

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Pesticide Board					
2. Rule citation & name: 02 NCAC 09L .0502 List of Restricted Use Pesticides					
3. Action: Adoption Amendment Repeal					
4. Was this an Emergency Rule: Yes Effective date: 03/25/2021					
5. Provide dates for the following actions as applicable:					
a. Proposed Temporary Rule submitted to OAH: 03/15/2021					
b. Proposed Temporary Rule published on the OAH website: 03/18/2021					
c. Public Hearing date: 03/30/2021					
d. Comment Period: 3/22/2021-4/13/2021					
e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/19/2021					
f. Adoption by agency on: 5/11/2021					
 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: 					
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.					
 A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: A recent change in federal or state budgetary policy. Effective date of change: A recent federal regulation. Cite: Federal Approval of Emergency Use Pesticides: <u>https://taspub.epa.gov/apex/pesticides/t/p=124:2::::2,3</u>:: Effective date: A recent court order. Cite order: State Medical Facilities Plan. Other: 					

Explain: The North Carolina Pesticide Board finds it critical to exempt pesticides approved by the United States Environmental Protection Agency (EPA) on an emergency basis in accordance with 02 NCAC 09L .0318 for use in preventing, destroying, or mitigating COVID-19 from being restricted use pesticides as currently required by 02 NCAC 09L .0502(3). This exemption will bring North Carolina standards in line with other states and ensure North Carolina does not fall behind in its efforts to respond to COVID-19 by allowing for normal distribution of these pesticides.

Actions by other states and the EPA have created unforeseen circumstances that put North Carolina at a disadvantage in attempting to respond to COVID-19 through the use of newly approved pesticides (sanitizing products). These actions are more fully set forth in Box 7 below.

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7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the						
rule is required? "Pesticides" include substances intended to destroy microorganisms (such as sanitizing products). NCGS § 143-460(26a) and (28). All pesticides in North Carolina must be registered to be sold/used. NCGS § 143-442(a). This is generally accomplished by companies registering the pesticide with the EPA and if a pesticide meets the EPA's registration approval process, it may be sold/used in North Carolina. NCGS § 143-442(d). The EPA may also approve the use of pesticides on an emergency basis under Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), known as the "Exemption of Federal and State Agencies for Use of Pesticides in Emergencies" and codified at 40 C.F.R. Section 166 (this is incorporated by reference in 02 NCAC 09L .0318).						
Other State's began applying for, and the EPA began approving pesticides used to combat COVID-19 under this emergency basis. However, under the current 02 NCAC 09L .0502(3), pesticides approved by the EPA under the emergency approval process (as opposed to the normal registration process) would be Restricted Use Pesticides in North Carolina (meaning only licensed pesticides dealers could sell them and old license pesticides applicators could buy/use them).						
The pesticides approved by the EPA to address COVID-19 are sanitizing products that do not present the usual needs for the applicator to be licensed. Making these pesticides RUPs would significantly limit the public's ability to obtain and benefit from these pesticides in North Carolina.						
A list of these applications/approvals is available at: https://iaspub.epa.gov/apex/pesticides/f ² p=124·2····2.3:: This website is updated on a rolling basis as new products are approved.						
Therefore, for the reasons stated above, this Board finds it necessary and in the best interest of the State to not classify pesticides approved by the EPA for use in preventing, destroying, or mitigating COVID-19 as restricted use pesticides under the Board's Rules in 02 NCAC 09L .0502(3). This Board further finds that timing is the of essence in responding to COVID-19 and that temporary rulemaking are necessary. A public hearing was held and the Pesticide Board did not receive any comments at that time, or during the comment period.						
8. Rule establishes or increases a fee? (See G.S. 12-3.1)						
Yes Agency submitted request for consultation on: Consultation not required. Cite authority:						
No No						
9. Rule-making Coordinator: Christina L. Waggett	10. Signature of Agency Head*:					
Phone: 919-707-3008	Mut Lanates					
E-Mail: christing wagatt ancogr gov	If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.					
Agency contact, if any:	Typed Name:					
Phone:	Title:					
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Date returned to	agency:									
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Temporary Rule 0500 - 11/2014

1	02 NCAC 09L .0	0502 is adopted under temporary procedures with changes as follows:					
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3	02 NCAC 09L.	0502 LIST OF RESTRICTED USE PESTICIDES					
4	(a) For the purpose of this Subchapter a "restricted use pesticide" shall be:						
5	(1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling						
6	"Restricted Use Pesticide;"						
7	(2) arsenic trioxide; and						
8	(3) any	pesticide approved under Rule .0318 of this Subchapter.					
9	(b) Any pesticid	le approved by the United States Environmental Protection Agency for use in the State of North					
10	Carolina in acco	rdance with 02 NCAC 09L .0318 that is labeled as approved for use in preventing, destroying, or					
11	<u>mitigating [</u> Covi	d <mark>-19</mark>] COVID-19 shall be exempt from the provisions of [02 NCAC 09L .0502 (a)(3)]					
12	<u>Subparagraph (a</u>)(3) of this Rule and shall not be considered a Restricted Use Pesticide.					
13							
14	History Note:	Authority G.S. 143-440(a),(b); 143-441; 143-458;					
15		Eff. February 1, 1976;					
16		Amended Eff. April 21, 1977;					
17		Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December					
18		31, 1977; Emergency Amendment [(e)] Expired Eff. December 31, 1977;					
19		Amended Eff. January 1, 1990; August 1, 1982; January 1, 1979; June 30, 1978;					
20		Readopted Eff. August 1, 2020. <u>2020;</u>					
21		Emergency Amendment Eff. March 25, 2021.					
22							