shall continue the existing assessment monitoring that was required by Paragraph (c) of this Rule unless and until the requirements of Paragraph (e) of this Rule are met.

(e) The Division shall give approval to the owner or operator to return to detection monitoring in accordance with Rule .1633 of this Section if all of the following are met:

(1) for two consecutive sampling events, the concentrations of the constituents are shown to be at or below groundwater quality standards and IMACs established in 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (b) of this Rule;

(2) the plume is not migrating horizontally or vertically; and

(3) the plume has not exceeded the compliance boundary.

(f) If one or more Appendix II constituents are detected for two consecutive sampling events above background, the groundwater

quality standards and IMACs established in 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (b) of this Rule, the owner or operator shall initiate assessment of corrective measures in accordance with Rule .1635 of this Section.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. April 1, 2011;
Pending Delayed Eff. Date.

15A NCAC 13B .1635 ASSESSMENT OF CORRECTIVE MEASURES

(a) Within 90 days of finding that one or more Appendix II constituents exceeded, for two consecutive sampling events, either the groundwater quality standards or IMACs established in 15A NCAC 02L .0202, the groundwater protection standards established in accordance with Rule .1634(b) of this Section, or an approved background value, the owner or operator shall initiate assessment of corrective action measures. Such an assessment shall be completed within 120 days.

(b) The owner or operator shall continue to monitor in accordance with the approved assessment monitoring program.

(c) The owner or operator shall analyze the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under Rule .1636 of this Section. The owner or operator shall address the following, as provided for in 40 CFR 258:

(1) the performance, reliability, ease of implementation, and potential impacts of potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
(2) the time required to begin and complete the remedy;
(3) the costs of remedy implementation; and
(4) the institutional requirements such as State and local permit requirements or other environmental or public health requirements that may affect implementation of the remedy(s).

(d) Within 120 days of completion of the assessment of corrective measures as set forth in Paragraph (a) of this Rule and prior to the selection of a remedy, the owner or operator shall discuss the results of the assessment of corrective measures, in a public meeting with interested and affected parties. The owner or operator shall provide a public notice of the meeting at least 30 days prior to the meeting. The notice shall include the time, place, date, and purpose of the public meeting. A copy of the public notice shall be forwarded to the Division at least five days prior to publication. Public notice shall be provided to interested and affected parties by the following methods:

(1) publication on the owner or operator's official business website and social media websites;
(2) posting in the post office and public places of the municipalities nearest the site under consideration, or on the websites of these public places;
(3) a news release by a local news organization serving the county where the site under consideration is located; and
(4) to persons requesting notification, sending to the mailing address or e-mail address provided by those persons.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. May 1, 2011;
Pending Delayed Eff. Date.

15A NCAC 13B .1636 SELECTION OF REMEDY

(a) Based on the results of the assessment of corrective measures in accordance with Rule .1635 of this Section, the owner or operator shall select a remedy that, meets the standards listed in Paragraph (b) of this Rule. Within 14 days of selecting a remedy, the permittee shall submit an application to modify the permit describing the selected remedy to the Division for review and approval that the remedy complies with this Rule. The application shall be subject to the processing requirements set forth in Rule .1603(c) of this Section. The application shall include the demonstrations necessary to comply with the financial assurance requirements set forth in Rule .1628 of this Section and Section .1800 of this Subchapter.

(b) Remedies shall:

(1) be protective of human health and the environment;
(2) attain the approved groundwater quality standards and IMACs established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .1634(b) of this Section;
(3) control the source(s) of releases to reduce or eliminate, to the maximum extent practicable, further releases of 40 CFR 258 Appendix II constituents into the environment; and
(4) comply with standards for management of wastes as specified in Rule .1637(e) of this Section.

(c) In selecting a remedy that meets the standards of Paragraph (b) of this Rule, the owner or operator shall consider the following factors:

(1) The long-term and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:
    (A) magnitude of reduction of existing risks;
    (B) magnitude of residual risks in terms of likelihood of further releases due to wastes remaining following implementation of a remedy;
    (C) the type and degree of long-term management required, including monitoring, operation, and maintenance;

(D) short-term risks that might be posed to the community, to workers, or to the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(E) time until full protection is achieved;

(F) potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(G) long-term reliability of the engineering and institutional controls; and

(H) potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the extent to which containment practices will reduce further releases, and the extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:

(A) the degree of difficulty associated with constructing the technology;

(B) the expected operational reliability of the technologies;

(C) the need to coordinate with and obtain necessary approvals and permits from other agencies;

(D) the availability of necessary equipment and specialists; and

(E) the available capacity and location of needed treatment, storage, and disposal services.

(4) The practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy.

(d) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. This schedule shall be submitted to the Division for review and approval to determine compliance with this Rule. The owner or operator shall consider the following factors in determining the schedule of remedial activities:

(1) nature and extent of contamination;

(2) practical capabilities of remedial technologies in achieving compliance with the approved groundwater protection standards and other objectives of the remedy;

(3) availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) desirability of utilizing technologies that are not currently available, but which may offer advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) resource value of the aquifer including:

(A) current and future uses;

(B) proximity and withdrawal rate of users;

(C) groundwater quantity and quality;

(D) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to contaminants;

(E) the hydrogeologic characteristics of the facility and surrounding land;

(F) groundwater removal and treatment costs; and

(G) the costs and availability of alternative water supplies; and

(7) practical capability of the owner or operator.

(e) The Division may determine that active remediation of a release of a 40 CFR 258 Appendix II constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the Division that:

(1) the groundwater is contaminated by substances that have originated from a source other than a MSWLF unit and those substances are present in concentrations such that active cleanup of the release from the MSWLF unit would provide no reduction in risk to actual or potential receptors; or

(2) the constituent or constituents are present in groundwater that:

(A) is not currently or expected to be a source of drinking water; and

(B) is not hydraulically connected with water to which the constituents are migrating or are likely to migrate in concentrations that would exceed the approved groundwater protection standards; or

(3) remediation of the releases is technically impracticable; or

(4) remediation results in unacceptable cross-media impacts.

(f) A determination by the Division pursuant to Paragraph (e) of this Rule shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to groundwater, to prevent exposure to groundwater, or to remediate groundwater to concentrations that are technically

practicable and reduce threats to human health or the environment.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Pending Delayed Eff. Date.

15A NCAC 13B .1637 IMPLEMENTATION OF THE CORRECTIVE ACTION PROGRAM

(a) Based on the approved schedule for initiation and completion of remedial activities, the owner or operator shall:

(1) within 120 days after the approval of the selected remedy or as approved by the Division, submit a corrective action plan that establishes and implements a corrective action groundwater monitoring program that:
  (A) meets the requirements of an assessment monitoring program under Rule .1634 of this Section;
  (B) indicates the effectiveness of the corrective action remedy; and
  (C) demonstrates compliance with groundwater quality standards and interim maximum allowable concentrations (IMACs) established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Rule .1634(b) of this Section pursuant to Paragraph (f) of this Rule.

(2) implement the approved corrective action remedy; and

(3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:
  (A) the time required to develop and implement a final remedy;
  (B) actual or potential exposure of nearby populations or environmental receptors to constituents of concern;
  (C) actual or potential contamination of drinking water supplies or sensitive ecosystems;
  (D) further degradation of the groundwater that may occur if remedial action is not initiated;
  (E) weather conditions that may cause constituents of concern to migrate or be released;
  (F) risks of fire or explosion, or potential for exposure to constituents of concern resulting from an accident or failure of a container or handling system; and
  (G) other situations that may pose threats to human health or the environment.

(b) The owner or operator shall submit a corrective action evaluation report to the Division in an electronic format that is accessible and viewable by the Division no less than once every five calendar years until the owner or operator are released from the corrective action program in accordance with Paragraph (g) of this Rule. The report shall contain a description of the corrective measure remedies that have been implemented or completed since the initiation of the corrective action program; and an evaluation of the effectiveness of the corrective action program. The owner or operator may request to submit the Corrective Action Evaluation Report to the Division on an alternate schedule. The owner or operator shall submit the request in writing to the Division, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:

(1) the schedules for corrective action established in the Corrective Action Plan and changes to corrective actions;
(2) the justification submitted by the owner or operator;
(3) the size, direction, and rate of travel of the contaminant plume;
(4) the circumstances and use of properties, groundwater, and surface water downgradient of the contaminant plume; and
(5) whether the alternate schedule complies with Article 9 of Chapter 130A of the General Statutes and the rules adopted thereunder.

(c) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Rule .1636(b) of this Section are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques to comply with Rule .1636 of this Section unless the Division determines that active remediation is not necessary in accordance with Rule .1636(e) of this Section.

(d) If the owner or operator or the Division determines that compliance with requirements under Rule .1636(b) of this Section cannot be achieved with any currently available methods, the owner or operator shall:

(1) submit a written report that documents that compliance with the requirements under Rule .1636(b) of this Section cannot be achieved with any currently available methods and gain approval from the Division. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.];

(2) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technically practicable and consistent with the overall objective of the remedy; and

(4) submit a report justifying the alternative measures to the Division for review. The Division shall date and stamp the report "approved" if the conditions of this Paragraph are satisfied. The approved report shall be placed in the operating record prior to implementing the alternative measures.

(e) All solid wastes that are managed pursuant to a remedy required under Rule .1636 of this Section, or an interim measure required under Paragraph (a) of this Rule, shall be managed in a manner that is protective of human health and the environment; and that complies with applicable Resource Conservation and Recovery Act requirements.

(f) Remedies selected pursuant to Rule .1636 of this Section shall be considered complete when:

(1) the owner or operator complies with the groundwater quality and groundwater protection standards at all points within the plume of contamination that lie beyond the relevant point of compliance;

(2) compliance with the groundwater quality standards and IMACs established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Rule .1634(b) of this Section has been achieved by demonstrating that concentrations of 40 CFR 258 Appendix II constituents have not exceeded these standards for a period of three consecutive years, consistent with performance standards in Rule .1636(b) of this Section; and

(3) all actions required to complete the remedy have been satisfied.

(g) Upon completion of the remedy, the owner or operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (f) of this Rule. This report shall be signed by the owner or operator and by the preparer of the report. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] Upon approval by the Division, this report shall be placed in the operating record.

(h) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (f) of this Rule, the owner or operator shall be released from the requirements for financial assurance for the corrective action program under Rule .1628 of this Section and Section .1800 of this Subchapter. Nothing in this Paragraph shall release the owner or operator from the requirements for financial assurance for closure, post-closure care, or potential assessment and corrective action in accordance with Rule .1628 of this Section and Section .1800 of this Subchapter.

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15A NCAC 13B .1680 LEACHATE STORAGE REQUIREMENTS

(a) Applicability.

(1) Construction of leachate storage tanks and surface impoundments located at solid waste management facilities shall meet the requirements set forth in this Rule.

(2) Liquid treatment and disposal at a solid waste management facility is subject to the requirements of this Subchapter.

(3) Operation and closure of all leachate storage tanks and surface impoundments shall meet the requirements of this Rule.

(b) Application requirements. An application for a permit to construct a landfill facility which includes leachate storage facilities shall contain the following:

(1) a description of the liquid to be stored;

(2) the estimated volume of liquid generated and a proposed recordkeeping system to record actual quantities stored;

(3) a schedule for liquid removal;

(4) a description of the final treatment and disposal of the liquid stored;

(5) a description of the liquid storage facility design;

(6) a contingency plan for managing unexpected surges in liquid quantities; and

(7) a closure plan prepared in accordance with Paragraph (f) of this Rule.

(c) Aboveground or onground tank requirements.

(1) Tanks shall be constructed of concrete, steel, or other material stated in the permit. Tanks shall be supported on a well-drained foundation that prevents movement, rolling, or settling of the tank.

(A) The exterior surfaces of all aboveground and onground steel storage tanks shall be protected by a primer coat, a bond coat, and two or more final coats of paint or have at least an equivalent surface coating system designed to prevent corrosion and deterioration.

(B) The interior of all aboveground and onground tanks shall consist of or be

lined with a material resistant to the liquid being stored.

(2) Tanks shall have a secondary containment system that may consist of dikes, liners, pads, ponds, impoundments, curbs, ditches, sumps, or other systems capable of containing the liquid stored.

(A) The design volume for the secondary containment system shall be 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater.

(B) The secondary containment system shall be constructed of a material compatible with the liquid being stored.

(3) A system shall be designed to contain and remove storm water from the secondary containment area. Provisions shall be included for the removal of any accumulated precipitation and shall be initiated within 24 hours or when 10 percent of the storage capacity is reached, whichever occurs first.

(4) All aboveground and onground tanks shall be equipped with an overfill prevention system that shall include level sensors and gauges, high level alarms, or automatic shutoff controls. The overfill control equipment shall be inspected weekly by the facility operator to ensure it is in good working order.

(5) The operator of the facility shall inspect the exterior of all tanks for leaks, corrosion, and maintenance deficiencies weekly. Interior inspection of tanks shall be performed according to the Division approved plan. If the inspection reveals a tank or equipment deficiency which could result in failure of the tank to contain the liquid, remedial measures shall be taken within 24 hours of the inspection to eliminate the leak or correct the deficiency. Inspection reports shall be maintained and made available to the Division upon request for the lifetime of the liquid storage system.

(6) All uncovered tanks shall have a minimum two feet of freeboard. Odor and vector control shall be practiced.

(d) Underground tank requirements.

(1) Underground tanks shall be placed a minimum of two feet above the seasonal high groundwater table and a minimum of two feet vertical separation shall be maintained between bedrock and the lowest point of the tank.

(2) Tanks may be constructed of fiberglass reinforced plastic, steel that is cathodically protected, steel that is clad with fiberglass, or other materials stated in the permit.

(3) The secondary containment and continuous leak detection system shall be installed in the form of a double-walled tank, designed as an integral structure so that any release from the inner tank is contained by the outer shell.

(A) The leak detection system shall be monitored no less than weekly using methods specified by the operator and stated in the permit.

(B) Any tank system vulnerable to corrosion shall be protected from both corrosion of the primary tank interior and the external surface of the outer shell. All resistant coatings applied to the primary tank interior shall be chemically compatible with the liquid to be stored. Cathodic protection systems, where installed, shall be inspected no less than weekly by the facility operator and any deficiencies shall be corrected when discovered.

(4) All underground tanks shall be equipped with an overfill prevention system that shall include level sensors and gauges, high level alarms, or automatic shutoff controls. The overfill control equipment shall be inspected weekly by the facility operator to ensure it is in good working order.

(5) Inspection and leak detection monitoring reports shall be maintained and made available upon request for the lifetime of the liquid storage system.

(e) Surface impoundment requirements.

(1) Any surface impoundment shall be constructed so that the bottom elevation of liquid is no less than four feet above the seasonal high groundwater table and bedrock.

(2) Surface impoundments shall be designed and constructed with a liner system equivalent to the liner system for the landfill unit generating the liquid.

(A) A surface impoundment designed and constructed to store leachate from a MSWLF unit shall include a composite liner which conforms to the requirements of Rule .1624 of this Section.

(B) The owner or operator may submit a request to use an alternative liner system in the permit application. The request shall include a demonstration that the alternative liner system is designed and constructed to achieve an equivalent containment efficiency to the liner system required by Rule .1624 of this Section.

(3) Construction of the liner system components shall be consistent with the pertinent requirements set forth in Rule .1624(b)(8),

(b)(9), and (b)(10) of this Section; and a construction quality assurance report shall be prepared by the project engineer.

(4) The top liner shall be protected from degradation and damage.

(5) A minimum of two feet of freeboard shall be maintained in the surface impoundment. Odor and vector control shall be practiced.

(6) A groundwater monitoring system shall be installed and sampled in a manner consistent with or equivalent to the groundwater monitoring requirements for MSWLF units as set forth in Rules .1630 through .1637 of this Section.

(7) An operation plan shall be prepared and followed for operation of the surface impoundment.

(f) Closure of leachate storage facilities.

(1) The owner or operator of the liquid storage facility shall prepare a written closure plan for the liquid storage facility and submit the plan with the permit application for the solid waste management facility.

(2) The owner or operator shall complete closure activities in accordance with the approved closure plan and within 180 days after liquid collection has ceased.

(3) At closure, all solid waste shall be removed from the tank or surface impoundment, connecting lines, and any associated secondary containment systems, and disposed of in accordance with the rules of this Subchapter. All connecting lines shall be disconnected and sealed.

(A) Underground tanks shall be removed or cleaned to remove traces of waste and all accumulated sediments and then filled to capacity with a solid inert material, such as clean sand or concrete slurry. If groundwater surrounding the tank is found to be contaminated, the tank and surrounding contaminated soil shall be removed and disposed of in accordance with the rules of this Chapter and 15A NCAC 02. A contaminant plume shall be addressed in accordance with the rules of this Chapter, and 15A NCAC 02B and 02L.

(B) Accessways to aboveground and onground tanks shall be secured to prevent unauthorized access. Tanks shall either be stenciled with the date of permanent closure or removed. The secondary containment system shall be perforated to provide for drainage.

(C) For surface impoundments, all waste residues, contaminated system components, contaminated subsoils, structures and equipment contaminated with waste shall be removed and appropriately disposed. If the groundwater surrounding the impoundment is contaminated, other corrective actions to remediate a contaminant plume may be required by the Department. If the groundwater surrounding the impoundment is found not to be contaminated, the liner system may remain in place if drained, cleaned to remove all traces of waste, and both liners punctured so that drainage is allowed. The impoundment is to be backfilled and regraded to the surrounding topography.

History Note: *Authority G.S. 130A-294;*
Eff. October 9, 1993;
Pending Delayed Eff. Date.

TITLE 20 - DEPARTMENT OF STATE TREASURER

20 NCAC 03 .0502 AUDIT CONTRACT

(a) The Secretary may promulgate a standard audit contract designed to include the specific requirements in Paragraph (c) of this Rule. The Secretary may revise the standard audit contract provided that the contract continues to include the requirements of this Section. The requirements may be included in the contract either specifically or by reference to this Section.

(b) Government units and their independent auditors may submit contracts on their own forms provided that the form includes all requirements, either specifically or by reference, in Paragraph (c) of this Rule.

(c) The following requirements and conditions shall be included in all contracts for government units:

(1) The scope of the audit shall include all funds and ledgers of the government unit, and the requirement that the audit shall be conducted in accordance with generally accepted auditing standards and shall include such tests of the accounting records and such other procedures (including direct confirmation of tax, utility and other receivables) as are considered by the auditor to be necessary in the circumstances. Exceptions to the scope of the audit may be made only by specific approval of the Secretary or a deputy secretary and only for reasons that are explained as to the circumstances of the particular situation.

(2) The audit shall include a review of the internal control system of the government unit as provided by generally accepted auditing standards. The auditor shall forward a management letter to the government unit, detailing the auditor's findings and

recommendations for improvement. The auditor shall forward a copy of the management letter to the Secretary.

(3) All audit engagement terms shall be stated, and all audit engagement fees shall be stated and show the amounts and calculations necessary to compute the final fee.

(4) The auditor shall, after completion of his or her examination, submit to the governing body a report of the audit with as many copies as requested in the contract. The report shall include all funds and ledgers included in the scope of the audit, and an expression of opinion on the financial statements included therein. If the expression of opinion is in any way modified or if an opinion is disclaimed or not included for any reason, the reason therefor shall be included in the report of audit. Copies of the audit report and any special reports issued as a result of the audit engagement shall be transmitted forthwith to the Secretary.

(5) The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee shall include:

(A) the description of each finding, including all material weaknesses and significant deficiencies, as found by the auditor, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;

(B) the status of the prior year audit findings;

(C) the values of Financial Performance Indicators based on information presented in the audited financial statements; and

(D) notification to the governing body that the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under Rule .0508 of this Section.

The Secretary shall verify auditors' compliance with the presentation requirement of Subparagraph (c)(5) of this Rule.

(6) Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern.

(7) The auditor shall notify the governing body and the Secretary if circumstances disclosed during the audit call for an expanded scope of work by the auditor beyond that indicated by the auditor's audit planning and risk assessment.

(8) No agreement(s) relating to the audit engagement but not attached to and referenced in the audit contract shall be enforceable by any party to said agreement(s).

(d) Form LGC-205 (standard audit contract) shall be provided for the convenience of those auditors and government units who wish to use the form.

(e) For purposes of this Section, the following definitions apply:

(1) "Financial Performance Indicators" are values derived from information included in the audited financial statements that assist the Secretary in improving the comparability of reporting a given government unit's financial condition and financial performance. These criteria include adequacy of a government unit's fund balance; liquidity or the ability to meet short-term obligations; solvency or the ability to meet long-term obligations; debt service coverage; leverage; and such other indicators of financial condition and financial performance as the Secretary may establish.

(2) "Financial Performance Indicators of Concern" are Financial Performance Indicators with values which may indicate inadequate financial conditions or fiscal management concerns within the government unit.

History Note: Authority G.S. 159-3(f); 159-34;
Eff. February 1, 1976;
Readopted Eff. September 23, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. November 1, 2020.

20 NCAC 03 .0505 AUDIT BILLINGS

(a) All invoices for services rendered in an audit engagement as defined in Rule .0503 of this Section shall be submitted to the Secretary for approval before any payment is made. Payment before approval is a violation of law pursuant to G.S. 159-34(a).

(b) Invoices shall be approved only under the following circumstances:

(1) there is a valid contract;

(2) the report of audit has been received;

(3) the audit billing conforms to the requirements of the contract and of this Section;

(4) the audit billing shows all calculations necessary to compute the fee from the rates and terms shown in the contract; and

(5) there are no circumstances known to the Secretary indicating that the audit report may fail to conform to the requirements of the contract and of this Section.

Notwithstanding the above, the Secretary may approve interim billings up to a maximum of 75 percent of the billings for the last annual audit of the subject unit submitted to the Secretary. Provided however, that the Secretary or a deputy secretary may approve a higher or lower amount if he or she finds that such would be more equitable under a particular set of circumstances.

History Note: Authority G.S. 159-3(f); 159-34;
Eff. February 1, 1976;
Readopted Eff. September 23, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. November 1, 2020.

20 NCAC 03 .0508 RESPONSE TO THE INDEPENDENT AUDITOR'S FINDINGS, RECOMMENDATIONS, AND FISCAL MATTERS

(a) If the governing body of a government unit is notified by its independent auditor that the audited financial statements presented to the governing body included one or more significant deficiencies, material weaknesses, other findings or if the auditor determined that Financial Performance Indicators of Concern were identified based on information presented in the audited financial statements, then the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters" ("Response"), pursuant to this Rule, signed by a majority of the members of the governing body. The governing body shall submit the Response to the Secretary within 60 days of the auditor's presentation.

(b) The Response shall address each significant deficiency, material weakness and other audit finding presented to the governing body and shall provide a plan to address each Financial Performance Indicator of Concern reported to the governing body. The Response shall include the following:

(1) Audit Findings

(A) A written description of the procedure, process, or action plan developed by the government unit to address each finding, including all material weaknesses and significant deficiencies, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successors.

(B) The description shall provide specific and detailed steps with measurable results that allow the governing body to conclude that the procedure, process, or action plan as implemented and followed by the staff of the government unit, will address the specific audit finding. The description may include such information as the date for implementation, position titles responsible for implementation, positions performing the procedures or processes, frequency of performance, and other matters necessary to evaluate the success of the procedure or process.

(2) Financial Performance Indicators of Concern

(A) A written description of the procedure, process, or action plan developed by the government unit to address each Financial Performance Indicator of Concern.

(B) The description shall provide specific and detailed steps with measurable results that allow the governing body to conclude that it will address each specific Financial Performance Indicator of Concern. The description may include such information as the time period required for improvement, any governing body action required for implementation, the steps to increase revenue or reduce expenses, the frequency of performance evaluation, and other matters necessary to evaluate the success of the plan.

(c) If the governing body disagrees with an audit finding, it shall describe in detail its disagreement and explain the factors that support this determination in its Response.

History Note: Authority G.S. 159-3(f); 159-34;
Eff. November 1, 2020.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 34 – BOARD OF FUNERAL SERVICE

21 NCAC 34B .0110 WORK REPORTS AND CHECKLISTS

(a) Active resident trainees shall submit a work report to the Board every month on a form provided by the Board no later than the 10th day of the calendar month that immediately follows the month during which the work was performed. On the work report, the resident trainee shall provide:

(1) The trainee's name and signature;

(2) The month during which the work was performed;

(3) The number of hours worked during that month;

(4) The name and address of the funeral establishment where the resident trainee is working;
(5) A description of the work performed during that month;
(6) The name, license number, and notarized signature of the trainee's supervisor; and
(7) The name, license number, and notarized signature of the licensed manager of the funeral establishment where the resident trainee is working.

(b) By signing the work report, the trainee's supervisor shall certify that the data contained in the report is correct. Neither the trainee nor the trainee's supervisor shall be permitted to amend or revise the work report after it is submitted to the Board. The Board shall not accept incomplete work reports and a trainee who fails to submit a complete work report by the due date shall be subject to the provisions of Paragraph (c) of this Rule.

(c) A late fee of twenty-five dollars ($25.00) shall be assessed against the trainee for each work report that is submitted to the Board after the due date. Following a trainee's first failure to timely submit a work report, the Board shall issue the trainee a letter that cautions against future non-compliance with this Rule. Following a trainee's second failure to timely submit a work report, the work set forth in the second untimely work report shall not be credited toward the certification of the trainee's resident traineeship. Following a trainee's third failure to timely submit a work report, the Board shall revoke the trainee's resident traineeship.

(d) Resident trainees shall maintain a checklist for each decedent for whom he or she performs funeral services on a form provided by the Board. The checklist shall contain the following information:

(1) The name of the deceased person;
(2) The date when the services were provided;
(3) The trainee's name and signature;
(4) A description of the funeral services provided; and
(5) The supervisor's signature.

(e) Resident trainees shall maintain a list of the preneed funeral contracts with which the resident trainees participated.

(f) All documents and information set forth in this Rule shall be retained by the trainee until his or her traineeship requirement has been certified by the Board. During this time, the reports and information shall be subject to inspection by the Board or its authorized agent.

History Note: Authority G.S. 90-210.23(a); 90-210.23(d); 90-210.23(f); 90-210.25(a)(4)e.; 90-210.25(a)(4)g.; 90-210.67(a); 90-210.69(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; June 1, 1994; August 1, 1988; September 1, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017;
Amended Eff. November 1, 2020.

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CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0121 PETITIONING FOR RULEMAKING

(a) Any person wishing to submit a petition to the Board requesting the adoption, amendment, or repeal of a rule shall file the petition with the Board's chief executive officer. Petitions shall be mailed to the Board at Post Office Box 2129, Raleigh, NC 27602-2129.

(b) The petition shall contain the following information:

(1) a proposed draft of the rule to be adopted, amended, or a citation to the rule to be repealed;
(2) a statement of the reason for the proposal including statutory authority;
(3) effect of the proposed rule change on the practice of nursing;
(4) any data supporting the proposal including cost factors; and
(5) name, address, and telephone number of each petitioner.

(c) The Board shall determine whether the public interest would be served by the adoption, amendment, or repeal of the requested rule. Prior to making this determination, the Board may:

(1) request additional information from the petitioner;
(2) contact interested persons or those likely to be affected by the proposed rule and request comments; and
(3) use any other method for obtaining information on which to base its determination. It shall consider all the contents of the petition submitted plus any other information obtained by the means described herein.

(d) The Board shall act on a petition within the timeframe outlined in G.S. 150B-20.

History Note: Authority G.S. 150B-20; 90-171.23(b)(3);
Eff. November 1, 2020.

21 NCAC 36 .0122 PETITIONS FOR DECLARATORY RULINGS

(a) All requests for declaratory rulings shall be written and mailed to the Board at Post Office Box 2129, Raleigh, NC 27602-2129. The envelope containing the request shall bear the notation: "REQUEST FOR DECLARATORY RULING."

(b) Each Request for Declaratory Ruling shall include the following information:

(1) the name and address of the person requesting the ruling;
(2) the statute or rule to which the request relates;
(3) a statement of the manner in which the requesting person is affected by the statute or rule or its potential application to that person; and
(4) a statement whether an oral hearing is desired and, if so, the reason.

(c) Upon receipt of a Request for Declaratory Ruling, the Board shall determine whether a ruling is appropriate under the facts stated.

(d) When the Board determines that the issuance of a declaratory ruling is inappropriate, the Board shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request.

(e) The Board shall decline to issue a declaratory ruling where:

(1) there has been a similar controlling factual determination made by the Board in a contested case;

(2) the rulemaking record shows that the factual issues raised by the request were specifically considered prior to adoption of the rule;

(3) the subject-matter of the request is involved in pending litigation in any state or federal court in North Carolina; or

(4) the petitioner fails to show that the circumstances are so changed since the adoption of the statute or rule that a ruling is warranted.

History Note: Authority G.S. 150B-4; 90-171.23(b)(3); Eff. November 1, 2020.

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) Only a registered nurse who meets the qualifications outlined in Paragraph (b) of this Rule shall be approved by the Board as a clinical nurse specialist to perform advanced practice registered nursing activities listed in Paragraph (f) of this Rule.

(b) The Board shall approve an applicant who:

(1) has an active, unencumbered license to practice as a registered nurse in North Carolina or a state that has adopted the Nurse Licensure Compact;

(2) has an unrestricted previous approval, registration, or license as a clinical nurse specialist if previously approved, registered, or licensed as a clinical nurse specialist in another state, territory, or possession of the United States;

(3) has successfully completed a master's or higher level degree program that is accredited by a nursing accrediting body approved by the United States Secretary of Education or the Council for Higher Education Accreditation and meets the qualifications for clinical nurse specialist certification by an approved national credentialing body under Part (b)(4)(A) of this Rule; and

(4) either:

(A) has current certification as a clinical nurse specialist from a national credentialing body approved by the Board, as defined in Paragraph (h) of this Rule and 21 NCAC 36 .0120(26); or

(B) meets requirements that are equivalent to national certification if no clinical nurse specialist certification is available in the specialty. The Board shall determine equivalence based on consideration of an official transcript and course descriptions validating Subparagraph (b)(3) of this Rule, a current curriculum vitae, work history, professional recommendations indicating evidence of at least 1,000 hours of clinical nurse specialist practice, and documentation of certificates indicating 75 contact hours of continuing education applicable to clinical nurse specialist practice during the previous five years.

(c) An applicant certified as a clinical nurse specialist by a national credentialing body prior to January 1, 2007, and who has maintained that certification and active clinical nurse specialist practice and holds a master's or higher degree in nursing or a related field shall be approved by the Board as a clinical nurse specialist.

(d) New graduates seeking first-time clinical nurse specialist approval in North Carolina shall hold a master's or doctoral degree or a post-master's certificate from a clinical nurse specialist program accredited by a nursing accrediting body approved by the U.S. Secretary of Education or the Council for Higher Education Accreditation and shall meet all requirements in Subparagraph (b)(1) and Part (g)(3)(A) of this Rule.

(e) A clinical nurse specialist seeking Board approval who has never practiced as a clinical nurse specialist or has not practiced in more than two years shall complete a clinical nurse specialist refresher course approved by the Board in accordance with 21 NCAC 36 .0220(o) and (p), consisting of common conditions and their management related to the clinical nurse specialist's area of education and certification. A clinical nurse specialist refresher course participant shall be granted limited clinical nurse specialist recognition that is specific to clinical activities taught in the refresher course.

(f) The scope of practice of a clinical nurse specialist shall incorporate the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced practice registered nurse level in the area of clinical nursing specialization in which the clinical nurse specialist is educationally prepared and for which competency is maintained, including:

(1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;

(2) diagnosing and managing clients' acute and chronic health problems within an advanced practice nursing framework;

(3) assessing for and monitoring the usage and effect of pharmacologic agents within an advanced practice nursing framework;

(4) formulating strategies to promote wellness and prevent illness;

(5) prescribing and implementing therapeutic and corrective non-pharmacologic nursing interventions;

(6) planning for situations beyond the clinical nurse specialist's expertise and consulting with or

referring clients to other health care providers as appropriate;

(7) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals, and individuals whose decisions influence the health of individual clients, families, and communities;

(8) initiating, establishing, and using measures to evaluate health care outcomes and modify nursing practice decisions;

(9) assuming leadership for the application of research findings for the improvement of health care outcomes; and

(10) integrating education, consultation, management, leadership, and research into the clinical nurse specialist role.

(g) A registered nurse seeking approval by the Board as a clinical nurse specialist shall:

(1) complete the appropriate application that includes the following:

(A) evidence of a master's or doctoral degree or a post-master's certificate, as set out in Subparagraph (b)(3) or Paragraph (d) of this Rule; and either

(B) evidence of current certification in a clinical nursing specialty from a national credentialing body, set out in Part (b)(4)(A) of this Rule; or

(C) meet requirements set out in Part (b)(4)(B) of this Rule;

(2) renew the approval every two years at the time of registered nurse renewal; and

(3) either:

(A) submit evidence of initial certification and re-certification by a national credentialing body at the time such occurs in order to maintain Board recognition, consistent with Paragraphs (b) and (h) of this Rule; or

(B) if subject to Part (b)(4)(B) of this Rule, submit evidence of at least 1,000 hours of practice and 75 contact hours of continuing education every five years.

(h) The Board shall approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty that have established the following minimum requirements:

(1) active unencumbered licensure as a registered nurse; and

(2) certification as a clinical nurse specialist that is limited to applicant prepared with a master's or doctoral degree or a post-master's certificate.

History Note: Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.27(b); 90-171.42(b);
Eff. April 1, 1996;
Amended Eff. January 1, 2015; April 1, 2008; January 1, 2007; November 1, 2005; August 1, 2005; April 1, 2003;
Readopted Eff. January 1, 2019;
Amended Eff. November 1, 2020.

21 NCAC 36 .0323 RECORDS AND REPORTS

(a) The controlling institution's publications describing the nursing program shall be current and accurate.

(b) The controlling institution shall maintain a system for maintaining official records. Current and permanent student records shall be stored in a secure manner that prevents physical damage and unauthorized access.

(c) Both permanent and current records shall be available for review by Board staff.

(d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.

(e) The record for each currently enrolled student shall contain up-to-date and complete information, including the following:

(1) documentation of admission criteria met by the student;

(2) documentation of high school graduation, high school equivalent, or earned credits from post-secondary institution approved pursuant to G.S. 90-171.38(a); and

(3) a transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.

(f) The nursing program shall file with the Board records, data, and reports in order to furnish information concerning operation of the program as prescribed in the rules in this Section, including:

(1) an annual report to be filed with the Board by November 1 of each year;

(2) a program description report for non-accredited programs filed with the Board at least 30 days prior to a scheduled review by the Board; and

(3) notification by institution administration of any change of the nursing program director. This notification shall include a curriculum vitae for the new director and shall be submitted no later than 10 business days before the effective date of the change.

(g) All communications relevant to accreditation shall be submitted to the Board at the same time that the communications are submitted to the accrediting body.

(h) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its controlling institutions.

(i) The part of the application for licensure by examination to be submitted to the Board by the nursing program shall include a statement verifying satisfactory completion of all requirements for program completion and the date of completion. The nursing program director shall verify completion of requirements to the Board no later than one month following completion of the Board-approved nursing program.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38;
Eff. February 1, 1976;

Amended Eff. December 1, 2016; January 1, 2015; December 1, 2005; January 1, 2004; June 1, 1992; January 1, 1989; January 1, 1984;
Readopted Eff. January 1, 2019;
Amended Eff. November 1, 2020.

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CHAPTER 40 – BOARD OF OPTICIANS

21 NCAC 40 .0202 REGISTRATION OF OPTICAL PLACE OF BUSINESS AND OPTICIAN IN CHARGE

(a) As used in this Rule, "optical place of business" means the principal office, as well as each branch office of the business.

(1) Every optical place of business shall be registered with the Board within 10 days following its opening for business and thereafter annually and in the event of relocation or change of ownership. The registration fee shall be paid for each registration.

(2) Registration of an optical place of business automatically expires on the last day of June of each year, and it shall not engage in business until it is registered for the next annual period.

(3) An optical place of business registration is the responsibility of the owner. Any business that violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1, G.S. 90-252, and G.S. 90-254.

(4) An optical place of business registered in compliance with this Rule shall be eligible to be a training establishment when the requirements of Rules .0314 and .0321 of this Chapter are met.

(b) Every optical place of business shall register a licensed optician in charge, who shall serve as the licensee in charge of only one optical place of business.

(1) Every optician in charge shall be registered with the Board within 10 days of the opening of an optical place of business, or change of optician in charge. The registration fee as set forth in G.S. 90-246 shall be paid for each registration.

(2) Registration of an optician in charge automatically expires on the last day of June of each year, and the optical business shall not engage in dispensing activities under G.S. 90-236 until it has a registered optician in charge for the next annual period.

(3) An optician in charge registration is the responsibility of both the licensed optician in charge and the owner. Any optician in charge of an optical place of business that violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1, G.S. 90-252, and G.S. 90-254.

History Note: Authority G.S. 90-239; 90-243; 90-249(5); 90-252; 90-253;
Eff. February 1, 1976;
Amended Eff. November 1, 1978; June 21, 1978; September 6, 1977;
Readopted Eff. May 23, 1979;
Amended Eff. August 1, 1998; January 1, 1994; August 1, 1991; February 1, 1989; August 1, 1985;
Temporary Amendment Eff. November 1, 2016;
Temporary Amendment Expired Eff. August 12, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;
Amended Eff. November 1, 2020.

21 NCAC 40 .0206 PROFESSIONAL RESPONSIBILITY; CONTINUING EDUCATION

(a) A licensed optician shall:

(1) maintain equipment and instruments in his or her office at all times to assure professional service to the public, and for use in training apprentices and interns as set forth in 21 NCAC 40 .0321;

(2) make a referral to another healthcare provider when, in the licensee's professional opinion, such referral would benefit the client;

(3) treat all information concerning his or her clients as privileged and not to be communicated to others except when authorized or required by a law or rule, or with express consent of the client; and

(4) take annual courses of study in subjects related to the practice of opticianry for the purpose of enhancing his or her scientific knowledge and professional skills, learning new techniques, and acquiring increased knowledge of laws and rules governing the practice of opticianry, as set forth in Paragraph (b) of this Rule.

(b) A licensee whose license was issued after July 1 shall be exempt from the continuing education requirement for renewal by December 31 of the same year. Otherwise, each North Carolina-licensed optician shall take a total of at least eight hours of continuing education each calendar year as follows:

(1) three hours of study on the practice of contact lens fitting and dispensing. Alternatively, a licensee may take two hours of study on contact lens fitting and dispensing, and one hour of study on either: optical business management, consumer protection, or ethics;

(2) four hours of study on eyeglass fitting and dispensing; and

(3) one hour of education on the laws and rules affecting North Carolina opticians.

(c) All hours shall be currently-approved by the American Board of Opticianry or the National Contact Lens Examiners.

(d) Courses of self-study, taken by licensees through journal articles or online, where organized material is presented and written evaluations are offered prior to or after completing the course or courses shall be eligible for credit, provided the vendor

or sponsor submits the course or courses for approval to the Board as described in Paragraph (j) of this Rule prior to offering it to licensed opticians. However, no licensee shall receive credit for more than four hours of continuing education credit by self-study in any calendar year.

(e) Any licensed optician who is not practicing opticianry in the State shall annually obtain a total of at least eight hours of courses of study: three hours shall be on the practice of contact lens fitting and dispensing, and five hours shall be on eyeglass fitting and dispensing. Alternatively, one of the eight hours may be on optical business management, consumer protection, or ethics. No other state's hours pertaining to its laws or rules shall be allowed as credit.

(f) All hours must be taken within the prior or current calendar year for which credit is sought, and a licensee shall not receive continuing education credit for any course that the licensee already has completed during the same calendar year.

(g) Continuing education hours acquired in excess of the number required at the time of renewal shall not be applied to future requirements.

(h) Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to disciplinary action.

(i) The hours of study set forth in this Rule may not be waived, except by:

(1) declared Board waiver as defined in 21 NCAC 40 .0113;

(2) presentation to the Board of evidence of illness, or residency outside the United States, that makes the licensee's attendance impossible; or

(3) presentation to the Board of active-duty orders for the licensee serving in a branch of the US armed forces.

(j) Courses of study for which a licensee desires continuing education credit must be approved by the Board, meeting the following criteria:

(1) Courses must be directly related to the practice of a dispensing optician as defined in G.S. 90-235 and G.S. 90-236. The education of opticians must be the primary objective of the education provider.

(2) Each course must be made available to all NC licensed opticians.

(3) The following information shall be submitted to the Board office no later than 45 days prior to the date the course is to be made available for presentation:

(A) The method of course presentation; if in-person training is utilized, the location and scheduled time;

(B) The course title;

(C) The instructor's name, mailing address, and resume or curriculum vitae to show education, training qualifications and experience;

(D) A course description, including course length, instructional objectives, or course outline;

(E) Documentation showing the course's approval status granted and course number assigned by the American Board of Opticianry or National Contact Lens Examiners;

(F) The name and address of the provider agency, and its preferred contact information;

(G) A description of the provider's attendance certification process; and

(H) An agreement to provide an electronic attendance roster to the Board, and certified attendance documentation to attendees.

(4) Course content shall be presented in a manner that does not promote the sale or marketing of one company's products or services over another. Presentations on new optical technology shall not include a specific brand/manufacturer of the technology in the title or content. Product-specific "info-mercials" and sales pitches shall not be approved.

(5) Courses shall consist of a minimum 50 minutes' education for each hour's credit.

(6) Online courses shall not exceed two hours in length.

(7) In-person training instructors may not present more than two consecutive hours of continuing education.

(k) Each course to be presented in-person shall be submitted for approval separately each time credit is sought as set forth in Subparagraph (j)(3) of this Rule.

(l) The Board shall not grant retroactive approval of courses.

(m) The course provider shall allow Board representation to attend courses approved for in-person training without registration charge.

(n) Course sponsors shall, no later than 30 days following the presentation of in-person training:

(1) Certify opticians' attendance for the requisite period;

(2) Submit to the Board documentation of attendance in a format provided by the Board that includes:

(A) The course title and classification verification;

(B) The course provider or sponsor identification that includes name and contact information;

(C) The name of and license number of each attending North Carolina licensee;

(D) The sponsor's attestation or verification of attendance.

(o) Any licensee may enter online continuing education hours taken through his or her portal on the Board website or by submitting their online continuing education hours taken to the Board office. The entries or submissions shall include information from the course provider that shall serve as attendance

verification. A licensee who is unable to enter his or her hours shall mail the continuing education credits into the Board office during the annual renewal period for credit.

(p) Course sponsors shall maintain for three years records of the names of attendees who complete continuing education hours.

(q) Opticians and course attendees shall:

(1) Retain documentation for a minimum two-year period, beginning with the next renewal year immediately following the date the courses were taken; and

(2) Present the documentation to Board as required during the license renewal process, or complaint or disciplinary investigations.

History Note: Authority G.S. 90-235; 90-236; 90-249; 90-249.1;
Eff. February 1, 1976;
Amended Eff. September 6, 1977;
Readopted Eff. September 29, 1977;
Amended Eff. January 1, 2013; July 1, 1991; February 1, 1989; February 1, 1988; January 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;
Amended Eff. November 1, 2020.

TITLE 25 - STATE HUMAN RESOURCES COMMISSION

25 NCAC 01E .1601 PURPOSE

(a) A supervisor may approve Volunteer Service and Child Involvement Leave for employees as follows:

(1) for parents for involvement with their child in a "school" as defined in in Rule .1602 in this Subchapter;

(2) for any employee to volunteer in a school or in a Volunteer Service Organization as defined in Rule .1602 in this Subchapter; or

(3) for any employee to volunteer in a school or state agency as defined in Rule .1602 of this Subchapter provided that the service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.

(b) A supervisor may approve special provisions for volunteer work for serving as a tutor, mentor, or volunteer in a literacy program in a school.

History Note: Authority G.S. 126-4;
Eff. April 1, 2001;
Amended Eff. April 1, 2015; August 1, 2010; October 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. November 1, 2020.

25 NCAC 01E .1602 DEFINITIONS

When used in this Section, these terms have the following meaning:

(1) "Child" means dependent son or daughter who is a biological child, an adopted child, a foster child, a step-child, a legal ward, or a child of an employee standing in loco parentis.

(2) "Child Involvement" means the act of supporting one's child through attendance or participation in activities related to the child's education at his or her school.

(3) "Literacy Program" means act of volunteering in an elementary, middle, or high school to assist students with reading or writing skills in accordance with established academic standards.

(4) "School" means elementary school, a middle school, a high school, an accredited community college, university, vocational or trade school, or a child care program that is authorized to operate under the laws of the state in which it is located.

(5) "State Agency" means a state government agency that is authorized to operate under the laws of the state in which it is located.

(6) "Tutoring and Mentoring" means the act of volunteering in an elementary, middle, or high school to support a student who is more likely than other students to struggle academically.

(7) "Volunteer Service Organization" means a non-profit, non-partisan community organization that is designated as an IRS Code 501(c)(3) civic, charitable, or humanitarian agency, or a human service organization licensed or accredited by the state in which it is located to serve citizens with special needs including children, youth, and the elderly.

(8) "Volunteer Service" means the act of serving citizens of North Carolina and the broader community without expectation of compensation for services.

(9) "Volunteer" means a person who willingly chooses to perform hours of service for civic, charitable, or humanitarian reasons without promise or expectation of compensation for services provided.

History Note: Authority G.S. 126-4;
Eff. April 1, 2001;
Amended Eff. April 1, 2015; August 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. November 1, 2020.

25 NCAC 01E .1604 USES OF VOLUNTEER SERVICE AND CHILD INVOLVEMENT LEAVE

Volunteer Service and Child Involvement Leave may be used for:

(1) meeting with a teacher or administrator concerning the employee's child;

(2) attending any function sponsored by the school in which the employee's child is participating. This shall only be utilized in conjunction with

nonathletic programs that are a part or supplement to the school's academic or artistic program;

(3) performing school-approved volunteer work approved by a teacher, school administrator, or program administrator;

(4) performing a service for a Volunteer Service Organization. Service shall not include attendance or participation in an event in which no service is performed;

(5) performing volunteer work for a university that is approved by a university administrator or other university official;

(6) performing volunteer work for a community college that is approved by a community college administrator or other community college official;

(7) performing volunteer work for a non-profit vocational or trade school that is approved by a school administrator or other school official; or

(8) performing volunteer work for a state agency that is approved by the agency head or his or her designee.

History Note: Authority G.S. 126-4;
Eff. April 1, 2001;
Amended Eff. August 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. November 1, 2020.

25 NCAC 01E .1605 LEAVE ADMINISTRATION

Each agency shall administer the Volunteer Service and Child Involvement Leave program as follows:

(1) Employees shall receive approval from their supervisor to use Volunteer Service and Child Involvement Leave. The agency may require that the leave be taken at a time other than the one requested, based on the needs of the agency. The agency may require proof that community service leave taken is being utilized within the purpose of this Section.

(2) Leave shall only be requested and approved for Volunteer Service that occurs during the employee's regularly scheduled hours of work. Agencies with shift employees regularly scheduled to work evening or night shift may allow the use of Volunteer Service and Child Involvement Leave in situations where the employee's participation in Volunteer Service and Child Involvement Leave outside of the work schedule impacts the employee's normal sleep period, and if the agency can maintain coverage at the workplace.

(3) Travel time may be included in approved time for Volunteer Service and Child Involvement Leave, but only for the time that intersects the employee's regular work schedule.

(4) If an employee transfers to another State agency, any balance of the Volunteer Service and Child Involvement Leave not used shall be transferred to the new agency. Under the tutoring and mentoring or literacy leave option, the employee shall secure approval from the new supervisor to continue with that option prior to the transfer.

(5) Leave not taken in a calendar year is forfeited; it shall not be carried over into the next calendar year.

(6) Employees shall not be paid for this leave upon separation from State government.

(7) The use of Volunteer Service and Child Involvement Leave shall be reported separately from all other paid leave. Employees and supervisors are responsible for accurate reporting of the use of Volunteer Service and Child Involvement Leave on the employee's time record.

History Note: Authority G.S. 126-4;
Eff. July 18, 2002;
Amended Eff. April 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. November 1, 2020.

25 NCAC 01E .1607 SPECIAL LEAVE PROVISIONS

(a) Agency heads may establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services. Each agency head shall determine that a bona fide need for such services exists within a given area. A bona fide need is defined as real or eminent danger to life or property. Volunteer emergency and rescue services leave shall not exceed 15 work days in any 12-month period, and shall be entered as Other Management Approved Leave for timekeeping purposes.

(b) Each policy shall require proof of the employee's membership in an emergency volunteer organization and that the performance of such emergency services will not hinder agency activity for which the employee is responsible.

(c) Blood, Bone Marrow, and Organ Donorship - Employees may be given time off with pay for whole blood donation, pheresis procedure, and bone marrow transplant. Employees may be given up to 30 days with pay for organ donation. Leave granted under this Paragraph shall be entered as Other Management Approved Leave for timekeeping purposes.

History Note: Authority G.S. 126-4;
Temporary Adoption Eff. March 18, 2002 (This temporary adoption replaces a permanent rulemaking originally proposed to be eff. July 1, 2002);
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. November 1, 2020.

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at http://www.ncoah.com/hearings/decisions/
If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 984-236-1850.

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
Don Overby
J. Randall May
David Sutton
Selina Malherbe
J. Randolph Ward
Stacey Bawtinhimer
Tenisha Jacobs
Michael Byrne

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				Published			
20	BLC	00366	9/28/2020	North Carolina Landscape Contractors Licensing Board	v.	Jason Lee Atkins and Natural Choice Contracting LLC f/k/a ALM Contracting LLC	Ward
20	CTY	00292	9/18/2020	Mohamad Kodaimati	v.	Town of Mint Hill	Malherbe
19	DOJ	05371	9/22/2020; 9/23/2020	William Donald Britt	v.	NC Sheriffs Education and Training Standards Commission	Lassiter
19	DOJ	06179	9/11/2020	Donald Ray McGlamery	v.	NC Sheriffs Education and Training Standards Commission	May
19	DOJ	06469	9/11/2020	Paul J Eagle	v.	North Carolina Sheriffs Education and Training Standards Commission	May
19	DOJ	06638	9/23/2020	Scott McCoy	v.	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	06927	9/14/2020	Jacqueline Deneen Coefield	v.	North Carolina Criminal Justice Education and Training Standards Commission	Ward
20	DOJ	00518	9/9/2020	Alicia Micole Smith	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinhimer
20	DOJ	00742	9/10/2020	David Scott Sutton Jr.	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinhimer
20	DOJ	02155	9/16/2020	William Thomas Whiting	v.	NC Private Protective Services Board	Bawtinhimer
20	OSP	01463	9/28/2020	Velma Sharpe-Johnson	v.	NC Department of Public Instruction Eastern North Carolina School for the Deaf	Culpepper

				Unpublished			
20	ABC	02585	9/14/2020	NC Alcoholic Beverage Control Commission	v.	Vinayak Stores Inc T/A Triangle Food Mart	May
20	CPS	01750	9/1/2020	Tawanda S McKinney	v.	NC Crime Victims Compensation Commission	Mann
20	CPS	01834	9/9/2020	Clotene Freeman(for Husband) Michael Freeman	v.	Department of Public Safety Victims Services	Bawtinhimer
20	CPS	02330	9/15/2020	Russell C Rowe	v.	NC Department of Public Safety Victim Services	Overby
19	CSE	05959	9/15/2020	Alvin V Brookins	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	06118	9/15/2020	Jason Addams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
19	CSE	06583	9/23/2020	Lamont Fagan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
20	CSE	00323	9/2/2020	Douglas A Gibson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
20	CSE	01804	9/16/2020	Christopher R Santana	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	01833	9/10/2020	Jonathan F Hall	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
20	CSE	01911	9/8/2020	Teresa Myers	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
20	CSE	02071	9/14/2020	Chris Newman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Mann
20	CSE	02102	9/22/2020	Reginald J Lise	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	CSE	02348	9/15/2020	Frank J Rush	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	02369	9/15/2020	Olis Ray Bryant	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	02409	9/4/2020	Corshaun Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	02603	9/17/2020	Leonardo Chavez	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	02835	9/23/2020	Joe Nathan Sikes II	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer

20	CSE	02991	9/23/2020	James M Redmond	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
19	DCS	06464	9/21/2020	Crystal M Humphrey	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	DHR	06737	7/29/2020; 9/1/2020	Kenesha Lofton	v.	NC Department of Health Human Services	Jacobs; Lassiter
20	DHR	02051	9/25/2020	Christopher Hilliard	v.	Department of Health and Human Services	Byrne
20	DHR	02368	9/15/2020	Renee J Williams	v.	NC Dept of Health and Human Serv Div of Child Development and Early Ed	Lassiter
20	DHR	02386	9/11/2020	Tyra Whitaker	v.	NCDON (OAH)	Lassiter
20	DHR	02583	9/4/2020	Theddies Lewis Butler/Butler's Day Care Center	v.	Division of Child Development and Early Education	Lassiter
20	DHR	02628	9/10/2020	Kingshuk Roy Choudhury	v.	Orange County Board of County Commissioners	Jacobs
20	DHR	02916	9/23/2020	Micah Glenn Smith Sr	v.	DHHS	Lassiter
20	DOT	01985	9/1/2020	Trent Demond Bellamy	v.	NC Department of Transportation	Mann
20	EDC	02795	9/11/2020	Kinetic Minds Inc and Kinetic Minds Inspire LLC	v.	NC Department of Public Instruction	Byrne
20	INS	01520	9/4/2020	Mary Elizabeth Franklin Tanner	v.	North Carolina State Health Plan	Overby
20	INS	01658	9/15/2020	Lisa Bass	v.	North Carolina State Health Plan	Overby
20	MIS	01515	5/26/2020; 9/4/2020	Demetrius Marwin Holder	v.	Gaston County Sheriff's Dept Gaston County Police Department Gaston County Clerk of Superior Court	Malherbe
19	OSP	06219	9/3/2020	Lailtrice Graham Biteye	v.	Guilford County Department of Health and Human Services CWS	May
20	OSP	00418	9/18/2020	Laquannah N Hester	v.	North Carolina Department of Public Safety	Culpepper
20	SOS	00931	9/1/2020	Raleigh Police Memorial Foundation Inc	v.	NC Department of the Secretary of State, Charitable Solicitation Licensing Division	Mann
20	UNC	01561	9/1/2020	Lyndon Melvin Whitfield	v.	UNC Health Care Collections	Mann