

# ***NORTH CAROLINA REGISTER***

**VOLUME 33 • ISSUE 12 • Pages 1267 – 1368**

**December 17, 2018**

## **I. PROPOSED RULES**

### **Commerce, Department of**

Credit Union Division ..... 1267 – 1268

### **Public Safety, Department of**

Alcoholic Beverage Control Commission ..... 1268 – 1269

Private Protective Services Board ..... 1269 – 1277

### **Environmental Quality, Department of**

Environmental Management Commission ..... 1278 – 1331

### **Transportation, Department of**

Department ..... 1331 – 1332

### **Occupational Licensing Boards and Commissions**

Appraisal Board ..... 1332 – 1337

### **State Human Resources, Office of**

State Human Resources Commission ..... 1337 – 1345

**II. RULES REVIEW COMMISSION ..... 1346 – 1365**

## **III. CONTESTED CASE DECISIONS**

Index to ALJ Decisions ..... 1366 – 1368

## **PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division*

*6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone (919) 431-3000  
Fax (919) 431-3104*

*Julian Mann III, Director*

*Molly Masich, Codifier of Rules*

*Dana McGhee, Publications Coordinator*

*Lindsay Woy, Editorial Assistant*

*Cathy Matthews-Thayer, Editorial Assistant*

## **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

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

[molly.masich@oah.nc.gov](mailto:molly.masich@oah.nc.gov)

(919) 431-3071

Dana McGhee, Publications Coordinator

[dana.mcgee@oah.nc.gov](mailto:dana.mcgee@oah.nc.gov)

(919) 431-3075

Lindsay Woy, Editorial Assistant

[lindsay.woy@oah.nc.gov](mailto:lindsay.woy@oah.nc.gov)

(919) 431-3078

Cathy Matthews-Thayer, Editorial Assistant

[cathy.thayer@oah.nc.gov](mailto:cathy.thayer@oah.nc.gov)

(919) 431-3006

### **Rule Review and Legal Issues**

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Amber Cronk May, Commission Counsel

[amber.may@oah.nc.gov](mailto:amber.may@oah.nc.gov)

(919) 431-3074

Amanda Reeder, Commission Counsel

[amanda.reeder@oah.nc.gov](mailto:amanda.reeder@oah.nc.gov)

(919) 431-3079

Jason Thomas, Commission Counsel

[jason.thomas@oah.nc.gov](mailto:jason.thomas@oah.nc.gov)

(919) 431-3081

Alexander Burgos, Paralegal

[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)

(919) 431-3080

Julie Brincefield, Administrative Assistant

[julie.brincefield@oah.nc.gov](mailto:julie.brincefield@oah.nc.gov)

(919) 431-3073

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

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Carrie Hollis, Economic Analyst

[osbmruleanalysis@osbm.nc.gov](mailto:osbmruleanalysis@osbm.nc.gov)

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

[amy.bason@ncacc.org](mailto:amy.bason@ncacc.org)

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

[scollins@nclm.org](mailto:scollins@nclm.org)

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

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 2018 – December 2018

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	270 <sup>th</sup> day from publication in the Register
32:13	01/02/18	12/06/17	01/17/18	03/05/18	03/20/18	04/19/18	05/01/18	09/29/18
32:14	01/16/18	12/19/17	01/31/18	03/19/18	03/20/18	04/19/18	05/01/18	10/13/18
32:15	02/01/18	01/10/18	02/16/18	04/02/18	04/20/18	05/17/18	06/01/18	10/29/18
32:16	02/15/18	01/25/18	03/02/18	04/16/18	04/20/18	05/17/18	06/01/18	11/12/18
32:17	03/01/18	02/08/18	03/16/18	04/30/18	05/21/18	06/21/18	07/01/18	11/26/18
32:18	03/15/18	02/22/18	03/30/18	05/14/18	05/21/18	06/21/18	07/01/18	12/10/18
32:19	04/02/18	03/09/18	04/17/18	06/01/18	06/20/18	07/19/18	08/01/18	12/28/18
32:20	04/16/18	03/23/18	05/01/18	06/15/18	06/20/18	07/19/18	08/01/18	01/11/19
32:21	05/01/18	04/10/18	05/16/18	07/02/18	07/20/18	08/16/18	09/01/18	01/26/19
32:22	05/15/18	04/24/18	05/30/18	07/16/18	07/20/18	08/16/18	09/01/18	02/09/19
32:23	06/01/18	05/10/18	06/16/18	07/31/18	08/20/18	09/20/18	10/01/18	02/26/19
32:24	06/15/18	05/24/18	06/30/18	08/14/18	08/20/18	09/20/18	10/01/18	03/12/19
33:01	07/02/18	06/11/18	07/17/18	08/31/18	09/20/18	10/18/18	11/01/18	03/29/19
33:02	07/16/18	06/22/18	07/31/18	09/14/18	09/20/18	10/18/18	11/01/18	04/12/19
33:03	08/01/18	07/11/18	08/16/18	10/01/18	10/22/18	11/15/18	12/01/18	04/28/19
33:04	08/15/18	07/25/18	08/30/18	10/15/18	10/22/18	11/15/18	12/01/18	05/12/19
33:05	09/04/18	08/13/18	09/19/18	11/05/18	11/20/18	12/13/18	01/01/19	06/01/19
33:06	09/17/18	08/24/18	10/02/18	11/16/18	11/20/18	12/13/18	01/01/19	06/14/19
33:07	10/01/18	09/10/18	10/16/18	11/30/18	12/20/18	01/17/19	02/01/19	06/28/19
33:08	10/15/18	09/24/18	10/30/18	12/14/18	12/20/18	01/17/19	02/01/19	07/12/19
33:09	11/01/18	10/11/18	11/16/18	12/31/18	01/22/19	02/21/19	03/01/19	07/29/19
33:10	11/15/18	10/24/18	11/30/18	01/14/19	01/22/19	02/21/19	03/01/19	08/12/19
33:11	12/03/18	11/07/18	12/18/18	02/01/19	02/20/19	03/21/19	04/01/19	08/30/19
33:12	12/17/18	11/26/18	01/01/19	02/15/19	02/20/19	03/21/19	04/01/19	09/13/19

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

## **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.

**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 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce/Credit Union Division intends to adopt the rule cited as 04 NCAC 06C .0708.*

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

**Proposed Effective Date:** April 1, 2019

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): A public hearing may be demanded by written request to Tony Knox, Deputy Administrator of the North Carolina Department of Commerce/Credit Union Division within 15 days of the publication of the Notice of Text.*

**Reason for Proposed Action:** 04 NCAC 06C .0708 CHARITABLE CONTRIBUTIONS AND CHARITABLE DONATION ACCOUNTS – proposed for adoption to allow State-chartered credit unions to make charitable contributions and to fund charitable donation accounts.

**Comments may be submitted to:** Tony Knox, Deputy Administrator, 205 W. Millbrook Road, STE 105, Raleigh, NC 27609, phone (919) 571-4888, fax (919) 420-7919, email [tknox@nccud.org](mailto:tknox@nccud.org)

**Comment period ends:** February 15, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ **State funds affected**  
☐ **Environmental permitting of DOT affected**  
**Analysis submitted to Board of Transportation**

- ☐ **Local funds affected**  
☒ **Substantial economic impact (≥\$1,000,000)**  
☒ **Approved by OSBM**  
☐ **No fiscal note required by G.S. 150B-21.4**

**CHAPTER 06 - CREDIT UNION DIVISION**

**SUBCHAPTER 06C - CREDIT UNIONS**

**SECTION .0700 - ACCOUNTS**

**04 NCAC 06C .0708 CHARITABLE CONTRIBUTIONS AND CHARITABLE DONATION ACCOUNTS**

(a) A credit union may make charitable contributions and donations or may fund a charitable donation account. The following definitions apply throughout this Rule:

- (1) "Charitable contributions and donations" means gifts provided by credit unions to assist others through contributions of staff, equipment, money, or other resources. This definition includes donations to community groups, nonprofit organizations, other credit unions or credit union affiliated causes, political donations, or donations to create charitable foundations.
- (2) "Charitable donation account" ("CDA") means a hybrid charitable and investment vehicle that a credit union may fund as a means to provide charitable contributions to qualified charities.
- (3) "Qualified charity" means a charitable organization or other non-profit entity that serves either a charitable, social, welfare, or educational purpose, and recognized by section 501(c)(3) of the Internal Revenue Code as tax exempt.
- (4) "Total return" means the actual rate of return on all investments in a CDA over a given period of up to five years, including realized interest, capital gains, dividends, and distributions, but exclusive of account fees and expenses.

(b) A credit union seeking to make charitable contributions and donations shall adopt policies and procedures as approved by its Board of Directors.

(c) A credit union shall be allowed to fund a CDA only after it has satisfied the following:

- (1) Notice. The credit union shall send written notice of the type and amount of initial investment to the Administrator 10 days prior to funding the CDA.
- (2) Rating. The credit union shall be rated a CAMEL 1, 2, or 3.

- (3) Maximum aggregate funding. The total aggregate investment in CDAs shall be limited to five percent of the applicant credit union's net worth for the duration of the CDAs, as measured every quarterly Call Report cycle.
- (4) Segregated account. The assets of a CDA shall be held in a segregated custodial account or special purpose entity and shall be labeled as a CDA.
- (5) Regulatory oversight. If a CDA is established using a trust vehicle, the trust shall be a revocable trust and the trustee shall be an entity regulated by a state financial regulatory agency or a federal regulatory agency. A regulated trustee, other person, or entity that is authorized to make investment decisions for a CDA (manager), other than the credit union itself, shall be either a Registered Investment Adviser with the U.S. Securities and Exchange Commission or regulated by the Office of the Comptroller of the Currency.
- (6) CDA documentation and other written requirements. The parties to the CDA shall document the terms and conditions controlling the CDA in a written agreement. The terms of the agreement shall be consistent with this Rule. A credit union's board of directors shall adopt written policies governing the creation, funding, and management of a CDA that are consistent with this Rule, review the policies annually, and may amend them. A CDA agreement and policies shall at a minimum:
  - (A) provide that the CDA will make charitable contributions and donations only to qualified charities;
  - (B) document the investment strategies and risk tolerances the CDA trustee or other manager shall follow in administering the account;
  - (C) provide that a credit union shall account for the CDA, including distributions to charities and liquidation of the CDA, in accordance with generally accepted accounting principles; and
  - (D) state the frequency with which the trustee or manager of the CDA will make distributions to qualified charities that are consistent with Subparagraph (c)(7) of this Rule.
- (7) Minimum distribution to charities. A credit union shall distribute a minimum of 51 percent of the CDA's total return to one or more qualified charities no less frequently than every five years.

(d) Upon termination of a CDA, regardless of the length of its term, a minimum of 51 percent of the CDA's total return on assets shall be distributed to one or more qualified charities. Following the distributions to the qualified charities, any remaining assets

shall be distributed to the credit union either in cash or shall be distributed to the credit union in kind but only if those assets are permissible investments for State-chartered credit unions as set forth in Rule .1201 of this Subchapter and G.S. 54, Article 14 I.

(e) The Administrator may revoke or modify a previously funded investment to the applicable credit union, if the Administrator finds the previously authorized investment is no longer a safe and sound practice, or has become inconsistent with applicable State or federal law. The Administrator shall send written notice of the revocation or modification to the applicable credit union. A credit union may appeal for a final decision by the Administrator as set forth in 04 NCAC 06B .0501.

*Authority G.S. 54-109.12; 54-109.21 (19) and (20).*

## **TITLE 14B – DEPARTMENT OF PUBLIC SAFETY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to adopt the rule cited as 14B NCAC 15B .0114.*

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

**Proposed Effective Date:** May 1, 2019

**Public Hearing:**

**Date:** February 13, 2019

**Time:** 10:00 a.m.

**Location:** ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

**Reason for Proposed Action:** *To adopt a permanent rule defining when a nonprofit organization may be reissued a limited special occasion permit or a special one-time permit when requested by the same person for the same location as a previous permit issued within 18 months, as permitted by G.S. 18B-903A. The rule also defines how often a permit may be issued under this Statute. This rule is authorized by G.S. 18B-903A.*

**Comments may be submitted to:** Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610, phone (919) 779-8367, fax (919) 661-6165, email [walker.reagan@abc.nc.gov](mailto:walker.reagan@abc.nc.gov)

**Comment period ends:** February 15, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery

service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

**CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL  
COMMISSION**

**SUBCHAPTER 15B - RETAIL BEER: WINE: MIXED  
BEVERAGES: BROWNBAGGING: ADVERTISING:  
SPECIAL PERMITS**

**SECTION .0100 - DEFINITIONS: PERMIT  
APPLICATION PROCEDURES**

**14B NCAC 15B .0114 ISSUANCE OF SUBSEQUENT  
NONPROFIT LIMITED SPECIAL OCCASION PERMIT  
AND SPECIAL ONE-TIME PERMIT**

(a) A nonprofit organization, issued a limited special occasion permit pursuant to G.S. 18B-1001(9) or a special one-time permit pursuant to G.S. 18B-1002(a)(2) or (a)(5), may apply for the issuance of a subsequent similar permit in accordance with G.S. 18B-903A within 18 months of the date of issuance of the initial permit.

(b) A permit may be issued pursuant to this Rule no more frequently than once a month within 18 months of the issuance date of the initial permit.

(c) After 18 months of the date of the issuance of the initial permit, a person seeking a limited special occasion permit or a special one-time permit shall submit an application for a new initial permit.

(d) As used in this Rule, "initial permit" means the first limited special occasion permit or special one-time permit issued to the same individual for the same location on behalf of a nonprofit organization pursuant to G.S. 18B-903 within the previous 18 months. The term does not include a limited special occasion permit or a special one-time permit subsequently issued pursuant to G.S. 18B-903A based on a limited special occasion permit or a special one-time permit previously issued.

Authority G.S. 18B-100; 18B-207; 18B-903A.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Private Protective Services Board intends to readopt with substantive changes the rules cited as 14B NCAC 16 .0110, .0804-.0809, .0901, .0904, .0906, .0909; and readopt without substantive changes the rules cited as 14B NCAC 16 .0101-.0109, .0111-.0114, .0201-.0205, .0301, .0302, .0401-*

*.0405, .0501-.0503, .0601-.0603, .0701-.0707, .0801-.0803, .0902, .0903, .0905, .0907, .0908, .0910-.0912, .1001-.1003, .1101-.1108, .1201-.1207, .1301-.1308, and .1401-.1408.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
*<https://www.ncdps.gov/About-DPS/Boards-Commissions/Private-Protective-Services-Board>*

**Proposed Effective Date:** *April 1, 2019*

**Public Hearing:**

**Date:** *January 10, 2019*

**Time:** *2:00 p.m.*

**Location:** *Private Protective Services Board, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609*

**Reason for Proposed Action:** *This set of rules has completed the statutorily required review process and need to be readopted.*

**Comments may be submitted to:** *Phil Stephenson, Field Services Supervisor, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609, phone (919) 788-5320, fax (919) 715-0370, email [Phillip.Stephenson@ncdps.gov](mailto:Phillip.Stephenson@ncdps.gov)*

**Comment period ends:** *February 15, 2019*

**Procedure for Subjecting a Proposed Rule to Legislative**

**Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

**CHAPTER 16 - PRIVATE PROTECTIVE SERVICES  
BOARD****SECTION .0100 - ORGANIZATION AND GENERAL  
PROVISIONS****14B NCAC 16 .0101 PURPOSE (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0102 LOCATION (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0103 DEFINITIONS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0104 UNIFORMS AND EQUIPMENT  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0105 PROHIBITED ACTS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0106 DISCIPLINARY ACTIONS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0107 LAW ENFORCEMENT  
OFFICERS SPECIAL PROVISIONS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0108 RECORDS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0109 RULEMAKING AND  
ADMINISTRATIVE HEARING PROCEDURES  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0110 REPORTING REQUIREMENTS  
~~FOR THE DISCHARGE OF FIREARMS~~**

(a) If any licensee or certificate holder is charged with any criminal offense that would constitute grounds to deny, suspend or revoke a license or certificate under this Chapter the licensee or certificate holder shall self-report the criminal charge to the Board either in person or by telephone no later than the first business day following the charge. The licensee or certificate holder shall provide a copy of the charging document and a written explanation to the Board within five working days.

(b) If any registrant is charged with any criminal offense that would constitute grounds to deny, suspend or revoke a license or certificate under this Chapter the licensee or certificate holder shall self-report the criminal charge to the Board either in person or by telephone no later than the first business day following knowledge of the charge. The licensee or certificate holder shall provide a copy of the charging document and a written explanation to the Board within five working days.

(c) If a ~~licensee or registrant~~ licensee, registrant or certificate holder discharges a firearm while engaged in the private protective services business, the licensee shall notify the Board either in person or by telephone no later than the first business day following the incident. The licensee shall also file a written report to the Board within five working days of the incident. In the

report, the licensee shall state the name of the individual who discharged the firearm, the type of weapon discharged, the location of the incident, the law enforcement agency investigating the incident, the events leading to the discharge of the firearm, and any bodily injuries occurring from the incident. This Rule shall not be construed to apply to a weapon that is discharged during a training course that has been approved by the Board.

*Authority G.S. 74C-5.*

**14B NCAC 16 .0111 CHANGE OF ADDRESS OR  
TELEPHONE NUMBER (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 16 .0112 SUSPENSION OF AUTHORITY  
TO EXPEND FUNDS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 16 .0113 INVOLVEMENT IN  
ADMINISTRATIVE HEARING (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0114 APPLICATION COMPLETION  
DEADLINE (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)****SECTION .0200 - LICENSES: TRAINEE PERMITS****14B NCAC 16 .0201 APPLICATION FOR LICENSES  
AND TRAINEE PERMITS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 16 .0202 FEES FOR LICENSES AND  
TRAINEE PERMITS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 16 .0203 RENEWAL OR RE-ISSUE OF  
LICENSES AND TRAINEE PERMITS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 16 .0204 DETERMINATION OF  
EXPERIENCE (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 16 .0205 COMPANY BUSINESS LICENSE  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****SECTION .0300 - SECURITY GUARD AND PATROL:  
GUARD DOG SERVICE****14B NCAC 16 .0301 EXPERIENCE  
REQUIREMENTS/SECURITY GUARD AND PATROL  
LICENSE (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)****14B NCAC 16 .0302 EXPERIENCE REQUIREMENTS  
FOR GUARD DOG SERVICE LICENSE (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**



**SECTION .0400 - PRIVATE INVESTIGATOR:  
ELECTRONIC COUNTERMEASURES**

**14B NCAC 16 .0401 EXPERIENCE REQUIREMENTS  
FOR A PRIVATE INVESTIGATOR LICENSE  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0402 EXPERIENCE REQUIREMENTS  
FOR A COUNTERINTELLIGENCE LICENSE  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0403 TRAINEE PERMIT  
REQUIREMENTS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0404 REPORTS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0405 PRIVATE INVESTIGATOR'S  
USE OF A BADGE (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**SECTION .0500 - POLYGRAPH**

**14B NCAC 16 .0501 EXPERIENCE REQUIREMENTS  
FOR A POLYGRAPH LICENSE (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0502 POLYGRAPH TRAINEE  
PERMIT REQUIREMENTS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0503 POLYGRAPH EXAMINATION  
REQUIREMENTS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**SECTION .0600 - PSYCHOLOGICAL STRESS  
EVALUATOR (P.S.E.)**

**14B NCAC 16 .0601 EXPERIENCE REQUIREMENTS  
FOR A PSYCHOLOGICAL STRESS EVALUATOR  
LICENSE (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

**14B NCAC 16 .0602 P.S.E. EXAMINATION  
REQUIREMENTS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0603 P.S.E. INSTRUMENTS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0700 - SECURITY GUARD REGISTRATION  
(UNARMED)**

**14B NCAC 16 .0701 APPLICATION FOR UNARMED  
SECURITY GUARD REGISTRATION (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0702 FEES FOR UNARMED  
SECURITY GUARD REGISTRATION (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0703 MINIMUM STANDARDS FOR  
UNARMED SECURITY GUARD REGISTRATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0704 INVESTIGATION FOR  
UNARMED SECURITY GUARD REGISTRATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0705 UNARMED SECURITY GUARD  
REGISTRATION IDENTIFICATION CARDS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0706 RENEWAL OR REISSUE OF  
UNARMED SECURITY GUARD REGISTRATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0707 TRAINING REQUIREMENTS  
FOR UNARMED SECURITY GUARDS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0800 - ARMED SECURITY GUARD FIREARM  
REGISTRATION PERMIT**

**14B NCAC 16 .0801 APPLICATION/ARMED  
SECURITY GUARD FIREARM REGISTRATION  
PERMIT (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

**14B NCAC 16 .0802 FEES FOR ARMED SECURITY  
GUARD FIREARM REGISTRATION PERMIT  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0803 MINIMUM STDS/ARMED  
SECURITY GUARD FIREARM REGISTRATION  
PERMIT (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

**14B NCAC 16 .0804 INVESTIGATION/ARMED  
SECURITY GUARD FIREARM REGISTRATION  
PERMIT**

(a) After the administrator receives a complete application for registration, the ~~administrator~~ Director may cause to be made such further investigation of the applicant as deemed necessary.

(b) Any denial of an applicant for registration by the ~~administrator~~ Director shall be subject to review by the Board.

*Authority G.S. 74C-5.*

**14B NCAC 16 .0805 ARMED SECURITY GUARD  
FIREARM REGISTRATION PERMIT IDENT CARDS**

(a) The provisions of ~~42 NCAC 7D .0705~~ 14B NCAC 16 .0705 are hereby made to apply to armed security ~~officers~~ guards.

(b) Upon termination of employment of an armed security ~~officer~~ guard, the employer shall return the employee's registration card to the Board within 15 days of the employee's termination.

*Authority G.S. 74C-5; 74C-11; 74C-13.*

**14B NCAC 16 .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his or her employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor fewer than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPASL-Photos@ncdps.gov or by compact disc;
- (2) statements of any criminal record obtained from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 months;
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application that shall serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

(e) A registered armed security guard may utilize a dedicated light system or gun-mounted light for requalification.

*Authority G.S. 74C-5; 74C-11; 74C-13.*

**14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS**

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in Rule .0707 of this Chapter.

(b) Private investigator licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of the courses set forth in Rule

.0707(a)(1) and (2) of this Chapter and all additional training requirements set forth in that Rule.

(c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

Subparagraph (c)(2), "operation" under Subparagraph (c)(3), and Subparagraph (c)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(d) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office. For rifle qualification all shots shall be located on the target. Should a student fail to attain a score of 80 percent accuracy, the student may be given three additional attempts to qualify on the course of fire the student did not pass. Failure to meet the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed Security Guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour course.

(e) All armed security guard training required by this Chapter shall be administered by a certified trainer and shall be completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(f) All applicants for an armed security guard firearm registration permit shall obtain training under the provisions of this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(g) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training for armed security guards.

(h) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard registered with one company may be registered with a second company. The registration shall be considered "dual." The registration with the second company shall

expire at the same time that the registration expires with the first company. An updated application shall be required to be submitted by the applicant, along with the digital photograph, updated criminal records checks, and a forty dollar (\$40.00) registration fee. If the guard will be carrying a firearm of the same make, model, and caliber, then no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

(j) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, six hours of classroom training that shall include the following:

- (1) legal limitations on the use of shotgun (minimum of one hour);
- (2) shotgun safety, including range firing procedures (minimum of one hour);
- (3) shotgun operation and maintenance (minimum of one hour);
- (4) shotgun fundamentals (minimum of two hours); and
- (5) night firing (minimum of one hour).

Subparagraph (j)(2), "operation" under Subparagraph (j)(3), and Subparagraph (j)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(k) An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete one hour of classroom training covering the topics set forth in Paragraph (j) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(m) To be authorized to carry a rifle in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, 16 hours of classroom training which shall include the following:

- (1) legal limitations on the use of rifles (minimum of one hour);
- (2) rifle safety, including range firing procedures (minimum of one hour);
- (3) rifle operation and maintenance (minimum of two hours);
- (4) rifle fundamentals (minimum of ten hours); and
- (5) night firing (minimum two hours).

Subparagraph (m)(2), "operation" under Subparagraph (m)(3), and Subparagraph (m)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(n) The applicant shall pass a skills course that tests each basic rifle skill and the test of each skill shall be completed within three attempts.

(o) An applicant may take the additional rifle training at a time after the initial training in this Rule. If the rifle training is completed at a later time, the rifle certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraphs (m) and (n) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a rifle range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(p) Applicants for rifle recertification shall complete an additional one hour of classroom training covering the topics set forth in Paragraph (m) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(q) Upon written request, an applicant for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with the applicant's duty firearms as set forth in Paragraph (d) of this Rule.

(r) ~~The An~~ armed security guard is required to qualify annually both for day and night firing with his or her duty handgun, shotgun, and rifle, if applicable. If the security guard fails to qualify on any course of fire, the security guard shall not carry the firearm until such time as he or she meets the qualification requirements. Upon failure to qualify, the firearm instructor shall notify the security guard that he or she is no longer authorized to carry the firearm and the firearm instructor shall notify the employer and the Private Protective Services Board staff on the next business day.

(s) A firearm training certificate of an armed security guard remains valid even if the guard leaves the employment of one company for the employment of another. The range qualifications shall remain valid if the guard will be carrying a firearm of the same make, model, and caliber, then no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course. However, nothing herein shall extend the period of time the qualification is valid.

Authority G.S. 74C-5; 74C-9; 74C-13.

#### **14B NCAC 16 .0808 CONCEALED WEAPONS**

(a) Nothing in G.S. 74C or this Chapter shall be construed as permitting the carrying of concealed weapons by licensees, trainees, registrants or firearms trainers while in performance of duties regulated by the Private Protective Services Act, ~~unless the Act. However, a~~ licensee, trainer, or registrant who has complied with all provisions of G.S. 14, Article 54B and applicable rules ~~promulgated~~ adopted by the N.C. Criminal Justice Education and Training Standards Commission pursuant thereto and has been

issued a current concealed handgun permit by a ~~Sheriff~~. ~~Additionally, applicants shall comply~~ Sheriff may carry a concealed handgun after complying with the concealed ~~firearm~~ handgun provisions for training and qualifications set forth in Paragraph (b) of this Rule.

(b) A licensee, ~~trainer, or registrant~~ trainee, registrant or firearms trainer shall comply with each of the following requirements to carry a ~~Concealed Firearm~~ concealed handgun while engaged in a private protective services business.

- (1) ~~An individual shall hold~~ Hold a current Armed Security Guard Registration Permit by complying with all requirements for armed registration as prescribed in this Section.
- (2) ~~An individual shall complete~~ Complete standards set forth by the N.C. Criminal Justice Education and Training Standards Commission to include knowledge of North Carolina firearms laws including, but not limited to, the limitation on concealed ~~weapon~~ handgun possession on specified ~~grounds~~ property and within certain buildings.
- (3) ~~An individual meeting the requirements of this Section shall be issued a concealed firearm endorsement to the current Armed Security Guard Registration Permit for the term of the Armed Security Guard Registration Permit without additional permit fees, but any additional training costs necessary to comply with this Section shall be borne directly by the applicant.~~

(c) Upon application to the Board, a licensee, trainee, registrant, or firearms trainer meeting the requirements of this Section may be issued a concealed handgun endorsement to the current Armed Security Guard Registration Permit for the term of the Armed Security Guard Registration Permit without additional permit fees, but any additional training costs necessary to comply with this Section shall be borne directly by the applicant. The endorsement shall be renewed at the time of the Armed Security Guard Registration Permit renewal pursuant to the applicable provisions of this Section on payment of the armed security guard registration renewal fee and proof of possession of a current Concealed Handgun Permit. There shall be no additional fee for the concealed ~~firearms~~ handgun endorsement renewal.

*Authority G.S. 74C-5; 74C-13.*

#### **14B NCAC 16 .0809 AUTHORIZED FIREARMS**

Armed licensees or registrants are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard revolver from .32 caliber to .357 caliber, a standard semi-automatic pistol from .354 caliber to .45 caliber, any standard 12 gauge shotgun, or any standard semi-automatic or bolt action ~~.223 or .223, .308, 5.56 X 45 mm NATO caliber~~ caliber, or any above handgun caliber rifle as long as the licensee or registrant has been trained pursuant to Rule .0807 of this Section. For purposes of this Section, a "standard" firearm means a firearm that has not been modified or altered from its original manufactured design.

*Authority G.S. 74C-5; 74C-13.*

#### **SECTION .0900 – TRAINER CERTIFICATE**

##### **14B NCAC 16 .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE**

(a) Firearms trainer applicants shall:

- (1) meet the minimum standards established by Rule .0703 of this Chapter;
- (2) have a minimum of one year of ~~supervisory~~ experience in security with a contract security company or proprietary security organization, or one year of experience with any federal, state, county or municipal law enforcement agency;
- (3) attain a 90 percent score on a firearm's prequalification course approved by the Board and the Secretary of Public Safety, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) to teach handgun qualification, complete a training course approved by the Board and the Secretary of Public Safety that shall consist of a minimum of 32 hours of classroom and practical range training in safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun firing;
- (5) to teach shotgun ~~or rifle~~ qualification, complete a training course approved by the Board and the Secretary of Public Safety that shall consist of a minimum of ~~24~~ 12 hours of classroom and practical range training in shotgun ~~and rifle~~ safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of shotgun ~~and rifle~~ firing;
- (6) to teach rifle qualification, complete a training course approved by the Board and the Secretary of Public Safety that shall consist of a minimum of 16 hours of classroom and practical range training in rifle safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of rifle firing;
- ~~(6)(7)~~ pay the certified trainer application fee established in Rule .0903(a)(1) of this Section; and
- ~~(7)(8)~~ successfully complete the requirements of the Unarmed Trainer Certificate set forth in Rule .0909 of this Section.

(b) The applicant's score on the prequalification course set forth in Subparagraph (a)(3) of this Rule is valid for 180 days after completion of the course.

(c) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards Commission.

(d) In lieu of Subparagraphs (a)(2) and (4) of this Rule, an applicant may establish that the applicant satisfies the conditions

set forth in G.S. 93B-15.1(a) for firearm instruction and two years of verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor.

(e) All applicants subject to Paragraphs (c) and (d) of this Rule shall comply with the provisions of Subparagraph (a)(3), pay the application fee amount as set forth in Rule .0903 of this Section, and complete the eight-hour course given by the Board on rules and regulations.

(f) In addition to the requirement of Section .0200 of this Chapter, an applicant for a firearms trainer certificate who is the spouse of an active duty member of the U.S. Armed Forces shall establish that the application satisfies the conditions set forth in G.S. 93B-15.1(b).

(g) A Firearms Trainer Certificate expires two years after the date of issuance.

*Authority G.S. 74C-5; 74C-9; 74C-13; 93B-15.1.*

**14B NCAC 16 .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0903 FEES FOR TRAINER CERTIFICATE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE**

(a) Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board and available on its website at [www.ncdps.gov/PPS](http://www.ncdps.gov/PPS). This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in safety and maintenance of the applicable firearm (i.e. handgun, shotgun or rifle), range operations, control and safety procedures, ~~and~~ methods of firing, firing, and night firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a certified statement of the result of a criminal records search from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 48 months;
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay

the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

(c) Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue to instruct during the period between the failure to qualify and the expiration of his or her permit.

(d) The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal requalification.

*Authority G.S. 74C-5; 74C-8.1(a); 74C-13.*

**14B NCAC 16 .0905 DETERMINATION OF EXPERIENCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0906 RECORDS RETENTION**

(a) A Certified Firearms Trainer shall retain the following in the individual's armed certification file:

- (1) a copy of the post delivery report listing the name(s) of individual(s) who qualified or attempted to qualify for armed security guard registration, and hour(s) of training, ~~weapon~~ firearms qualification scores and any other information thereon;
- (2) a copy of the individual's Firearm Training Certificate; and
- (3) the individual's B-27 target and the Certified Firearms Trainer's Documentation Record.

(b) The individual's B-27 qualification attempt target shall be retained for a minimum of 18 calendar months from the date of each qualification attempt. Each B-27 target must contain the full name of the individual that fired the qualification course of fire, the date that qualification attempt took place, the printed name and signature of the private protective service certified firearms trainer who scored the target and the score. The qualification target shall also show letter "N" or "D" to indicate if the qualification attempt was a day time ("D") or night time ("N") qualification attempt. The information required by this Paragraph shall be placed on the B-27 target in ink or permanent marker.

*Authority G.S. 74C-5; 74C-13.*

**14B NCAC 16 .0907 PRE-DELIVERY REPORT FOR FIREARMS TRAINING COURSES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0908 POST-DELIVERY REPORT FOR FIREARMS TRAINING COURSES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0909 UNARMED TRAINER CERTIFICATE**

(a) To receive an unarmed trainer certificate, an applicant shall meet the following requirements:

- (1) comply with the requirements of Rule .0703 of this Chapter;
- (2) have a minimum of one year of experience in security with a contract security company or proprietary security organization, or one year of experience with any federal, state, county or municipal law enforcement agency;
- (3) successfully complete a training course approved by the Board and the Secretary of Public Safety which shall consist of a minimum of 24 hours classroom instruction to include the following topic areas:
  - (A) civil liability for the security trainer -- (two hours);
  - (B) interpersonal communications in instruction -- (three hours);
  - (C) teaching adults -- (four hours);
  - (D) principles of instruction -- (one hour);
  - (E) methods and strategies of instruction - (one hour);
  - (F) principles of instruction: audio-visual aids -- (three hours); and
  - (G) student performance -- (45 minute presentation);
- (4) receive a favorable recommendation from the employing or contracting ~~licensee~~; licensee or other individual knowledgeable of the applicant's experience and teaching skills; and
- (5) submit the application required by Rule .0910 of this Section, which is available on the Board's website at [www.ncdps.gov/PPS](http://www.ncdps.gov/PPS).

(b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to the Board:

- (1) a Criminal Justice General Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards Commission; or
- (2) any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule and is approved by the Director of PPS.

(c) In lieu of the experience requirement of Subparagraph (a)(2) of this Rule and completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may establish that the applicant satisfies the conditions set forth in G.S. 93B-15.1(a) for an unarmed trainer and two years of verifiable experience within the past five years in the U.S. Armed forces as an unarmed guard trainer.

(d) In addition to the requirements of Section .0200 of this Chapter, an applicant for an unarmed guard trainer certificate that is the spouse of an active duty member of the U.S. Armed Forces shall establish that the applicant satisfies the conditions set forth in G.S. 93B-15.1(b).

~~(e) An Unarmed Trainer Certificate shall expire two years after the date of issuance.~~

(e) The holder of an unarmed trainer certificate may teach as:

- (1) an employee of a licensed security guard and patrol business;

- (2) as a contractor of a licensed security guard and patrol business; and
- (3) in a program sponsored by a public high school defined by G.S. 115C-75(a)(2) or a community college established pursuant to G.S. 115D-2(2).

(f) An Unarmed Trainer Certificate shall expire two years after the date of issuance.

*Authority G.S. 74C-8; 74C-9; 74C-11; 93B-15.1.*

**14B NCAC 16 .0910 APPLICATION FOR AN UNARMED TRAINER CERTIFICATE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0911 RENEWAL OF AN UNARMED TRAINER CERTIFICATE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .0912 ROSTERS OF UNARMED TRAINER CLASSES (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1000 - RECOVERY FUND**

**14B NCAC 16 .1001 DEFINITIONS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1002 PETITION FOR HEARING/APPLICATION FOR RELIEF (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1003 PROCESSING APPLICATIONS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1100 - TRAINING AND SUPERVISION FOR PRIVATE INVESTIGATOR ASSOCIATES**

**14B NCAC 16 .1101 DEFINITIONS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1102 TRAINING AND SUPERVISION REQUIRED IN LEVEL ONE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1103 TRAINING AND SUPERVISION REQUIRED IN LEVEL TWO (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1104 TRAINING AND SUPERVISION REQUIRED IN LEVEL THREE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1105 EDUCATIONAL DEGREES AND NON-DEGREED TRAINING (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1106 CONSIDERATION OF  
EXPERIENCE (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1107 ENFORCEMENT (READOPTIOIN  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1108 TRANSFERABILITY OF  
TRAINING HOURS (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**SECTION .1200 – CONTINUING EDUCATION**

**14B NCAC 16 .1201 DEFINITIONS (READOPTIOIN  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1202 REQUIRED CONTINUING  
EDUCATION HOURS (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1203 ACCREDITATION STANDARDS  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1204 NON-RESIDENT LICENSEE  
CONTINUING EDUCATION CREDITS (READOPTIOIN  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1205 RECORDING AND REPORTING  
CONTINUING EDUCATION CREDITS (READOPTIOIN  
WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1206 NON-COMPLIANCE  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1207 CREDIT FOR CE COURSES  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1300 – ARMORED CAR SERVICE GUARD  
REGISTRATION (UNARMED)**

**14B NCAC 16 .1301 APPLICATION FOR UNARMED  
ARMORED CAR SERVICE GUARD REGISTRATION  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1302 FEES FOR UNARMED  
ARMORED CAR SERVICE GUARD REGISTRATION  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1303 MINIMUM STANDARDS FOR  
UNARMED ARMORED CAR SERVICE GUARD  
REGISTRATION (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1304 INVESTIGATION FOR  
UNARMED ARMORED CAR SERVICE GUARD  
REGISTRATION (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1305 UNARMED ARMORED CAR  
SERVICE GUARD REGISTRATION IDENTIFICATION  
CARDS (READOPTIOIN WITHOUT SUBSTANTIVE  
CHANGES)**

**14B NCAC 16 .1306 RENEWAL OR REISSUE OF  
UNARMED ARMORED CAR SERVICE GUARD  
REGISTRATION (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1307 TRAINING REQUIREMENTS  
FOR UNARMED ARMORED CAR SERVICE GUARDS  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1308 UNIFORMS AND EQUIPMENT  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1400 - ARMED ARMORED CAR SERVICE  
GUARDS FIREARM REGISTRATION PERMIT**

**14B NCAC 16 .1401 APPLICATION/ARMED  
ARMORED CAR SERVICE GUARD FIREARM  
REGISTRATION PERMIT (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1402 FEES FOR ARMED ARMORED  
CAR SERVICE GUARD FIREARM REGISTRATION  
PERMIT (READOPTIOIN WITHOUT SUBSTANTIVE  
CHANGES)**

**14B NCAC 16 .1403 MINIMUM STDS/ARMED  
ARMORED CAR SERVICE GUARD FIREARM  
REGISTRATION PERMIT (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1404 INVESTIGATION/ARMED  
ARMORED CAR SERVICE GUARD FIREARM  
REGISTRATION PERMIT (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1405 ARMED ARMORED CAR  
SERVICE GUARD FIREARM REGISTRATION PERMIT  
IDENTIFICATION CARDS (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1406 RENEWAL OF ARMED  
ARMORED CAR SERVICE GUARD FIREARM  
REGISTRATION PERMIT (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1407 TRAINING REQUIREMENTS  
FOR ARMED ARMORED CAR SERVICE GUARDS  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 16 .1408 UNIFORMS AND EQUIPMENT  
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

---

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02D .1905, readopt with substantive changes the rules cited as 15A NCAC 02D .0540, .1802, .1806, .1902, .1903 and .1904; and readopt without substantive changes the rules cited as 15A NCAC 02D .1801, .1803, .1804, .1807, .1808, .1901, .1906 and .1907.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

**Proposed Effective Date:** July 1, 2019

**Public Hearing:**

**Date:** January 29, 2019

**Time:** 6:00 p.m.

**Location:** DEQ Green Square Office Building, 1<sup>st</sup> Floor Training Room (#1210), 217 West Jones Street, Raleigh, NC 27603

**Public Hearing:**

**Date:** January 31, 2019

**Time:** 6:00 p.m.

**Location:** Sampson County Community College, Activity Center, Highway 24 W, Clinton, NC 28329

**Reason for Proposed Action:** *To receive comments on the proposed readoption of air quality rules in several sections in 15A NCAC 02D to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

**15A NCAC 02D .0540 – Particulates from Fugitive Dust Emission Sources**

*This rule regulates excess fugitive dust emissions that are generated from activities such as loading and unloading areas, process areas, stockpiles, stock pile working, and facility parking lots and roads located at a plant. This rule is being proposed for readoption with substantive changes. These changes are intended to clarify the requirements that were already promulgated in the previous rule. Other changes to the rule include: general formatting, the addition of gender neutral language, and updating the format of references.*

**15A NCAC 02D .1800 – Control of Odors**

*This section consists of 7 rules for the control of objectionable odors from animal operations and other process facilities. Rules 02D .1801, .1803, .1804, .1807, and .1808 are proposed for readoption without substantive changes. The changes to these rules include: general formatting, the addition of gender neutral language, and updating the format of references. Rules 02D .1802 and .1806 are proposed for readoption with substantive changes.*

*Rule 02D .1802 is being revised to provide clarity, remove obsolete text, and to redefine the best management plan requirements. Rule 02D .1806 is being revised to amend rule language to provide clarity, remove obsolete text, add a provision for requesting extensions. Also, the DAQ is proposing to add an intermediary step prior to requirement for maximum feasible controls.*

**15A NCAC 02Q .1900 – Open Burning**

*There are 7 rules in this section that regulate open burning and air curtain incinerators. The rules prohibit most outdoor burning and sets conditions for allowable fires and what can be burned in those fires. The rule also sets conditions for the use of air curtain incinerators and the types of materials that can be burned in these incinerators. Rules 02D .1901, .1906, and .1907 are proposed for readoption without substantive changes. The changes to these rules include: general formatting, the addition of gender neutral language, and updating the format of references. Rule 02D .1905 is proposed for amendment. Rules 02D .1902, .1903, and .1904 are proposed for readoption with substantive changes. Rule 02D .1902 is being revised to remove definitions that are no longer needed and revise definitions to clarify different activities. In addition, changes were made to update the format of references and other administrative language. Rule 02D .1903 is being revised to update the name of the county office, clarify which items can be burned, and reformat the factors for the allowance of fire training burning by the regional supervisor. In addition, changes were made to update the format of references and other administrative language. Rule 02D .1904 is being revised to incorporate the changes to federal emissions guidelines and standards outlined in 40 CFR 60 Subpart DDDD and 40 CFR 241, which were finalized by the U.S. Environmental Protection Agency on June 23, 2016 and February 7, 2013, respectively.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules is available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.*

**Comments may be submitted to:** Joelle Burleson, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email [daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov) (please type "1/29/19 and 1/31/19 hearings" in subject line)

**Comment period ends:** February 15, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

*If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule.*



The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .0500 - EMISSION CONTROL STANDARDS**

**15A NCAC 02D .0540 PARTICULATES FROM FUGITIVE DUST EMISSION SOURCES**

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

- (1) "Excess fugitive dust emissions" means:
  - (A) ~~Fugitive~~ fugitive dust is visible extending beyond the facility's property ~~line~~, line; or
  - (B) ~~Upon~~ upon inspection of settled dust on adjacent property, the Division finds that the dust came from the adjacent facility.
- (2) "Fugitive dust emissions" means particulate matter that does not pass through a process stack or vent and that is generated within plant property boundaries from activities such as unloading and loading areas, process areas, stockpiles, stock pile working, plant parking lots, and plant roads (including access roads and haul roads).
- (3) "Production of crops" means:
  - (A) cultivation of land for crop planting;
  - (B) crop irrigation;
  - (C) harvesting;
  - (D) on site curing, storage, or preparation of crops; or
  - (E) protecting them from damage or disease conducted according to practices acceptable to the North Carolina Department of Agriculture and Consumer Services.
- (4) "Public parking" means an area dedicated to or maintained for the parking of vehicles by the general public.
- (5) "Public road" means any road that is part of the State highway system or any road, street, or

right-of-way dedicated or maintained for public use.

- (6) "Substantive complaints" means complaints that are verified by the Division with physical ~~evidence~~, evidence of excess fugitive dust emissions.

(b) This Rule does not apply to:

- (1) abrasive blasting covered ~~under by Rule 15A NCAC 02D .0541; .0541 of this Section;~~
- (2) cotton ginning operations covered ~~under by Rule 15A NCAC 02D .0542; .0542 of this Section;~~
- (3) non-production military base operations;
- (4) land disturbing ~~activities~~, activities that do not require a permit pursuant to 15A NCAC 02Q or are not subject to a requirement pursuant to 15A NCAC 02D, such as clearing, grading, or digging, and related activities such as hauling fill and cut material, building material, or equipment; or
- (5) public roads, public parking, timber harvesting, or production of crops.

(c) The owner or operator of a facility required to have a permit ~~under pursuant to~~ 15A NCAC 02Q or ~~of~~ a source subject to a requirement ~~under pursuant to~~ 15A NCAC 02D shall not cause or allow fugitive dust emissions to cause or contribute to substantive complaints, or visible emissions in excess of that allowed ~~under pursuant to~~ Paragraph (e) of this Rule.

(d) If fugitive dust emissions from a facility required to comply with this Rule cause or contribute to substantive complaints, the owner or operator of the facility shall:

- (1) within 30 days upon receipt of written notification from the Director of a second substantive complaint in a 12-month period, submit to the Director a written report that includes the identification of the probable ~~source(s)~~ sources of the fugitive dust emissions causing complaints and what measures can be made to abate the fugitive emissions;
- (2) within 60 days of the initial report submitted ~~under pursuant to~~ Subparagraph (1) of this Paragraph, submit to the Director a fugitive dust control plan as described in Paragraph (f) of this Rule; and
- (3) within 30 days after the Director approves the plan, be in compliance with the plan.

~~(e) If there is sufficient environmental benefit to justify a fugitive dust control plan, the~~ The Director shall require that the owner or operator of a facility covered by Paragraph (c) of this Rule develop and submit a fugitive dust control plan as described in Paragraph (f) of this Rule if:

- (1) ambient air quality measurements or dispersion modeling as provided in 15A NCAC 02D .1106(e) show that the excess fugitive dust emissions cause the show violation or a potential for a violation of an ambient air quality standard for particulates in 15A NCAC 02D ~~.0400; .0400 to be exceeded;~~ or

- (2) the Division observes ~~excessive~~ excess fugitive dust emissions from the facility beyond the property boundaries for six minutes in any one hour using Reference Method 22 in 40 CFR 60, Appendix A.
- (f) The fugitive dust control plan shall:
  - (1) identify the sources of fugitive dust emissions within the facility;
  - (2) describe how fugitive dust will be controlled from each identified source;
  - (3) contain a schedule by which the plan will be implemented;
  - (4) describe how the plan will be implemented, including training of facility personnel; and
  - (5) ~~describe methods~~ propose any methods that will be used to verify compliance with the plan.
- (g) The Director shall approve the plan if he or she finds that:
  - (1) the plan contains all required elements in Paragraph (f) of this Rule;
  - (2) the proposed schedule contained in the plan will reduce fugitive dust emissions ~~in a timely manner;~~ in accordance with the timeliness for implementing the proposed method or equipment;
  - (3) the methods used to control fugitive dust emissions ~~are sufficient~~ to prevent fugitive dust emissions from causing or contributing to a violation of the ambient air quality standards for particulates; and
  - (4) the ~~described~~ proposed compliance verification methods ~~are sufficient~~ to verify compliance with the fugitive dust control plan.

If the Director finds that the proposed plan does not meet the requirements of this ~~Paragraph~~ Paragraph, he or she shall notify the owner or operator of the facility of any deficiencies in the proposed plan. The owner or operator shall have 30 days after receiving written notification from the Director to correct the deficiencies or submit a schedule describing actions to be taken and the time by which they will be implemented.

(h) If after a plan has been implemented, the Director finds that the plan ~~inadequately controls~~ fails to control excess fugitive dust emissions, he or she shall require the owner or operator of the facility to correct the deficiencies in the plan. Within 90 days after receiving written notification from the Director identifying the deficiency, the owner or operator of the facility shall submit a revision to his or her plan to correct the deficiencies.

*Authority* G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(c)(7).

## **SECTION .1800 - CONTROL OF ODORS**

### **15A NCAC 02D .1801 DEFINITIONS (READOPTED WITHOUT SUBSTANTIVE CHANGES)**

### **15A NCAC 02D .1802 CONTROL OF ODORS FROM ANIMAL OPERATIONS USING LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS**

(a) Purpose. The purpose of this Rule is to control objectionable odors from animal operations beyond the boundaries of animal operations.

(b) Applicability. This Rule shall apply to all animal ~~operations;~~ operations using liquid animal waste management systems.

(c) Required management practices. All animal operations shall be required to implement applicable management practices for the control of odors as follows:

- (1) ~~The~~ the carcasses of dead animals shall be disposed of within 24 hours after becoming aware of the death of the animal according to the methods approved by the State Veterinarian for disposal of dead domesticated animals ~~under pursuant to G.S. 106-403; G.S. 106-403 and 02 NCAC 52C .0102.~~ 02 NCAC 52C .0102 is hereby incorporated by reference and includes subsequent amendments or editions;
- (2) ~~Waste~~ waste from animal wastewater application spray systems shall be applied in such a manner and ~~under pursuant to~~ such conditions to prevent drift from the irrigation field of the wastewater spray beyond the boundary of the animal operation, except waste from application spray systems may be applied in an emergency to maintain safe lagoon freeboard if the owner or operator notifies the Department and resolves the emergency with the Department as written in Section ~~44-6 III.13~~ III.13 of the Swine Waste Operation General Permit;
- (3) ~~Animal~~ animal wastewater application spray system intakes shall be located near the liquid surface of the animal wastewater lagoon;
- (4) ~~Ventilation~~ ventilation fans shall be maintained according to the ~~manufacturer's~~ manufacturer's specifications; and
- (5) ~~Animal~~ animal feed storage containers located outside of animal containment buildings shall be covered except when ~~necessary to remove or add feed;~~ removing or adding feed. ~~this~~ This Subparagraph ~~does~~ shall not apply to the storage of silage or hay or to commodity boxes with ~~roofs;~~ and roofs.

~~All animal operations shall be in compliance with this Paragraph by June 1, 1999.~~

(d) Odor management plan (OMP) for existing animal operations for swine. Animal operations for swine that meet the criteria in the table in this Paragraph shall submit an odor management plan to the ~~Director according to the schedule in the table in this Paragraph.~~ Director. The odor management plan shall describe how odors are currently being controlled and how these odors will be controlled in the future. ~~The odor management plan shall contain the elements described in Rule .1803(a) of this Section.~~

**PROPOSED RULES**

The animal operation shall be required to submit its odor management plan only once. The odor management plan shall:

- (1) identify the name, location, and owner of the animal operation;
- (2) identify the name, title, address, and telephone number of the person filing the plan;
- (3) identify the sources of odor within the animal operation;
- (4) describe how odor will be controlled from:
  - (A) the animal houses;
  - (B) the animal wastewater lagoon, if used;
  - (C) the animal wastewater application lands, if used;
  - (D) waste conveyances and temporary accumulation points; and
  - (E) other possible sources of odor within the animal operation;

- (5) contain a diagram showing all structures and lagoons at the animal operation, forced air directions, and approximate distances to structures or groups of structures within 3,000 feet of the property line of the animal operation; a recent or updated aerial photograph instead of a diagram provided the items required by this Subparagraph are shown;
- (6) for existing animal operations, contain a schedule not to exceed six months by which the plan will be implemented;
- (7) describe how the plan will be implemented, including training of personnel;
- (8) describe inspection and maintenance procedures; and
- (9) describe methods of monitoring and recordkeeping to verify compliance with the plan.

100 pounds steady state live weight of swine		Distance in feet to the boundary of the nearest neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State <del>Park</del> <u>parks</u> , historic property, or child care center	Date by when the odor management plan is to be submitted
at least	but less than		
10,000	20,000	less than or equal to 3,000	<del>January 15, 2002</del>
20,000	40,000	less than or equal to 4,000	<del>July 15, 2001</del>
40,000		less than or equal to 5,000	<del>January 15, 2001</del>

For the purposes of this Rule, the distance shall be measured from the edge of the barn or lagoon, whichever is closer, to the boundary of the neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State ~~Park~~ parks, historic property, or child care center. All animal operations for swine that are of the capacity size in the table in this Paragraph shall submit ~~by the date specified in this table~~ either an odor management plan or documentation that no neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State ~~Park~~ parks, historic property, or child care center is within the distances specified in the ~~table as of the date that the submittal is due.~~ table. After ~~July 15, 2002, the~~ The Director may require existing animal operations for swine with a steady state live weight of swine between ~~1,000 100,000 to 40,000 1,000,000 pounds steady state live weight hundredweights~~ to submit an odor management plan if the Director determines pursuant to Paragraph (g) of this Rule that these animal operations ~~may~~ cause or contribute to an objectionable odor. The Director may require an existing animal operation to submit a best management plan (BMP) pursuant to 15A NCAC 02D .1803, under then submit the BMP pursuant to Paragraph (h) of this Rule if the existing animal operation fails to submit an odor management ~~plan by the schedule in this Paragraph of this Rule.~~ plan.

(e) Location of objectionable odor determinations.

- (1) For an existing animal operation that does not meet the following siting requirements:
  - (A) at least ~~1500~~ 1,500 feet from any occupied residence not owned by the owner of the animal operation;

- (B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation ~~facility.~~ Facility, national ~~park; parks,~~ State ~~Park; parks,~~ historic property, or child care center; and
  - (C) at least 500 feet from any property boundary;
- objectionable odors shall be determined at neighboring occupied property not owned by the owner of the animal operation, such as businesses, schools, hospitals, churches, outdoor recreation facilities, national parks, State ~~Parks, parks,~~ historic properties, or child care centers that are affected.
- (2) For a new animal operation or existing animal operation that meets the siting requirements in Subparagraph (1) of this Paragraph, objectionable odors shall be determined beyond the boundary of the animal operation.
- (f) Complaints. The Director shall respond to complaints about objectionable odors from animal operations as follows:
- (1) Complaints shall be ~~investigated to the extent practicable.~~ investigated;
  - (2) Complaints may be used to assist in determination of a best management plan failure or a control technology ~~failure.~~ failure;
  - (3) The Director shall respond to complaints within ~~30 days.~~ days of receipt of the complaint;
  - (4) Complaint response shall ~~at least~~ include a ~~written response~~ of the Director's evaluation of the ~~complaint.~~ complaint;

- (5) The investigation of a complaint shall be completed as expeditiously as possible considering the meteorology, activities at the animal operation, and other conditions occurring at the time of the ~~complain~~ complaint.

(g) Determination of the existence of an objectionable odor. In ~~deciding~~ determining if an animal operation is causing or contributing to an objectionable odor, the factors the Director may consider ~~one or more of the following:~~ include:

- (1) the nature, intensity, frequency, pervasiveness, and duration of the odors from the animal operation;
- (2) complaints received about objectionable odors from the animal operation;
- (3) emissions from the animal operation of known odor causing compounds, such as ammonia, total volatile organics, hydrogen ~~sulfide~~ sulfide, or other sulfur compounds at levels that could cause or contribute to an objectionable odor;
- (4) any epidemiological studies associating health problems with odors from the animal operation or documented health problems associated with odors from the animal operation provided by the State Health Director; or
- (5) any other evidence, including records maintained by neighbors, that show that the animal operation is causing or contributing to an objectionable odor.

(h) ~~Requirement~~ Requirements for a best management plan for ~~controlling~~ control of odors from existing animal operations. If the Director ~~finds~~ determines that an existing animal operation is causing or contributing to an objectionable odor, the owner or operator of the animal operation shall:

- (1) submit to the Director as soon as practical, but not to exceed 90 days after receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor, a best management plan for odor control as described in 15A NCAC 02D .1803; Rule .1803 of this Section; and
- (2) be in compliance with the terms of the best management plan within 30 days after the Director approves the best management ~~plan~~ plan, or an approved compliance schedule by the Director (approved compliance schedule is an alternate schedule to 30 days). ~~(compliance with an approved compliance schedule in the best management plan is deemed to be in compliance with the plan).~~

(i) Requirement for amendment to the best management plan. No later than 60 days from completion of a compliance schedule in an approved best management plan or if the best management plan contains no compliance schedule, no later than 60 days from the implementation date of the best management plan, the Director shall determine whether the plan has been properly implemented. If the Director determines at any time that a plan submitted ~~under~~ pursuant to Paragraph (h) of this Rule does not control objectionable odors from the animal operation, the Director shall

require the owner or operator of the animal operation to amend the plan to incorporate additional or alternative measures to control objectionable odors from the animal operation. The owner or operator shall:

- (1) submit a revised best management plan to the Director as soon as practical but not later than 60 days after receipt of written notification from the Director that the plan is inadequate; and
- (2) be in compliance with the revised best management plan within 30 days after the Director approves the revisions to the best management ~~plan~~ plan (approved compliance schedule is an alternate schedule to 30 days). ~~(compliance with an approved compliance schedule in the best management plan is deemed to be in compliance with the plan).~~

~~(j) Plan failure. Any of the following conditions shall constitute failure of a best management plan:~~

- ~~(1) failing to submit the initial best management plan required under Paragraph (h) of this Rule within 90 days of receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor;~~
- ~~(2) failing to submit a revised best management plan required under Paragraph (i) of this Rule within 60 days of receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor;~~
- ~~(3) failing to correct all deficiencies in a submitted best management plan under Rule .1803(c) of this Section within 30 days of receipt of written notification from the Director to correct these deficiencies;~~
- ~~(4) failing to implement the best management plan after it has been approved; or~~
- ~~(5) finding by the Director, using the criteria under Paragraph (g) of this Rule, that, after the best management plan has been implemented and revised no more than one time (voluntary revisions and revisions made pursuant to 15A NCAC 2D .1803(c) shall not be counted as revisions under this Subparagraph); the best management plan does not adequately control objectionable odors from the animal operation and will not adequately control objectionable odors even with further amendments.~~

~~(j)(k)~~ Requirements for control technology. After the best management plan has been implemented and revised no more than one time excluding voluntary revisions and revisions made pursuant to 15A NCAC 02D .1803(c), If a A plan failure occurs, shall constitute a finding by the Director, using the criteria pursuant to Paragraph (g) of this Rule. If a plan failure occurs, the Director shall require the owner or operator of the animal operation to install control technology to control odor from the animal operation. The owner or operator shall submit within

Within 90 days from receipt of written notification from the Director of a plan failure, the owner or operator shall submit a permit application for control technology and an installation schedule. If the owner or operator demonstrates to the Director that a permit application cannot be submitted within 90 days, the Director ~~may~~ shall extend the time for submittal up to an additional 90 ~~days~~ days if the owner or operator demonstrates the delay in submitting the application was beyond his or her control. Control technology shall be determined according to Subparagraph (1) of this Paragraph. The installation schedule shall contain the increments of progress described in Subparagraph (2) of this Paragraph. The owner or operator may at any time request adjustments in the installation schedule and shall in his or her request explain why the schedule cannot be met. If the Director finds ~~that the request reason for not meeting the schedule is valid; to be accurate,~~ the Director shall revise the installation schedule as requested; however, the Director shall not extend the final compliance date beyond 24 months from the date that the permit was first issued for the control technology. The owner or operator shall certify to the Director within five days after the deadline for each increment of progress described in Subparagraph (2) of this Paragraph whether the required increment of progress has been met.

- (1) Control technology. The owner or operator of an animal operation shall identify control technologies that are technologically feasible for his or her animal operation and shall select the control technology or control technologies that results in the greatest reduction of odors considering human health, energy, environmental, and economic impacts and other costs. The owner or operator shall explain the reasons for selecting the control technology or control technologies. If the Director finds that the selected control technology or control technologies will effectively control odors following the procedures in 15A NCAC ~~2Q~~ 02Q .0300 or .0500, he or she shall approve the installation of the control technology or control technologies for this animal operation upon permit issuance. The owner or operator of the animal operation shall comply with all terms and conditions in the permit.
- (2) Installation schedule. The installation schedule for control technology shall contain the following increments of progress:
  - (A) a date by which contracts for odor control technology shall be awarded or orders shall be issued for purchase of component ~~parts; parts or materials;~~
  - (B) a date by which on-site construction or installation of the odor control technology shall begin;
  - (C) a date by which on-site construction or installation of the odor control technology shall be completed; and
  - (D) a date by which final compliance shall be achieved.

Control technology shall be in place and operating as soon as practical but not to exceed 12 months from the date that the permit is issued for control technology.

~~(k)(4) New or modified animal operations. This Paragraph does not apply to activities exempted from the moratorium on construction or expansion of swine farms in S.L. 1997, c. 458, s. 1-1 provided that the owner or operator demonstrates to the Director that the activity will not result in an objectionable odor. The following requirements shall apply to new or modified animal operations:~~

- (1) Before beginning construction, the owner or operator of a new or modified animal operation raising or producing swine shall submit and have an approved best management plan and shall meet the ~~following;~~ following setbacks. A house or lagoon that is a component of an animal operation shall be constructed:
  - (A) at least ~~4500~~ 1,500 feet from any occupied residence not owned by the owner of the animal operation;
  - (B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation facility, national park, State ~~Park;~~ parks, historic property, or child care center; and
  - (C) at least 500 feet from any property boundary;
- (2) Before beginning construction, the owner or operator of a new or modified animal operation other than swine shall submit and have an approved best management plan.
- (3) For new or modified animal operations raising or producing swine, the outer perimeter of the land area onto which waste is applied that is a component of an animal operation shall be:
  - (A) at least 75 feet from any boundary of property on which an occupied residence not owned by the owner of the animal operation is ~~located;~~ located; and
  - (B) at least 200 feet from any occupied residence not owned by the owner of the animal operation.
- (4) The Director shall either approve or disapprove the best management plan submitted ~~under~~ pursuant to this Paragraph within 90 days after receipt of the plan. If the Director disapproves the plan, he or she shall identify the ~~plan's~~ plan's deficiency.

*Authority* G.S. 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a); 150B-21.6.

**15A NCAC 02D .1803 BEST MANAGEMENT PLANS FOR ANIMAL OPERATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1804 REPORTING REQUIREMENTS FOR ANIMAL OPERATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1806 CONTROL AND PROHIBITION OF ODOROUS EMISSIONS**

(a) Purpose. The purpose of this Rule is to provide for the control and prohibition of objectionable odorous emissions.

(b) Definitions. For the purpose of this ~~Rule~~ Rule, the following definitions shall apply:

- (1) "Commercial purposes" means activities that require a ~~state~~ State or local business license to operate.
- (2) "Temporary activities or operations" means activities or operations that are less than 30 days in duration during the course of a calendar year and do not require an air quality permit.

(c) Applicability. With the ~~exceptions~~ exemptions in Paragraph (d) of this Rule, this Rule shall apply to all operations that ~~may~~ produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's boundaries.

(d) Exemptions. The requirements of this Rule do not apply to:

- (1) processes at kraft pulp mills identified in 15A NCAC 02D Rule .0528 of this Section, and ~~covered under subject to Rule 15A NCAC 02D .0524 or .0528 of this Section; .0528;~~
- (2) processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils identified in ~~and covered under Rule .0539;~~ 15A NCAC 02D .0539;
- (3) motor vehicles and transportation facilities;
- (4) all on-farm animal and agricultural operations, including dry litter operations and operations ~~covered under Rule .1804 of this Section;~~ subject to 15A NCAC 02D .1804;
- (5) municipal wastewater treatment plants and municipal wastewater handling systems;
- (6) restaurants and food preparation facilities that prepare and serve food on site;
- (7) single family dwellings not used for commercial purposes;
- (8) materials odorized for safety purposes;
- (9) painting and coating operations that do not require a business license; ~~or~~
- (10) all temporary activities or ~~operations;~~ operations; or
- (11) any facility that stores products that are grown, produced, or generated on one or more agricultural operations and that are "renewable energy resources," as defined in G.S. 62-133.8(a)(8) if the facility identifies the sources of potential odor emissions and specifies odor management practices in their permit pursuant to 15A NCAC 02Q .0300 or .0500 to minimize objectionable odor beyond the property lines.

(e) Control Requirements. The owner or operator of a facility subject to this Rule shall not operate the facility without implementing management practices or installing and operating odor control equipment sufficient to prevent odorous emissions

from the facility from causing or contributing to objectionable odors beyond the facility's boundary.

(f) Odor management plan. If the Director determines, pursuant to Paragraph (i) of this Rule, that a source or facility subject to this Rule is causing or contributing to objectionable odors beyond its property boundary by the procedures described in Paragraph (i) of this Rule, the owner or operator shall develop and submit an odor management plan within 60 days of receipt of written notification from the Director of an objectionable odor determination. The odor management plan shall:

- (1) identify the sources of odorous emissions;
- (2) describe how odorous emissions will be controlled from each identified source;
- (3) describe how the plan will be implemented; and
- (4) contain a schedule by which the plan will be implemented.

Upon receipt of an approval letter from the Director for the odor management plan, the source or facility shall implement the approved plan within 30 days, unless an alternative schedule of implementation is approved as part of the odor management plan submittal. If the Director finds that the odor management plan does not meet the requirements of this Paragraph or that the plan is insufficient to address the specific odor concerns, he or she shall notify the owner or operator of any deficiencies in the proposed plan. The owner or operator shall have 30 days after receipt of written notification from the Director to resubmit the odor management plan correcting the stated deficiencies with the plan or the schedule of implementation. If the owner or operator fails to correct the plan deficiencies with the second draft plan submittal or repeatedly fails to meet the deadlines set forth in this Paragraph or Paragraph (g) of this Rule, the Director shall notify the owner or operator in writing that they are required to comply with the maximum feasible control requirements in Paragraph (h) of this Rule.

(g) Odor management plan revision. If after the odor management plan has been implemented, the Director determines that the plan fails to eliminate objectionable odor emissions from a source or facility using the procedures described in Paragraph (i) of this Rule, he or she shall require the owner or operator of the facility to submit a revised plan. Within 60 days after receiving written notification from the Director of a new objectionable odor determination, the owner or operator of the facility shall submit a revision to their odor management plan following the procedures and timelines in Paragraph (f) of this Rule. If the revised plan, once implemented, fails to eliminate objectionable odors, then the source or facility shall comply with requirements in Paragraph (h) of this Rule.

(h)(f) Maximum feasible controls. If an amended odor management plan does not prevent objectionable odors beyond the facility's boundary, If the Director determines that a source or facility subject to this Rule is emitting an objectionable odor by the procedures described in Paragraph (g) of this Rule, the Director shall require the owner or operator to implement maximum feasible controls for the control of odorous emissions. (Maximum Maximum feasible controls shall be determined according to the procedures in Rule .1807 of this Section.) 15A NCAC 02D .1807. The owner or operator shall:

- (1) within 180 days of receipt of written notification from the Director of the

~~requirement to implement maximum feasible controls, complete the determination process outlined in 15A NCAC 2D .1807 and submit the completed maximum feasible control determination process along with a permit application for maximum feasible controls and a compliance schedule to the Division of Air Quality; the compliance schedule shall contain the following increments of progress: complete the process outlined in 15A NCAC 02D .1807 and submit a complete permit application according to 15A NCAC 02Q .0300 or 15A NCAC 02Q .0500, as applicable, within 180 days of receipt of written notice from the Director requiring implementation of maximum feasible controls. The application shall include a compliance schedule containing the following increments of progress:~~

- (A) a date by which contracts for the odorous emission control systems and equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (B) a date by which on-site construction or installation of the odorous emission control systems and equipment shall begin;
  - (C) a date by which on-site construction or installation of the odorous emission control systems and equipment shall be completed; and
  - (D) a date by which final compliance shall be achieved.
- (2) install and begin operating maximum feasible controls within 18 months after receiving written notification from the Director of the requirement to implement maximum feasible controls, ~~have installed and begun operating maximum feasible controls.~~ controls. The owner or operator may request an extension to implement maximum feasible controls. The Director shall approve an extension request if he or she finds that the extension request is the result of circumstances beyond the control of the owner or operator.

The owner or operator shall certify to the Director within five days after the deadline for each increment of progress in this Paragraph whether the required increment of progress has been met.

~~(i)(g)~~ Determination of the existence of an objectionable odor. A source or facility is causing or contributing to an objectionable odor when:

- (1) A ~~a~~ member of the Division staff determines by field investigation that an objectionable odor is present by taking into account the nature, intensity, pervasiveness, duration, and source of the odor and other pertinent factors;
- (2) ~~The~~ the source or facility emits known ~~odor~~ causing odor-causing compounds such as ammonia, total volatile organics, hydrogen

sulfide, or other sulfur compounds at levels that cause objectionable odors beyond the property line of that source or facility; or

- (3) ~~The~~ the Division receives ~~from the State Health Director~~ epidemiological studies associating health problems with odors from the source or facility facility, or evidence of documented health problems associated with odors from the source or facility provided by the State Health Director.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

## **15A NCAC 02D .1807 DETERMINATION OF MAXIMUM FEASIBLE CONTROLS FOR ODOROUS EMISSIONS (READOPTED WITHOUT SUBSTANTIVE CHANGES)**

## **15A NCAC 02D .1808 EVALUATION OF NEW OR MODIFIED SWINE FARMS (READOPTED WITHOUT SUBSTANTIVE CHANGES)**

### **SECTION .1900 – OPEN BURNING**

## **15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE (READOPTED WITHOUT SUBSTANTIVE CHANGES)**

## **15A NCAC 02D .1902 DEFINITIONS**

For the purpose of this Section, the following definitions apply:

- (1) "Air Curtain ~~Burner~~" Incinerator" means a stationary or portable combustion device that ~~operates by directs~~ directing a plane of high velocity forced draft air through a manifold head ~~into a pit onto an open chamber, pit,~~ or container with vertical walls ~~in such a manner as~~ to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain. ~~These incinerators can be built above or below ground and be constructed with or without refractory walls and floors. These shall not include conventional combustion devices with enclosed fireboxes or controlled air technology such as mass burn, modular, or fluidized bed combustors.~~
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index of 101 or greater than 100 as defined in 40 CFR Part 58, Appendix G. This includes Codes Orange, Red, Purple, and Maroon.
- (3) "Air quality forecast area" means for:
  - (a) ~~Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;~~
  - (b) ~~Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;~~

- (e) ~~Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;~~
- (d) ~~Fayetteville air quality forecast area: Cumberland and Harnett Counties;~~
- (e) ~~Rocky Mount air quality forecast area: Edgecombe and Nash Counties;~~
- (f) ~~Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and~~
- (g) ~~Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.~~
- (4)(3) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (5)(4) "Initiated" means to start or ignite a fire or reignite or rekindle a fire.
- (6) ~~"HHCU" means the Health Hazards Control Unit of the Division of Public Health.~~
- (7)(5) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; ~~right-of-way maintenance;~~ agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property ~~value; but~~ value. This term does not include ~~routine~~ regularly scheduled maintenance or property clean-up activities.
- (8)(6) "Log" means any limb or trunk whose diameter exceeds six inches.
- (9)(7) "Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.
- (10)(8) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (11)(9) "Occupied structure" means a building ~~in which where people may live or work, can be reasonably expected to be present or one intended a building used~~ for housing farm or ~~other~~ domestic animals.
- (12)(10) "Off-site" means any area not on the premises of the land-clearing activities.
- (13)(11) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (14) ~~"Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.~~
- (15) ~~"Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.~~
- (16)(12) "Person" as used in 15A NCAC 02D .1901(e), .1901 means:
  - (a) the person in operational control over the open burning; or
  - (b) the landowner or person in possession or control of the land when he or she has directly or indirectly allowed the open burning or the Division determined that the land owner has benefited from it.
- (17)(13) "Pile" means a quantity of combustible material assembled together in ~~a mass; one place.~~
- (18)(14) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency, or municipal service.
- (19)(15) "Public road" means any road that is part of the State highway ~~system;~~ system or any road, street, or right-of-way dedicated or maintained for public use.
- (20) ~~"RACM" means regulated asbestos-containing material as defined in 40 CFR 61.142.~~
- (21)(16) "Refuse" means any garbage, rubbish, or trade waste.
- (22)(17) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of ~~Environment and Natural Resources.~~ Environmental Quality.
- (18) "Right-of-way maintenance" means vegetation management, including grass cutting, weed abatement, tree trimming and tree/brush removal of existing streets, highways, and public places.
- (23)(19) "Salvageable items" means any product or material that was first discarded or damaged and then ~~all, or part, all or part was saved~~ recovered for future use, use, and Examples of these items include insulated wire, electric motors, and electric transformers.
- (24)(20) "Smoke management plan" means the plan developed following the North Carolina Forest Service's smoke management program and approved by the North Carolina Forest Service. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.
- (25)(21) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.



Authority G.S. 143-212; 143-213; 143-215.3(a)(1).

**15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

(a) All open burning is prohibited except open burning allowed ~~under~~ pursuant to Paragraph (b) of this Rule or ~~Rule .1904 of this Section.~~ 15A NCAC 02D .1904. Except as allowed ~~under Paragraphs~~ pursuant to Subparagraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in ~~an air quality forecast area~~ a county that the ~~Department,~~ Department or the Forsyth County Office of Environmental Assistance and Protection ~~Environmental Affairs Department for the Triad air quality forecast area,~~ has forecasted to be in an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that ~~forecast.~~ Air Quality Action Day.

(b) The following types of open burning are permissible without an air quality ~~permit:~~ permit.

(1) The open burning of leaves, logs, stumps, tree ~~branches~~ branches, or yard trimmings, if the following conditions are met:

(A) ~~The~~ the material burned originates on the premises of private residences and is burned on those ~~premises;~~ premises and does not include material collected from multiple private residences and combined for burning;

(B) ~~There~~ there are no public pickup services available;

(C) ~~Non-vegetative~~ non-vegetative materials, such as household garbage, ~~lumber,~~ treated or coated wood, or any other synthetic materials are not burned;

(D) ~~The~~ the burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

(E) ~~The~~ the burning does not create a nuisance; and

(F) ~~Material~~ material is not burned when the North Carolina Forest Service or other government agencies ~~has~~ have banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this ~~Subparagraph.~~ Subparagraph:

(2) The open burning for land clearing or right-of-way maintenance if the following conditions are met:

(A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured

from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

(B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property ~~on which~~ where the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:

(i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or

(ii) an air curtain ~~burner~~ incinerator that complies with ~~Rule .1904 of this Section,~~ 15A NCAC 02D .1904 is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is ~~occupied.~~ occupied;

(C) Only land-cleared plant growth is burned. Heavy oils, ~~asphaltic materials such as shingles and other roofing materials,~~ items containing natural or synthetic rubber, synthetic materials, or any materials other than

- plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;
- (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest Service or other government agencies ~~has~~ have banned burning for that area; and
- (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried or transported to:
- (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (~~Air Curtain Burners~~) for the operation of an air curtain ~~burner~~ incinerator at a permanent site; or
  - (ii) A location, where the material is burned not more than four times per calendar year, that meets all of the following criteria:
    - (I) ~~At~~ at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is ~~conducted~~ conducted;
    - (II) ~~There~~ there are no more than two piles, each no more than 20 feet in diameter, being burned at one ~~time~~ time; and
    - (III) ~~The~~ the location is not a permitted solid waste management ~~facility~~ facility;
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, ~~or for~~ ceremonial occasions, or for human warmth and comfort and ~~which~~ that do not create a nuisance and do not use synthetic ~~materials~~ materials, ~~or refuse~~ refuse, or salvageable materials for fuel;
- (4) fires purposely set to public or private forest land for forest management practices for which burning is currently acceptable to the North Carolina Forest Service; ~~Service and which follow the smoke management plan as outlined in the North Carolina Forest Service's smoke management program~~;
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the Department of ~~Agriculture~~; Agriculture and Consumer Services;
- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when the Divisions ~~has~~ determined that it is the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
  - (A) the North Carolina Forest Service;
  - (B) the North Carolina Insurance Department; or
  - ~~(C) North Carolina technical institutes; or~~
  - ~~(D)~~ (C) North Carolina ~~community~~ Community colleges, Colleges; ~~including:~~
    - ~~(i) the North Carolina Fire College; or~~
    - ~~(ii) the North Carolina Rescue College;~~
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
  - (A) ~~The~~ the regional office supervisor ~~of the appropriate regional office and the HHC~~ have ~~has~~ been notified according to the procedures and deadlines contained in the notification appropriate regional notification form ~~form~~ and the regional office supervisor has granted permission for the burning. The information required to be submitted in the form include:

- (i) the address of the fire department that is requesting the training exercise;
- (ii) the location of the training exercise;
- (iii) a description of the type of structure or object and amount of materials to be burned at the location of the training exercise;
- (iv) the dates that the training exercise will be performed; and
- (v) an inspection from a North Carolina Asbestos Inspector that the structure being burned is free of asbestos.

The form shall be submitted 10 days prior to commencement of the burn. This form may be obtained in electronic format at <https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information> or by writing the appropriate regional office at the address in Rule 15A NCAC 02D .1905 of this Section and requesting it, and it.

- (B) ~~The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate~~

~~regional office at least one hour before the burn is scheduled; and~~

- (i) type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items or if the primary purpose of the fire is to dispose of synthetic materials or refuse;
- (ii) the burning of previously demolished structures. The regional office supervisor shall not consider these structures as having training value;
- (iii) the burning of motor vehicles. The regional office supervisor may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units if he or she determines that they have training value; and
- (iv) the distance from the location of the fire training to residential, commercial, or institutional buildings or properties.

Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor at least one hour before the burn is scheduled.

- (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall

~~comply with the conditions of Subparagraph (b)(2) of this Rule.~~

(c) The authority to conduct open burning ~~under~~ pursuant to this Section does not exempt or excuse any person from the consequences, ~~damages~~ damages, or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2.*

#### **15A NCAC 02D .1904 AIR CURTAIN BURNERS INCINERATORS**

(a) Applicability. Air quality permits are required for air curtain burners subject to 40 CFR 60.2245 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069 or located at permanent sites or where materials are transported in from another site. Air quality permits are not required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months unless they are subject to 40 CFR 60.2245 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069. The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in any area that has been forecasted by the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

(1) This Rule applies to all new and existing air curtain incinerators subject to 40 CFR 60.2245 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069 that combust the following materials:

- (A) 100 percent wood waste;
- (B) 100 percent yard waste; or
- (C) 100 percent mixture of only wood waste and yard waste.

(2) This Rule applies to new and existing temporary air curtain incinerators used at industrial, commercial, institutional, or municipal sites where a temporary air curtain incinerator is defined in Subparagraph (b)(5).

(3) Air curtain incinerators that combust materials other than those listed in Parts (a)(1)(A) through (C) are subject to the following requirements:

- (A) 40 CFR 60 Subpart CCCC or 40 CFR 60 Subpart DDDD, for air curtain incinerators that have a charge rate of greater than or equal to 35 tons per day; or
- (B) 40 CFR 60 Subpart EEEE or 40 CFR 60 Subpart FFFF, for air curtain incinerators that have a charge rate of less than 35 tons per day.

(b) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. 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.

(2) "New air curtain incinerator" means an air curtain incinerator that began operating on or after the effective date of this Rule.

(3) "Operator" means the person in operational control over the open burning.

(4) "Permanent air curtain incinerator" means an air curtain incinerator whose owner or operator operates the air curtain incinerator at one facility or site during the term of the permit.

(5) "Temporary air curtain incinerator" means an air curtain incinerator whose owner or operator moves the air curtain incinerator to another site and operates it for land clearing or right-of-way maintenance at that site at least once during the term of its permit.

(6) "Temporary-use air curtain incinerator used in disaster recovery" means an air curtain incinerator that meets all of the following requirements:

- (A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts (a)(1)(A) through (C);
- (B) combusts debris within the boundaries of an area officially declared a disaster or emergency by federal, state or local government; and
- (C) combusts debris for less than 16 weeks unless the owner or operator submits a request for additional time at least 1 week prior to the end of the 16-week period and provides the reasons that the additional time is needed. The Director will provide written approval for the additional time if he or she finds that the additional time is warranted based on the information provided in the request.

Examples of disasters or emergencies include tornadoes, hurricanes, floods, ice storms, high winds, or acts of bioterrorism.

(7) "Wood waste" means tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include treated or untreated wood products, construction waste, renovation waste, or demolition waste.

(8) "Yard waste" means bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of

maintaining yards or other private or public lands. This does not include grass, grass clippings, or collected leaves.

~~(b)(c)~~ Air curtain ~~burners~~ incinerators shall comply with the following conditions and ~~stipulations~~; requirements:

(1) the operation of air curtain incinerators in particulate and ozone nonattainment areas shall cease in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection has forecasted to be an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day;

~~(1)(2)~~ The ~~the~~ wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

(2) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;

(3) No ~~no~~ fires shall be started or material added to existing fires when the North Carolina Forest Service Service, Fire Marshall, or other governmental agency has banned burning for that area;

(4) Burning ~~burning~~ shall be conducted only between the hours of 8:00 a.m. and 6:00 ~~p.m.~~; p.m. No combustible materials shall be added to the air curtain incinerator prior to or after this time period;

(5) The air curtain burner shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule .1106(b), (c), and (f) of this Subchapter. This Subparagraph shall not apply to temporary air curtain burners;

(6) An air curtain burner with an air quality permit shall have onsite at all times during operation of the burner a visible emissions reader certified according to 40 CFR Part 60, Method 9 to read visible emissions, and the facility shall test for visible emissions within five days after initial

~~operation and within 90 days before permit expiration;~~

~~(7)(6)~~ Air ~~air~~ curtain ~~burners~~ incinerators shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;

(8) ~~Except during start up, visible emissions shall not exceed ten percent opacity when averaged over a six minute period except that one six-minute period with an average opacity of more than ten percent but no more than 35 percent shall be allowed for any one hour period. During start up, the visible emissions shall not exceed 35 percent opacity when averaged over a six minute period. Start up shall not last for more than 45 minutes, and there shall be no more than one start up per day. Instead of complying with the opacity standards in this Subparagraph, air curtain burners subject to:~~

(A) ~~40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250;~~

(B) ~~40 CFR 60.2810 through 60.2870 shall comply with the opacity standards in 40 CFR 60.2860;~~

(C) ~~40 CFR 60.2970 through 60.2975 shall comply with the opacity standards in 40 CFR 60.2971; or~~

(D) ~~40 CFR 60.3062 through 60.3069 shall comply with the opacity standards in 40 CFR 60.3066;~~

~~(9)(7)~~ The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The the owner or operator of an air curtain ~~burner~~ incinerator shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;

(10) ~~The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;~~

~~(11)(8)~~ Only ~~only~~ distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and

~~(12)(9)~~ The ~~the~~ location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or

other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.

(d) Exemptions. Temporary-use air curtain incinerators used in disaster recovery are excluded from the requirements of this Rule if the following conditions are met:

- (1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in disaster recovery as specified in Subparagraph (d)(5) of this Rule;
- (2) the air curtain incinerator meets all the requirements pursuant to 40 CFR 60.2969 or 60.3061, as applicable; and
- (3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air curtain incinerator and the charge rate during all periods of operation is less than or equal to the lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air curtain incinerator.

(e) Permitting. Air curtain incinerators shall be subject to 15A NCAC 02Q .0500.

- (1) The owner or operator of a new or existing permanent air curtain incinerator shall obtain a General Operating Permit pursuant to 15A NCAC 02Q .0509.
- (2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a General Operating Permit pursuant to 15A NCAC 02Q .0510 Permitting of Facilities at Multiple Temporary Sites.
- (3) The owner or operator of an existing permanent or temporary air curtain incinerator shall complete and submit a permit application no later than 12 months after the effective date of this Rule.
- (4) The owner or operator of a new permanent or temporary air curtain incinerator shall complete and submit a permit application 60 days prior to the date the unit commences operation.
- (5) The owner or operator of an existing permanent or temporary air curtain incinerator that is planning to close rather than obtaining a permit pursuant to 15A NCAC 02Q .0509 or 15A NCAC 02Q .0510 shall submit a closure

notification to the Director no later than 12 months after the effective date of this Rule.

(f) Opacity limits.

(1) The owner or operator of an existing air curtain incinerators shall meet the following opacity limits:

(A) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) during startup of the air curtain incinerator, where startup is defined as the first 30 minutes of operation.

(B) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) at all times, other than during startup or during malfunctions.

(2) The owner or operator of a new air curtain incinerator shall meet the opacity limits specified in Subparagraph (f)(1) of this Rule within 60 days after air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(g) Performance tests.

(1) All initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test Method 9 to determine compliance with the opacity limitations specified in Subparagraph (f)(1) of this Rule.

(2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 on or before 90 days after the effective date of this rule.

(3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at which the affected air curtain incinerator will be operated, but not later than 180 days after initial startup of the air curtain incinerator.

(4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than 12 calendar months following the date of the previous test.

(5) The owner or operator of an existing air curtain incinerator that has ceased operations and is restarting after more than 12 months since the previous test shall conduct an opacity test upon startup of the unit.

(h) Increments of Progress and Compliance Requirements.

(1) The owner or operator of an air curtain incinerator subject to this Rule that has a charge

rate of greater than 35 tons per day shall meet the increments of progress according to 40 CFR 60.2815 through 60.2845.

- (2) The owner or operator of an air curtain incinerator subject to this Rule shall demonstrate compliance with the emission limits in Subparagraph (f)(1) of this Rule.

~~(e)(i)~~ Recordkeeping and Reporting Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. Additionally, the owner or operator of air curtain burner subject to:

- (1) 40 CFR 60.2245 through 60.2265 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2245 through 60.2265;
- (2) 40 CFR 60.2810 through 60.2870 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2810 through 60.2870;
- (3) 40 CFR 60.2970 through 60.2975 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2970 through 60.2975; or
- (4) 40 CFR 60.3062 through 60.3069 shall comply with comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.3062 through 60.3069.

- (1) Prior to commencing construction of an air curtain incinerator, the owner or operator of a new air curtain incinerator shall submit the following information to the Director:

- (A) a notification of intent to construct an air curtain incinerator;
- (B) the planned initial startup date of the air curtain incinerator; and
- (C) the materials planned to be combusted in the air curtain incinerator.

- (2) The owner or operator of a new or existing air curtain incinerator shall do the following:

- (A) keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format for five years;
- (B) make all records available for submission to the Director or for an inspector's onsite review;
- (C) report the results of the initial and annual opacity tests as the average of 3 1-hour blocks consisting of 10 6-minute average opacity values;
- (D) submit initial opacity test results to the Division no later than 60 days following the initial test and submit

- (E) annual opacity test results within 12 months following the previous report; submit initial and annual opacity test reports to the Division as electronic or paper copy on or before the applicable submittal date; and

- (F) keep a copy of the initial and annual reports onsite for a period of five years.

(d) Title V Considerations. Burners that have the potential to burn 8,100 tons of material or more per year may be subject to Section 15A NCAC 02Q .0500, Title V Procedures.

~~(e) Prevention of Significant Deterioration. Burners that burn 16,200 tons per year or more may be subject to 15A NCAC 02D .0530, Prevention of Significant Deterioration.~~

(f) A person may use a burner using a different technology or method of operation than an air curtain burner as defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall approve the burner if he finds that it is at least as effective as an air curtain burner. This burner shall comply with all the requirements of this Rule.

~~(g)(i)~~ In addition to complying with the requirements of this Rule, an air curtain burner incinerator subject to:

- (1) 40 CFR Part 60, Subpart CCCC that commenced construction after November 30, 1999, or that commenced reconstruction or modification on or after June 1, 2004, shall also comply with 40 CFR 60.2245 through 60.2265, or 60.2265;
- (2) 40 CFR Part 60, Subpart EEEE that commenced construction after December 9, 2004, or that commenced reconstruction or modification on or after June 16, 2006, shall also comply with 40 CFR 60.2970 through 60.2975; 60.2975; or
- (3) 40 CFR Subpart FFFF shall also comply with 40 CFR 60.3062 through 60.3069.

Authority G.S. 143-215.3(a)(1); ~~143-215.107(a)(5), (10);~~ 143-215.65; 143-215.66; ~~143-215.107(a)(5);~~ 143-215.107(a)(10); 143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2.

### 15A NCAC 02D .1905 REGIONAL OFFICE LOCATIONS

Inquiries, ~~requests~~ requests, and plans shall be handled by the appropriate Department of Environment and Natural Resources Environmental Quality regional offices: office. They are:

- (1) Asheville Regional Office, 2090 U.S. 70 Highway, Highway 70, Swannanoa, North Carolina ~~28778~~ 28778;
- (2) Winston-Salem Regional Office, ~~585 Woughtown Street,~~ 450 West Hanes Mill Road, Suite 300, Winston-Salem, North Carolina ~~27107; 27105;~~
- (3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;

- (4) Raleigh Regional Office, 3800 Barrett Drive, Raleigh, North Carolina ~~27611~~; 27609;
- (5) Fayetteville Regional Office, ~~Systel Building~~, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889; and
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

*analytical method requirements have changed. The program is fee-funded and the proposed amendments to fee structure are required to ensure that fees generated by the program are sufficient to operate and support the compliance efforts of the Department of Environmental Quality.*

**Comments may be submitted to:** Dana Satterwhite, 1623 Mail Service Center, Raleigh, NC 27699-1623; phone (919) 733-3908 ext 202; fax (919) 733-6241; email [dana.satterwhite@ncdenr.gov](mailto:dana.satterwhite@ncdenr.gov)

**Comment period ends:** February 15, 2019

**Procedure for Subjecting a Proposed Rule to Legislative**

**Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☒ Analysis submitted to Board of Transportation
- ☒ Local funds affected 15A NCAC 02H .0801-.0810
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM 15A NCAC 02H .0801-.0810
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2) 15A NCAC 02H .1101-.1111

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS**

**SECTION .0800 – LABORATORY CERTIFICATION**

**15A NCAC 02H .0801 PURPOSE**

~~The purpose of these Rules is to set out certification criteria for laboratory facilities performing any tests, analyses, measurements, or monitoring required under G.S. 143 Article 21 or any rules adopted thereunder, and to establish fees for certification program support.~~

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

**15A NCAC 02H .0802 SCOPE**

~~These Rules apply to laboratory facilities which perform and report analyses for persons subject to G.S. 143-215.1, 143-215.63,~~

Authority G.S. 143-215.3(a)(1).

**15A NCAC 02D .1906 DELEGATION TO COUNTY GOVERNMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1907 MULTIPLE VIOLATIONS ARISING FROM A SINGLE EPISODE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02H .0801-.0810, .1101-.1111.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Proposed Effective Date:** July 1, 2019

**Public Hearing:**

**Date:** January 10, 2019

**Time:** 6:00 p.m.

**Location:** Ground floor conference room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC

**Reason for Proposed Action:** N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the North Carolina Environmental Management Commission's rules. The NCAC 02H .0800 Laboratory Certification and .1100 Biological Laboratory Certification rules also needed to codify policies and Department of Environmental Quality approved written procedures as well as correct grammatical errors, provide needed clarifications, update names, update requirements to be consistent with changes in federal regulation, delete unnecessary or outdated components, modify or remove provisions superseded by statutes, and make changes to provide consistency between the .0800 and .1100 rules. The NCAC 02H .0800 Laboratory Certification fees were last increased in 2002. Since that time, operating costs have grown due to inflation, there has been an increase in the number of certified laboratories in the program and regulatory and



et seq.; the Environmental Management Commission Rules for Surface Water Monitoring and Reporting found in Subchapter 2B of this Chapter, Section .0500 (Only facilities classified in accordance with Classification of Water Pollution Control Systems Rules found in 15A NCAC 08G .0300 are subject to these Rules.); Groundwater Rules found in 15A NCAC 02L .0100, .0200, and .0300; Waste Not Discharged to Surface Waters Rules found in 15A NCAC 02H .0200; Point Source Discharges to the Surface Waters Rules found in 15A NCAC 02H .0100. These Rules also apply to all wastewater treatment plant laboratories for municipalities having Local Pretreatment Programs as regulated in 15A NCAC 02H .0900. Laboratory facilities performing and reporting analyses for field parameters only, shall be considered for certification as specified in Rule .0805(g) of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

### 15A NCAC 02H .0803 DEFINITIONS

The following terms as used in this Section shall have the assigned meaning:

- (1) ~~"Analytical chemistry experience" means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.~~
- (2) ~~"Certification" means a declaration by the state that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicant's proficiency has been considered and found to be acceptable pursuant to these Rules.~~
- (3) ~~"Certified Data" shall be defined as any analytical result, including the supporting documentation, obtained through the use of a method or procedure which has been deemed acceptable by the State of North Carolina for Laboratory Certification purposes pursuant to these Rules.~~
- (4) ~~"Commercial Laboratory" means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples, including Field Parameters, for others for a fee.~~
- (5) ~~"Decertification" means loss of certification.~~
- (6) ~~"Falsified data or information" means data or information which has been made untrue by alteration, fabrication, omission, substitution, or mischaracterization. The agency need not prove intent to defraud to prove data is falsified.~~
- (7) ~~"Field Parameters", for the purpose of these Rules shall include Total Residual Chlorine, Conductivity, Dissolved Oxygen, pH, Settleable Residue, and Temperature.~~
- (8) ~~"Inaccurate data or other information" means data or information that is in any way incorrect, or mistaken.~~
- (9) ~~"Industrial Laboratory" means a laboratory, including its agents or employees, operated by an industry to analyze samples, including Field~~

~~Parameters, from its wastewater or wastewater from its water treatment plant(s).~~

- (10) ~~"Municipal Laboratory" means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples, including Field Parameters, from its wastewater or wastewater from its water treatment plant(s).~~
- (11) ~~"Other" laboratory means a facility that does not require laboratory certification as part of its routine operation and does not analyze samples for a fee, or is doing business as a non-profit facility.~~
- (12) ~~"Pretreatment Program" means a program of waste pretreatment requirements set up in accordance with 15A NCAC 02H .0900 and approved by the Division of Water Quality.~~
- (13) ~~"State" means the North Carolina Department of Environment and Natural Resources, or its successor.~~
- (14) ~~"State Laboratory" means the Laboratory Section of the North Carolina Division of Water Quality, or its successor.~~
- (15) ~~"Unacceptable results" means those results on performance evaluation samples that exceed the specified acceptable range as indicated by a US EPA accredited vendor.~~
- (16) ~~"Uncertified data" shall be defined as any analytical result, including the supporting documentation, obtained using a method or procedure which is not acceptable to the State Laboratory pursuant to these Rules.~~
- (1) Acceptable Proficiency Testing results means those results on Proficiency Testing samples that are within the Vendor-specified acceptable range as indicated by a State Laboratory-approved Vendor or Split samples that are within the specified acceptance range as indicated by the State Laboratory.
- (2) Analytical chemistry experience means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.
- (3) Approved Procedure means an analytical procedure developed by the State Laboratory, based upon relevant reference methods, and approved for use for monitoring subject to G.S. 143-215.1 and 143-215.63, et seq.
- (4) Certification means a declaration by the State Laboratory that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant comply with these Rules and that the applicant's proficiency with analytical chemistry has been considered and found to be acceptable pursuant to these Rules.
- (5) Certified Data means any analytical result, including the Supporting Records, obtained using a method or procedure which has been

- deemed acceptable by the State Laboratory for laboratory Certification purposes pursuant to these Rules.
- (6) CFR means the Code of Federal Regulations.
- (7) Commercial Laboratory means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples in a chemistry laboratory or in a field setting, including Field Parameters, for others for a fee.
- (8) Decertification means loss of Certification.
- (9) Director means the Director of the Division of Water Resources or its successor.
- (10) Division means the Division of Water Resources or its successor.
- (11) Falsified Data or Information means data or information that, whether by intent or reckless disregard for accuracy, has been altered, fabricated, or otherwise mischaracterized by omission or substitution, such that the value or information reported is incorrect, incomplete, or inaccurate.
- (12) Field Laboratory means a laboratory, including its agents or employees, that is seeking Certification to analyze or is analyzing samples in a chemistry laboratory or a field setting for Field Parameters only.
- (13) Field Parameters for the purpose of these Rules shall include Total Residual Chlorine, Free Available Chlorine, Conductivity, Dissolved Oxygen, pH, Settleable Residue, Salinity, Sulfite, Turbidity, Temperature, Vector Attraction Reduction Option 5, Vector Attraction Reduction Option 6, and Vector Attraction Reduction Option 12.
- (14) Inaccurate Data or Other Information means data or information that is in any way incorrect, or mistaken.
- (15) Industrial Laboratory means a laboratory, including its agents or employees, operated by an industry to analyze samples in a chemistry laboratory or in a field setting under the scope of these Rules.
- (16) In-situ means in the original or natural place or site.
- (17) Matrix Spike means an additional aliquot of an environmental sample to which a known concentration of the analytes of interest is added before sample preparation, cleanup, and determinative procedures have been implemented. It is used to assess the performance of the method by measuring the effects of interferences caused by the sample matrix and reflects the bias of the method for the particular matrix in question.
- (18) Mobile Laboratory means a collection of analytical equipment and instruments contained in an environmentally controlled vehicle that can be deployed to a project site for other than Field Laboratory Certification purposes.
- (19) Municipal Laboratory means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples in a chemistry laboratory or in a field setting under the scope of these Rules. Municipal Laboratories may cost-share among Municipal Laboratories or charge a cost recovery fee or surcharge to operate their Pretreatment Program.
- (20) NPDES means National Pollutant Discharge Elimination System.
- (21) Other Laboratory means a facility that is not required to obtain State Laboratory Certification as part of its routine operation and does not analyze samples in a chemistry laboratory or in a field setting for a fee, or is doing business as a non-profit facility.
- (22) Parameter means the analyte, element, compound, or property being measured.
- (23) Parameter Method means a type of analytical technique, including materials and tools, used to measure a parameter.
- (24) Pretreatment Program means a program of waste pretreatment requirements set up in accordance with 15A NCAC 02H .0900, et seq., and approved by the Division.
- (25) Proficiency Testing (PT) sample means a performance evaluation sample whose true value is unknown to the laboratory and provided by a State Laboratory-approved Vendor to test whether the laboratory can produce analytical results within the specified acceptance criteria.
- (26) Recertification means re-instating Certification at the end of the Decertification period imposed by the Division pursuant to Rule .0807 of this Section by showing that it has corrected all deficiencies.
- (27) Reference Temperature-measuring Device means a National Institute of Standards and Technology (NIST) traceable temperature-measuring device used only to verify the calibration of other temperature-measuring devices.
- (28) Second Source means reference solutions from a different manufacturer or from the same manufacturer and identified by a different lot number.
- (29) Split sample means two or more representative portions taken from a sample or subsample and analyzed by two or more laboratories approved by the State Laboratory.
- (30) Standard Operating Procedure (SOP) means a laboratory's analytical or operational procedures, described with adequate detail to allow someone similarly qualified to reproduce the procedures used to generate the test or desired result.

- (31) State means the North Carolina Department of Environmental Quality or its successor.
- (32) State Laboratory means the Water Sciences Section or its successor, including the Laboratory Certification Branch of the North Carolina Division of Water Resources or its successor.
- (33) Supporting Record means any document or other source of information compiled, recorded, or stored in written form, by electronic process, or in any other manner that provides any information necessary to reconstruct or characterize a reported value.
- (34) Unacceptable Proficiency Testing Results means those results on Proficiency Testing samples that do not fall within the Vendor-specified acceptable range as indicated by a State Laboratory approved Vendor, or Split samples that do not fall within the specified acceptable range as indicated by the State Laboratory, or a failure to meet a reporting deadline imposed by the Vendor or State Laboratory.
- (35) Uncertified Data means any analytical result, including the Supporting Records, obtained using a method or procedure which is not acceptable to the State Laboratory pursuant to these Rules; analytical results produced by a laboratory for an analysis not within the Scope of these Rules pursuant to Rule .0802 of this Section; or analytical results produced by a laboratory without proper Certification.
- (36) US EPA means the United States Environmental Protection Agency.
- (37) Vector Attraction Reduction Option refers to an option for demonstrating a reduction in vector attraction of sewage sludge listed in 40 CFR Part 503.33(b)(1) through (b)(12).
- (38) Vendor means an accredited Proficiency Testing sample provider recognized by The NELAC Institute (TNI) or its successor.

~~parameters~~ Parameter Methods used to generate data which that will be reported by the client to the State in accordance with Rule .0802 of this Section. ~~comply with State surface water, groundwater, and pretreatment Rules. Municipal and Industrial laboratories shall obtain Certification for Field Parameter Methods used to generate data that will be reported to the State in accordance with Rule .0802 of this Section.~~

(b) Inorganics: Each of the inorganic, physical characteristic, and microbiological analytes listed in this paragraph shall be considered a certifiable parameter. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. One or more analytical methods or Parameter Methods may be listed with a laboratory's certified parameters. A listing of certifiable ~~inorganic~~ inorganic, physical characteristic, and microbiological parameters follows:

- (1) Alkalinity
- (2) Aquatic Humic Substances
- (3) BOD
- (4) COD
- (5) Chloride
- (6) Chlorine, Total Residual
- (7) Chlorophyll
- (8) Coliform, Fecal
- (9) Coliform, Total
- (10) Color
- (11) Conductivity
- (12) Cyanide
- (13) Dissolved Oxygen
- (14) Fluoride
- (15) Hardness, Total
- (16) MBAS
- (17) Ammonia Nitrogen
- (18) Total Kjeldahl Nitrogen (TKN)
- (19) Nitrate plus Nitrite Nitrogen
- (20) Nitrate Nitrogen
- (21) Nitrite Nitrogen
- (22) Total Phosphorus
- (23) Orthophosphate
- (24) Oil and Grease
- (25) pH
- (26) Phenols
- (27) Residue, Settleable
- (28) Residue, Total
- (29) Residue, Total Dissolved 180°C
- (30) Residue, Total Suspended
- (31) Salmonella
- (32) Sulfate
- (33) Sulfide
- (34) Sulfite
- (35) Temperature
- (36) Total Organic Carbon (TOC)
- (37) Turbidity
- (38) Leachate Procedures
- (39) Vector Attraction Reduction—All Options
- (1) Acidity;
- (2) Alkalinity;
- (3) Biochemical Oxygen Demand;
- (4) Bromide;
- (5) Carbonaceous Biochemical Oxygen Demand;

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

#### **15A NCAC 02H .0804 PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED**

(a) ~~Commercial laboratories~~ Laboratories are required to shall obtain ~~certification~~ Certification for ~~parameters~~ Parameter Methods used to generate data which that will be reported by the client to the State in accordance with Rule .0802 of this Section. ~~comply with State surface water monitoring, groundwater, and pretreatment Rules. Municipal and Industrial Laboratories are required to shall~~ obtain ~~certification~~ Certification for ~~parameters~~ Parameter Methods used to generate data which that will be reported to the State in accordance with Rule .0802 of this Section. ~~to comply with State surface water monitoring, groundwater, and pretreatment Rules. Commercial, Municipal, Industrial and Other Commercial Laboratories facilities are required to shall~~ obtain ~~certification~~ Certification for ~~field~~ Field

- (6) Chemical Oxygen Demand;
- (7) Chloride;
- (8) Chlorine, Free Available;
- (9) Chlorine, Total Residual;
- (10) Chlorophyll;
- (11) Coliform, Fecal;
- (12) Coliform, Total;
- (13) Color;
- (14) Conductivity/Specific Conductance;
- (15) Cyanide;
- (16) Dissolved Organic Carbon;
- (17) Dissolved Oxygen;
- (18) Enterococci;
- (19) Escherichia Coliform (E. coli);
- (20) Flash Point;
- (21) Fluoride;
- (22) Hardness, Total;
- (23) Ignitability;
- (24) Surfactants as Methylene Blue Active Surfactants;
- (25) Nitrogen, Ammonia;
- (26) Nitrogen, Nitrite plus Nitrate;
- (27) Nitrogen, Nitrate;
- (28) Nitrogen, Nitrite;
- (29) Nitrogen, Total Kjeldahl;
- (30) Oil and Grease;
- (31) Orthophosphate;
- (32) Paint Filter Liquids;
- (33) pH;
- (34) Phenols;
- (35) Phosphorus, Total;
- (36) Residue, Settleable;
- (37) Residue, Total;
- (38) Residue, Total Dissolved;
- (39) Residue, Total Suspended;
- (40) Residue, Volatile;
- (41) Salinity;
- (42) Salmonella;
- (43) Silica;
- (44) Sulfate;
- (45) Sulfide;
- (46) Sulfite;
- (47) Temperature;
- (48) Total Organic Carbon;
- (48) Turbidity;
- (49) Vector Attraction Reduction: Option 1;
- (50) Vector Attraction Reduction: Option 2;
- (51) Vector Attraction Reduction: Option 3;
- (52) Vector Attraction Reduction: Option 4;
- (53) Vector Attraction Reduction: Option 5;
- (54) Vector Attraction Reduction: Option 6;
- (55) Vector Attraction Reduction: Option 7;
- (56) Vector Attraction Reduction: Option 8; and
- (57) Vector Attraction Reduction: Option 12.

sources listed in Rule .0805(a)(1) of this Section. A listing of certifiable metals and leaching procedures follows:

- (1) Aluminum Aluminum;
- (2) Antimony Antimony;
- (3) Arsenic Arsenic;
- (4) Barium Barium;
- (5) Beryllium Beryllium;
- (6) Cadmium
- (7) Calcium
- (8) Chromium, Total
- (9) Chromium, Hexavalent
- (10) Cobalt
- (11) Copper
- (12) Iron
- (13) Lead
- (14) Magnesium
- (15) Manganese
- (16) Mercury
- (17) Molybdenum
- (18) Nickel
- (19) Selenium
- (20) Silver
- (21) Thallium
- (22) Tin
- (23) Vanadium
- (24) Zinc
- (6) Boron;
- (7) Cadmium;
- (8) Calcium;
- (9) Chromium, Hexavalent (Chromium VI);
- (10) Chromium, Total;
- (11) Chromium, Trivalent (Chromium III);
- (12) Cobalt;
- (13) Copper;
- (14) Hardness, Total (Calcium + Magnesium);
- (15) Iron;
- (16) Lead;
- (17) Lithium;
- (18) Magnesium;
- (19) Manganese;
- (20) Mercury;
- (21) Molybdenum;
- (22) Nickel;
- (23) Potassium;
- (24) Phosphorus;
- (25) Selenium;
- (26) Silica;
- (27) Silver;
- (28) Sodium;
- (29) Strontium;
- (30) Thallium;
- (31) Tin;
- (32) Titanium;
- (33) Vanadium; and
- (34) Zinc.

(c) Metals: Each of the metals and certified leaching procedures for metals listed in this Paragraph following will shall be considered a certifiable parameter. Metals analyte: One or more Parameter Methods shall be listed with a laboratory's certified parameters. Analytical methods shall be determined from the

(d) Organics: Each of the organic parameters analytical categories and certified leaching procedures for organics listed in this Paragraph shall be considered a certifiable parameter. One or more Parameter Methods shall be listed with a laboratory's

certified parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. A listing of certifiable organic parameters and leaching procedures follows:

- (1) Purgeable Halocarbons
- (2) Purgeable Aromatics
- (3) Acrolein, Acrylonitrile, Acetonitrile
- (4) Phenols
- (5) Benzidines
- (6) Phthalate Esters
- (7) Nitrosamines
- (8) Organochlorine Pesticides
- (9) Polychlorinated Biphenyls
- (10) Nitroaromatics and Isophorone
- (11) Polynuclear Aromatic Hydrocarbons
- (12) Haloethers
- (13) Chlorinated Hydrocarbons
- (14) Purgeable Organics
- (15) Base/Neutral and Acid Organics
- (16) Chlorinated Acid Herbicides
- (17) Organophosphorus Pesticides
- (18) Total Petroleum Hydrocarbons (TPH)
- (19) California GC Method Diesel Range Organics
- (20) Total Petroleum Hydrocarbons (TPH)
- (21) California GC Method Gasoline Range Organics
- (22) Nonhalogenated Volatile Organics
- (23) N Methylcarbamates
- (24) 1,2, Dibromoethane (EDB)
- (25) Extractable Petroleum Hydrocarbons
- (26) Volatile Petroleum Hydrocarbons
- (27) Chlorinated Phenolics
- (28) Adsorbable Organic Halides
- (1) 1,2-Dibromoethane (EDB); 1,2-Dibromo-3-chloro-propane (DBCP); 1,2,3-Trichloropropane (TCP);
- (2) Acetonitrile;
- (3) Acrolein, Acrylonitrile;
- (4) Adsorbable Organic Halides;
- (5) Base/Neutral and Acid Organics;
- (6) Benzidines;
- (7) Chlorinated Acid Herbicides;
- (8) Chlorinated Hydrocarbons;
- (9) Chlorinated Phenolics;
- (10) Explosives;
- (11) Extractable Petroleum Hydrocarbons;
- (12) Haloethers;
- (13) N-Methylcarbamates;
- (14) Nitroaromatics and Isophorone;
- (15) Nitrosamines;
- (16) Nonhalogenated Volatile Organics;
- (17) Organochlorine Pesticides;
- (18) Organophosphorus Pesticides;
- (19) Phenols;
- (20) Phthalate Esters;
- (21) Polychlorinated Biphenyls;
- (22) Polynuclear Aromatic Hydrocarbons;
- (23) Purgeable Aromatics;
- (24) Purgeable Halocarbons;

- (25) Purgeable Organics;
- (26) Total Organic Halides;
- (27) Total Petroleum Hydrocarbons – Diesel Range Organics;
- (28) Total Petroleum Hydrocarbons – Gasoline Range Organics; and
- (29) Volatile Petroleum Hydrocarbons.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).*

#### **15A NCAC 02H .0805 CERTIFICATION AND RENEWAL OF CERTIFICATION**

(a) Prerequisites and requirements for Certification. The following requirements must shall be met by all laboratories, excluding Field Laboratories, prior to certification Certification. Once certified, failure to comply with any of the following items will shall be a violation of certification Certification requirements. All "Field Parameter" only facility requirements are located in Paragraph (g) of this Rule.

- (1) Laboratory Procedures. Analytical methods, sample preservation, sample containers and sample holding times shall conform to those requirements found in 40 CFR 136.3; Standard Methods for the Examination of Water and Wastewater, 18th Edition; or Test Methods for Evaluating Solid Waste, SW 846, Third Edition. These and subsequent amendments and editions are incorporated by reference. This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina, 27607. Copies of the Code of Federal Regulations, 40 CFR Part 136, may be obtained for a cost of forty two dollars (\$42.00), from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, DC, 20402. The publication number is 869-042-00148-6. Standard Methods for the Examination of Water and Waste, is available for purchase from the American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235. The costs are as follows: 18th Edition one hundred sixty dollars (\$160.00), 19th Edition one hundred eighty dollars (\$180.00), 20th Edition two hundred dollars (\$200.00). Copies of Test Methods for Evaluating Solid Waste, SW 846, Third Edition may be purchased for a cost of three hundred sixty seven dollars (\$367.00) from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Vector Attraction Reduction Options shall be Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013, Chapter 8. The document is available from US EPA; Office of Research and Development, Washington, NC 20460 at no cost. The method for Total Petroleum Hydrocarbons shall be the California

- Gas Chromatograph Method, Eisenberg, D.M., and others, 1985, Guidelines for Addressing Fuel Leaks: California Regional Quality Control Board San Francisco Bay Region. The method for Total Petroleum Hydrocarbons is available from the State Laboratory at no cost. The methods for Volatile Petroleum Hydrocarbons and Extractable Petroleum Hydrocarbons shall be Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH) and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH); January, 1998. The Director may approve other analytical procedures that have been demonstrated to produce verifiable and repeatable results and that have a widespread acceptance in the scientific community.
- (1) Laboratory Procedures. Analytical methods, sample preservation, sample containers, and sample holding times shall conform to the requirements found in:
- (A) 40 CFR Part 136 and 40 CFR Part 503;
  - (B) Standard Methods for the Examination of Water and Wastewater;
  - (C) Test Methods for Evaluating Solid Waste, SW-846, Third Edition;
  - (D) Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013;
  - (E) Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH) and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH); May, 2004, Revision 1.1, et seq.; and
  - (F) The State Laboratory may develop Approved Procedures for Field Parameters based upon the methods in any of the sources referenced in Parts (a)(1)(A) through (F) of this Rule.
  - (G) The procedures and methods listed in this Subparagraph are incorporated by reference, including subsequent amendments and editions.
  - (H) This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina, 27607 or may be obtained from:
    - (i) Copies of the Code of Federal Regulations, 40 CFR Part 136 and 40 CFR Part 503, may be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, D.C., 20402 and free of charge on the internet at <http://www.ecfr.gov>.
    - (ii) Standard Methods for the Examination of Water and Wastewater, is available for purchase from American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235; American Public Health Association (APHA), 8001 Street, NW, Washington, D.C. 20001; or Water Environment Federation (WEF), 601 Wythe Street, Alexandria, VA 22314; and <http://www.standardmethods.org/>.
    - (iii) Copies of Test Methods for Evaluating Solid Waste, SW-846, Third Edition may be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 and free of charge on the internet at <http://www.epa.gov/osw/hazard/testmethods/sw846/online/>.
    - (iv) Vector Attraction Reduction Options shall be Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013. The document is available from US EPA; Office of Research and Development, Washington, D.C. 20460 and free of charge on the internet at <http://www.water.epa.gov/scitech/wastetech/biosolids/>.
    - (v) The methods for Volatile Petroleum Hydrocarbons and Extractable Petroleum Hydrocarbons shall be Massachusetts Department of Environmental Protection, Method for the Determination of Volatile

- Petroleum Hydrocarbons (VPH) and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH); May, 2004, Revision 1.1, et seq. These methods may be obtained from the Massachusetts Department of Environmental Protection, Senator William X. Wall Experiment Station, 37 Shattuck Street, Lawrence, MA, 01843-1398 and free of charge on the internet at <http://www.mass.gov/eea/docs/dep/cleanup/laws/vph0504.pdf> and <http://www.mass.gov/eea/docs/dep/cleanup/laws/eph0504.pdf>, respectively.
- (vi) State Laboratory Approved Procedures for Field Parameters may be obtained by request from the State Laboratory or on the State Laboratory Certification website at <http://portal.ncdenr.org/web/wq/lab/cert>.
- (J) The Director or assigned delegate may approve other analytical procedures, parameters, or Parameter Methods that have been demonstrated to produce verifiable and repeatable results.
- ~~(2) Performance Evaluations. Annually, each certified laboratory must demonstrate acceptable performance on evaluation samples as required by these Rules.~~
- (2) Proficiency Testing. Annually, each certified laboratory shall demonstrate acceptable performance on a minimum of one evaluation sample for each Parameter Method listed on their Certified Parameters Listing for which Proficiency Testing samples are available from more than one vendor, as required by these Rules. When two Proficiency Testing samples for the same Parameter Method are analyzed and submitted at the same time, an unacceptable result on one or both samples shall be considered the first unacceptable result for Certification purposes. A laboratory that submits Unacceptable Proficiency Testing Results for two Proficiency Testing samples for the same Parameter Method submitted at the same time shall analyze a remedial Proficiency Testing sample to demonstrate a return to control and send a corrective action report to the State Laboratory that details the root cause of the failure and the corrective actions taken to
- prevent recurrence. Proficiency Testing samples shall be analyzed in the same manner that routine samples are analyzed using the same staff, sample tracking, sample preparation procedures, analytical methods, standard operating procedures, calibration techniques, quality control procedures, and acceptance criteria.
- ~~(A) Municipal and Industrial laboratories must participate in the annual Environmental Protection Agency Discharge Monitoring Report Quality Assurance (EPA/DMR/QA) Study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate.~~
- (A) All laboratories shall participate annually in an evaluation studies by analyzing Proficiency Testing samples obtained from a State Laboratory approved Vendor as unknowns, and arranging with the Vendor to send the graded results directly to the State Laboratory by the date due. A laboratory that submits Unacceptable Proficiency Testing Results shall analyze a remedial Proficiency Testing sample using the same Parameter Method to demonstrate a return to control and send a corrective action report to the State Laboratory that details the root cause of the failure and the corrective actions taken to prevent recurrence.
- ~~(B) Commercial laboratories must participate annually in water pollution studies by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate. When two samples for the same parameter are submitted and analyzed at the same time, an unacceptable result on one or both samples will be considered the first unacceptable result for certification purposes and a rerun sample must be submitted.~~
- ~~(C)~~(B) Laboratories requesting initial certification Certification or additional Parameter Method Certification must shall submit an acceptable performance Proficiency Testing

sample result from the most recent attempt analyzed within the last six months for each ~~parameter~~ Parameter Method for which ~~performance~~ Proficiency Testing samples are available. Laboratories shall analyze Proficiency Testing samples obtained from a State Laboratory-approved Vendor as unknowns and arrange with the Vendor to send the graded results directly to the State Laboratory. Laboratories that submit two consecutive ~~unacceptable~~ Unacceptable Proficiency Testing Results results for a particular ~~parameter~~ Parameter Method must shall then submit two consecutive ~~acceptable~~ Acceptable Proficiency Testing results from the most recent attempt analyzed within the six months prior to initial Certification for that ~~parameter~~ Parameter Method prior to initial certification.

(C) If Proficiency Testing performance samples are not ~~available~~, available for a parameter, Certification certification for that parameter ~~will~~ shall be based on the proper use of the approved procedure, the on-site inspection, ~~and~~ or adherence to the other requirements in this Section. Analysis of ~~split~~ Split samples may also be ~~required~~, required if Proficiency Testing samples are not available or if analysis of Proficiency Testing samples is not representative of the entire analytical process.

(3) Supervisory Requirements.

(A) The supervisor of a ~~commercial~~ Commercial Laboratory must have a minimum of a B.S. or A.B. Bachelor's degree in chemistry or a closely-related closely related science curriculum from an accredited college or university plus a minimum of two years of laboratory experience in analytical chemistry, or a two-year two-year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or a closely-related closely related science curriculum plus a minimum of four years of experience in analytical chemistry.

(B) The supervisor of a ~~municipal or industrial waste water treatment plant~~ non-Commercial Municipal, Industrial, Mobile or Other Laboratory

laboratory must shall have a minimum of a B.S. or A.B. Bachelor's degree in chemistry or a closely-related closely related science curriculum from an accredited college or university plus a minimum of six months of laboratory experience in analytical chemistry or an equivalent combination of education and work experience, or a two-year two-year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or a closely-related closely related science curriculum plus a minimum of two years of experience in analytical chemistry or an equivalent combination of education and work experience. Non-degree supervisors must shall have at least six years of laboratory experience in analytical chemistry or an equivalent combination of education and work experience.

(C) All laboratory supervisors ~~are~~ shall be subject to review by the State Laboratory. One person may serve as supervisor of no more than two certified laboratories. The supervisor shall provide personal and direct supervision of the technical personnel and be held responsible for the proper performance and reporting of all analyses made for these Rules. The supervisor ~~must~~ shall work in the laboratory or ~~visit~~ contact the laboratory once each day of normal ~~operations~~, operations and Supporting Records shall be maintained as evidence of this supervision. If the supervisor is to be absent, the supervisor shall arrange for a substitute capable of insuring the proper performance of all laboratory procedures, however, the substitute supervisor ~~cannot~~ shall not be in charge for more than ~~six~~ 12 consecutive weeks. ~~Existing laboratory supervisors that do not meet the requirements of this Rule may be accepted after review by the State Laboratory and meeting all other certification requirements.~~ Previous laboratory-related performance ~~will~~ shall be considered when reviewing the qualifications of a potential laboratory supervisor.

(4) Laboratory Manager. Each laboratory ~~must~~ shall designate a laboratory manager and



- include ~~his~~ their name and title on the application for ~~certification~~. Certification. The laboratory manager shall be administratively above the laboratory supervisor and will be in responsible charge in the event the laboratory supervisor ceases to be employed by the laboratory and will be responsible for filling the laboratory supervisor position with a replacement qualified pursuant to these Rules. At ~~commercial laboratories~~, Commercial Laboratories, where the owner is the laboratory supervisor, the laboratory manager and laboratory supervisor may be the same person if there is no one administratively above the laboratory supervisor.
- (5) Application. Each laboratory requesting initial ~~state certification~~ Certification shall submit an application ~~in duplicate~~, accompanied by the application fee and the laboratory's Quality Assurance ~~Manual~~ Manual, including Standard Operating Procedures for all requested Parameter Methods, to the State Laboratory. Separate application and Certification shall be required for each Mobile Laboratory and the applicant shall supply the vehicle make, vehicle identification number, and license number. Separate application and ~~certification~~ Certification shall be required for all stationary laboratories maintained on separate premises even though operated under the same management; however, separate ~~certification~~ Certification ~~is not~~ shall not be required for separate buildings on the same or adjoining grounds. Analysis of Field Parameters away from the physical location of the laboratory shall be permitted without separate Certification. After receiving a completed application and prior to issuing ~~certification~~, Certification, a representative of the State Laboratory may visit each laboratory to verify the information in the application and the adequacy of the laboratory.
- (6) Properly Maintained Facilities, Supplies, and Equipment. Facilities and equipment. Each laboratory requesting ~~certification~~ Certification ~~must~~ shall be properly maintained so as to ensure the security and integrity of samples. Samples shall be analyzed in such a manner that contamination or error will not be introduced. Each facility shall contain or be equipped with the following:
- (A) A minimum of 150 sq. ft. of laboratory space;
  - (B) A minimum of 12 linear feet of laboratory bench space;
  - (C) A sink with hot and cold water;
  - (D) An analytical balance capable of weighing 0.1 mg, mounted on a shock proof table;
  - (E) A refrigerator of adequate size to store all samples and maintain temperature of four degrees Celsius;
  - (F) A copy of each approved analytical procedure being used in the laboratory;
  - (G) A source of distilled or deionized water that will meet the minimum criteria of the approved methodologies;
  - (H) Glassware, chemicals, supplies, and equipment required to perform all analytical procedures included in their certification.
  - (A) A source of water that will meet the minimum criteria of the approved methodologies; and
  - (B) Glassware, chemicals, supplies, and equipment required to perform all tests, analyses, measurements, or monitoring included in their Certification.
- (7) Analytical Quality Control Program. Each laboratory shall develop and maintain a document outlining the analytical quality control practices used for the parameters included in their certification. Supporting records shall be maintained as evidence that these practices are being effectively carried out. The quality control document shall be available for inspection by the State Laboratory. The following are requirements for certification and must be included in each certified laboratory's quality control program:
- (A) All analytical data pertinent to each certified analysis must be filed in an orderly manner so as to be readily available for inspection upon request.
  - (B) Excluding Oil and Grease, all residue parameters, leachate extractions, residual chlorine, and coliform, analyze one known standard in addition to calibration standards each day samples are analyzed to document accuracy. Analyze one suspended residue, one dissolved residue, one residual chlorine and one oil and grease standard quarterly. For residual chlorine, all calibration standards required by the approved procedure in use and by EPA must be analyzed.
  - (C) Except for Oil and Grease (EPA Method 413.1), settleable solids or where otherwise specified in an analytical method, analyze five percent of all samples in duplicate to document precision. Laboratories analyzing less than 20 samples per month must analyze at least one

- duplicate each month samples are analyzed.
- (D) Any quality control procedures required by a particular approved method shall be considered as required for certification for that analysis.
- (E) All quality control requirements in these Rules as set forth by the State Laboratory.
- (F) Any time quality control results indicate an analytical problem, the problem must be resolved and any samples involved must be rerun if the holding time has not expired.
- (G) All analytical records must be available for a period of five years. Records, which are stored only on electronic media, must be maintained and supported in the laboratory by all hardware and software necessary for immediate data retrieval and review.
- (H) All laboratories must use printed laboratory bench worksheets that include a space to enter the signature or initials of the analyst, date of analyses, sample identification, volume of sample analyzed, value from the measurement system, factor and final value to be reported and each item must be recorded each time samples are analyzed. The date and time BOD and coliform samples are removed from the incubator must be included on the laboratory worksheet.
- (I) For analytical procedures requiring analysis of a series of standards, the concentrations of these standards must bracket the concentration of the samples analyzed. One of the standards must have a concentration equal to the laboratory's lower reporting concentration for the parameter involved. For metals by AA or ICP, a series of at least three standards must be analyzed along with each group of samples. For colorimetric analyses, a series of five standards for a curve prepared annually or three standards for curves established each day or standards as set forth in the analytical procedure must be analyzed to establish a standard curve. The curve must be updated as set forth in the standard procedures, each time the slope changes by more than 10 percent at mid range, each time a new stock standard is prepared, or at least every twelve months. Each analyst performing the analytical procedure must produce a standard curve.
- (J) Each day an incubator, oven, waterbath or refrigerator is used, the temperature must be checked, recorded, and initialed. During each use, the autoclave maximum temperature and pressure must be checked, recorded, and initialed.
- (K) The analytical balance must be checked with one class S, or equivalent, standard weight each day used and at least three standard weights quarterly. The values obtained must be recorded in a log and initialed by the analyst.
- (L) Chemicals must be dated when received and when opened. Reagents must be dated and initialed when prepared.
- (M) A record of date collected, time collected, sample collector, and use of proper preservatives must be maintained. Each sample must clearly indicate the State of North Carolina collection site on all record transcriptions.
- (N) At any time a laboratory receives samples which do not meet sample collection, holding time, or preservation requirements, the laboratory must notify the sample collector or client and secure another sample if possible. If another sample cannot be secured, the original sample may be analyzed but the results reported must be qualified with the nature of the infraction(s) and the laboratory must notify the State Laboratory about the infraction(s). The notification must include a statement indicating corrective actions taken to prevent the problem for future samples.
- (O) All thermometers must meet National Institute of Standards and Technology (NIST) specifications for accuracy or be checked, at a minimum annually, against a NIST traceable thermometer and proper corrections made.
- (7) Analytical Quality Assurance and Quality Control Program. Each laboratory shall have a documented analytical quality assurance and quality control program. Each laboratory shall have a copy of each approved test, analysis, measurement, or monitoring procedure being used in the laboratory. Each laboratory shall develop and maintain documentation outlining the analytical quality control practices used for

the Parameter Methods included in their Certification, including Standard Operating Procedures for each certified Parameter Method. Quality Assurance, Quality Control, and Standard Operating Procedure documentation shall indicate the effective date of the document and be reviewed every two years and updated if changes in procedures are made. Each laboratory shall have a formal process to track and document review dates and any revisions made in all Quality Assurance, Quality Control, and Standard Operating Procedure documents. Supporting Records shall be maintained as evidence that these practices are implemented. The Quality Assurance, Quality Control, and Standard Operating Procedure documents shall be available for inspection by the State Laboratory. The following are requirements for Certification and shall be included in each certified laboratory's Quality Assurance and Quality Control program. For analysis of Field Parameters, a certified laboratory shall follow the quality assurance and quality control requirements in Subparagraphs (g)(1) through (9) of this Rule.

- (A) Unless specified by the method or this Rule, each laboratory shall establish performance acceptance criteria for all Quality Control analyses. Each laboratory shall calculate and document the precision and accuracy of all Quality Control analyses with each sample set. When the method of choice specifies performance acceptance criteria for precision and accuracy, and the laboratory chooses to develop laboratory-specific limits, the laboratory-specific limits shall not be less stringent than the criteria stated in the approved method.
- (B) If quality control results fall outside established limits or indicate an analytical problem, the laboratory shall identify the root cause of the failure. The problem shall be resolved through corrective action, the corrective action process documented and any samples involved shall be reanalyzed, if possible. If the sample cannot be reanalyzed, or if the quality control results continue to fall outside established limits or indicate an analytical problem, the results shall be qualified as such.
- (C) Except where otherwise specified in an analytical method, laboratories shall analyze five percent of all samples in duplicate to document

precision. Laboratories analyzing fewer than 20 samples per month shall analyze one duplicate during each month that samples are analyzed.

- (D) Unless the referenced method states a greater frequency or the parameter is not amenable to spiking, laboratories shall spike 5% of samples monthly. Laboratories analyzing fewer than 20 samples per month shall analyze one Matrix Spike during each month that samples are analyzed.
- (E) All analytical records, including original observations and information necessary to facilitate historical reconstruction of the calculated results, shall be maintained for five years. All analytical data and records pertinent to each certified analysis shall be accurate, filed in an orderly manner, and available for inspection upon request. All analytical records shall be readable and safeguarded against unauthorized amendment, obliteration, erasures, overwriting, and corruption. Records that are stored only on electronic media shall be maintained throughout the five-year retention period and supported in the laboratory by all hardware and software necessary for immediate data retrieval and review. All documentation errors shall be corrected by drawing a single line through the error so that the original entry remains legible. Entries shall not be obliterated by erasures or markings. Wite-Out®, correction tape or similar products designed to obliterate documentation shall not be used; instead, the correction shall be written adjacent to the error. The correction shall be initialed by the responsible individual and the date of change documented. All manual data and log entries shall be written in indelible ink.
- (F) All laboratories shall use printable laboratory benchsheets. Certified Data shall be traceable to the associated sample analyses and shall consist of:
  - (i) the method or Standard Operating Procedure;
  - (ii) the laboratory identification;
  - (iii) the instrument identification;
  - (iv) the sample collector;
  - (v) the signature or initials of the analyst;
  - (vi) the date and time of sample collection;

- (vii) the date of sample analyses
- (viii) the time of sample analyses  
(when required to document  
a required holding time or  
when time critical steps are  
imposed by the method, a  
federal regulation or this  
Rule);
- (ix) sample identification;
- (x) sample preparation, where  
applicable;
- (xi) the volume of sample  
analyzed, where applicable;
- (xii) the proper units of measure;
- (xiii) the dilution factor, where  
applicable;
- (xiv) all manual calculations;
- (xv) all quality control  
assessments;
- (xvi) the value from the  
measurement system;
- (xvii) the final value to be reported;  
and
- (xviii) any other data needed to  
reconstruct the final  
calculated result.

Each item shall be recorded each time  
samples are analyzed. The date and  
time samples are placed into and  
removed from ovens, water baths,  
incubators and other equipment shall  
be documented if a time limit is  
required by the method.

(G) If certified for total suspended residue,  
total dissolved residue or total residue,  
laboratories shall analyze one standard  
monthly during each month samples  
are analyzed.

(H) For analytical procedures requiring  
analysis of a series of standards, the  
concentrations of these standards shall  
bracket the range of the sample  
concentrations measured. One of the  
standards shall have a concentration  
equal to or less than the laboratory's  
lowest reporting concentration for the  
parameter involved. All data sets shall  
reference the corresponding  
calibration. Laboratories shall analyze  
or back-calculate a standard at the  
same concentration as the lowest  
reporting concentration each day  
samples are analyzed. A calibration  
blank and calibration verification  
standard shall be analyzed prior to  
sample analysis, after every tenth  
sample and at the end of each sample  
group, unless otherwise specified by

the method, to check for carry over  
and calibration drift.

(i) The concentration of reagent,  
method, and calibration  
blanks shall not exceed 50  
percent of the lowest  
reporting concentration or as  
otherwise specified by the  
reference method.

(ii) Laboratories shall analyze  
one known second source  
standard to verify the  
accuracy of standard  
preparation if an initial  
calibration is performed and  
in accordance with the  
referenced method  
requirements thereafter.

(iii) For electrode analyses, a  
series of two or more non-  
zero standards shall be used.

(iv) For metals analyses, a series  
of three or more non-zero  
standards or standards as set  
forth in the analytical  
procedure shall be analyzed  
along with each sample set  
shall be used.

(v) For colorimetric analyses, a  
series of five or more non-  
zero standards for a curve  
prepared every twelve  
months or three or more non-  
zero standards for curves  
established each day, or  
standards as set forth in the  
analytical procedure, shall be  
analyzed to establish a  
calibration curve. A  
manufacturer's factory-set  
calibration (internal curve)  
shall be verified with the  
same number of standards  
and frequency as a prepared  
curve.

(vi) For ion chromatographic  
analyses, a series of five or  
more non-zero standards for  
a curve prepared every  
twelve months or three or  
more non-zero standards for  
curves established each day,  
or standards as set forth in the  
analytical procedure, shall be  
analyzed to establish a  
calibration curve.

(I) Each day of normal business  
operations during which samples are  
placed into or removed from an

- incubator, oven, water bath, refrigerator, or other temperature controlled device, the temperature shall be checked, recorded, dated, and initialed. If a method requires more frequent monitoring, the method shall be followed. During each use, proper operation of the autoclave shall be verified and adequate temperature and pressure, cycle time, and items autoclaved shall be checked, recorded, dated, and initialed.
- (J) The analytical balance shall be checked with one ASTM Type 1, Class 1 or 2, or equivalent standard weight each day used. These weights shall be verified every five years. The analytical balance shall be verified monthly with three ASTM Type 1, Class 1 or 2, or equivalent standard weights across the range of use. The values obtained shall be recorded, dated, and initialed. Laboratory analytical balances shall be serviced by a metrology vendor or technician every 12 months to verify that the balance is functioning within manufacturer's specifications.
- (K) Chemical containers shall be dated when received and when opened. Reagent containers shall be dated, identified, and initialed when prepared. Chemicals and reagents exceeding the expiration date shall not be used. The laboratory shall have a documented system of traceability for the purchase, preparation and use of all chemicals, reagents, standards, and consumables.
- (L) A record of sample collection date, sample collection time, sample collector, and the use of proper preservatives and preservation techniques shall be maintained. Each North Carolina sample shall indicate the collection site on all record transcriptions.
- (M) Sample preservation shall be verified and documented. If a laboratory receives a sample subject to G.S. 143-215.1 and 143-215.63, et seq. that does not meet sample collection, holding time, or preservation requirements, the laboratory shall document the incident, notify the sample collector or client, and secure another sample that meets the regulatory requirements, if possible. If another viable sample cannot be secured, the original sample
- may be analyzed but the results reported shall be qualified with the nature of the sample collection, holding time, or preservation infractions and the laboratory shall notify the State Laboratory of the infractions. The notification shall include a statement indicating corrective action taken to prevent future infractions.
- (N) All temperature-measuring devices shall have accuracy appropriate for its intended use. All temperature-measuring devices shall be used, stored, and maintained according to the manufacturer's instructions.
- (i) Reference Temperature-Measuring Devices shall meet National Institute of Standards and Technology (NIST) specifications for accuracy and shall be recalibrated in accordance with the manufacturer's recalibration date not to exceed five years. If no recalibration date is given, the Reference Temperature-Measuring Device shall be recalibrated every five years.
- (ii) Excluding digital, incubator, and infrared temperature-measuring devices, all non-Reference Temperature-Measuring Devices shall be verified at the temperature of use every twelve months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.
- (iii) Digital temperature-measuring devices and temperature-measuring devices used in incubators shall be verified at the temperature of use every three months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.
- (iv) Infrared temperature-measuring devices shall be verified every three months at three different temperatures over the temperature range of use against a Reference Temperature-Measuring

- Device and their accuracy shall be corrected. Each day of use, infrared temperature-measuring devices shall be verified against a non-Reference Temperature-Measuring Device that meets NIST specifications for accuracy. If the infrared temperature-measuring device does not agree within 0.5 degrees Celsius during the daily verification, corrective action must be taken.
- (O) Mechanical volumetric liquid-dispensing devices (e.g., fixed and adjustable auto-pipettors and bottle-top dispensers) used for critical volume measurements shall be calibrated once every six months.
- (P) Each laboratory shall develop and implement a documented training program that includes documentation that:
- (i) staff have the education, training, experience, or demonstrated skills needed to generate quality control results within method-specified limits and/or that meet the requirements of these Rules;
  - (ii) staff have read the laboratory Quality Assurance Manual and/or applicable Standard Operating Procedures; and
  - (iii) staff have obtained acceptable results on Proficiency Testing samples pursuant to Rule .0803(1) of this Section or other demonstrations of proficiency.
- (8) Decertification Requirements. Municipal and industrial laboratories that cannot meet initial certification requirements must comply with the Decertification Requirements as set forth in Rule .0807(e) of this Section.
- (b) Issuance of Certification.
- (1) Upon compliance with these Rules, certification Certification shall be issued by the Director Division of Water Quality, Department of Environmental Quality or his assigned delegate, for each of the applicable parameters Parameter Methods requested within 30 days. days of receipt of the initial Certification invoice payment.
  - (2) Initial certifications Certifications shall be valid for the remainder of the applicable Certification cycle that begins on January 1 and is valid for one year. issued for prorated time periods to schedule all certification renewals on the first day valid for one year.
- (c) Maintenance of Certification.
- (1) To maintain certification Certification for each parameter Parameter Method, a certified laboratory must shall analyze up to four performance evaluation one Proficiency Testing sample samples per parameter Parameter Method per year year, submitted by an accredited vendor as an unknown. Laboratories submitting unacceptable results on a performance evaluation samples may be required to analyze more than four samples per year. A laboratory may be asked to analyze additional Proficiency Testing samples for a Parameter Method if a question about the accuracy of data produced arises, if there are changes in equipment or personnel, if inaccurate information is reported with Proficiency Testing results, or if Unacceptable Proficiency Testing Results are submitted.
  - (2) In addition, if a Proficiency Testing sample is not available, the State Laboratory may request the analysis of Split samples. that samples be split into two equal representative portions, one part going to the State and the other to the certified laboratory for analysis. Acceptable Split sample results shall be determined by the State Laboratory using scientifically valid statistical methodology.
  - (3) The State laboratory Laboratory may submit or require clients certified laboratories to submit analyze blind performance Proficiency Testing samples or split Split samples under direction of State Laboratory personnel. personnel if there is a question about the accuracy of data produced, if Proficiency Testing samples are not available or if analysis of Proficiency Testing samples does not represent the entire analytical process.
  - (4) A certified laboratory shall be subject to periodic announced or unannounced inspections during the certification Certification period and shall make time and all records pursuant to Part (a)(7)(E) of this Rule available for inspections inspection, and must supply copies of records for any investigation upon written request by the State Laboratory.
  - (5) A certified laboratory must provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 days of such changes.
  - (6) A certified laboratory must submit written notice of any changes of location, ownership,

- ~~address, name or telephone number within 30 days of such changes.~~
- (7) ~~A certified laboratory must submit a written amendment to the certification application each time that changes occur in methodology, reporting limits, and major equipment. The amendment must be received within 30 days of such changes.~~
- (5) A certified laboratory shall supply copies of all records pursuant to Part (a)(7)(E) of this Rule for any investigation upon written request by the State Laboratory.
- (6) A certified laboratory shall provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 days of such changes.
- (7) A certified laboratory shall submit written notice of any changes of location, ownership, address, name, or telephone number within 30 days of such changes.
- (d) ~~Certification Renewals~~ Renewals.
- (1) ~~Certification renewals of laboratories shall be issued for one year.~~
- (e) ~~Data reporting.~~ Reporting.
- (1) ~~Certified commercial laboratories must shall provide make data reports to their clients that are signed by the laboratory supervisor. This duty signatory authority may be delegated in writing ; however, the responsibility shall remain with the supervisor.~~
- (2) ~~Whenever If a certified commercial laboratory Laboratory refers or subcontracts analysis of samples to another laboratory certified laboratory for analyses, the Parameter, the referring laboratory must shall supply the date and time samples were collected to insure holding times are met. Subcontracted All record transcriptions of subcontracted samples must shall clearly indicate that the collection site is in the State of North Carolina Carolina, as the collection site on all record transcriptions. Laboratories may subcontract sample fractions, extracts, leachates leachates, and other sample preparation products provided that adherence to all Rules and requirements of 15A NCAC 02H .0800 are is documented. The initial client requesting the analyses must shall receive the original or a copy of the report made by the laboratory that performs the analyses. Each reported result shall be traceable to the laboratory that performed the analysis on the final report.~~
- (3) All uncertified data Uncertified Data must shall be clearly documented as such on the benchsheet and on the final report.
- (4) Sample results reported below the lowest reporting concentration, if required by the data receiver, shall be qualified as an estimated value.
- (5) Reported data associated with Quality Control failures, improper sample collection, holding time exceedances, or improper preservation shall be qualified as such.
- (f) Discontinuation of Certification.
- (1) ~~A laboratory may discontinue certification Certification for any or all parameters Parameter Methods by making a written request to the State Laboratory.~~
- (2) ~~After discontinuation of certification, Certification, a laboratory may shall be recertified by meeting the requirements for initial certification; Certification; however, laboratories that discontinue certification Certification during any investigation shall be subject to Rule .0808 of this Section.~~
- (g) Prerequisites and Requirements requirements for Field Laboratory Parameter Certification. Only the following requirements must be met prior to certification for Field Parameter Laboratories. Laboratories that meet the requirements of this Paragraph shall be certified as Field Laboratories. Once certified, failure to comply with any of the following items will shall be a violation of certification Certification requirements.
- (1) ~~Data pertinent to each analysis must be maintained for five years. Certified Data must consist of date collected, time collected, sample site, sample collector, and sample analysis time. The field benchsheets must provide a space for the signature or initials of the analyst, and proper units of measure for all analyses.~~
- (2) ~~A record of instrument calibration where applicable, must be filed in an orderly manner so as to be readily available for inspection upon request.~~
- (3) ~~A copy of each approved analytical procedure must be available to each analyst.~~
- (4) ~~Each facility must have glassware, chemicals, supplies, equipment, and a source of distilled or deionized water that will meet the minimum criteria of the approved methodologies.~~
- (5) ~~Supervisors of laboratories certified for Field Parameters only must meet the requirements of Subparagraph (a)(3)(A) or (a)(3)(B) of this Section, or possess a chemistry or related degree with two years of related environmental experience, or hold any Biological Water Pollution Control System Operator's Certification as defined by 15A NCAC 08G.~~
- (6) Application: Each Field Parameter Laboratory shall submit an application in duplicate.
- (7) Performance Evaluations. Each Field Parameter Laboratory must participate in an annual quality assurance study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns. If performance evaluations are not available for a parameter, certification for that parameter may

- ~~be based on the proper use of the approved procedure as determined by an announced or unannounced on-site inspection.~~
- (8) ~~Decertification and Civil Penalties. A laboratory facility can be decertified for infractions as outlined in Rule .0807 of this Section.~~
- (9) ~~Recertification. A laboratory facility can be recertified in accordance with Rule .0808 of this Section.~~
- (1) All analytical records, including original observations and information necessary to facilitate historical reconstruction of the calculated results, shall be maintained for five years. All analytical data and records pertinent to each certified analysis shall be accurate and filed in an orderly manner so as to be readily available for inspection upon request. All analytical records shall be legible and safeguarded against unauthorized amendment, obliteration, erasures, overwriting and corruption. Records which are stored only on electronic media shall be securely maintained throughout the five year retention period and supported in the laboratory by all hardware and software necessary for immediate data retrieval and review. All documentation errors shall be corrected by drawing a single line through the error so that the original entry remains legible. Entries shall not be obliterated by erasures or markings. Wite-Out®, correction tape or similar products designed to obliterate documentation are not to be used. Write the correction adjacent to the error. The correction shall be initialed by the responsible individual and the date of change documented. All manual data and log entries shall be written in indelible ink. Pencil entries are not acceptable.
- (2) All laboratories shall use printable laboratory benchsheets. Certified Data shall be traceable to the associated sample analyses and shall consist of:
- (A) the method or Standard Operating Procedure;
  - (B) the laboratory identification;
  - (C) the instrument identification;
  - (D) the sample collector;
  - (E) the signature or initials of the analyst;
  - (F) the date and time of sample collection;
  - (G) the date of sample analyses;
  - (H) the time of sample analyses (when required to document a required holding time or when time critical steps are imposed by the method, a federal regulation or this Rule);
  - (I) sample identification;
  - (J) sample preparation, where applicable;
  - (K) the volume of sample analyzed, where applicable;
  - (L) the proper units of measure;
  - (M) the dilution factor, where applicable;
  - (N) all manual calculations;
  - (O) the quality control assessments;
  - (P) the value from the measurement system;
  - (Q) the final value to be reported; and
  - (R) any other data needed to reconstruct the final calculated result.
- Each item shall be recorded each time samples are analyzed. Analyses shall conform to methodologies found in Subparagraph (a)(1) of this Rule.
- (3) A record of instrument calibration or calibration verification shall be documented, filed in an orderly manner, and available for inspection upon request.
- (4) Laboratory Procedures. Laboratory procedures shall comply with Subparagraph (a)(1) of this Rule. A copy of each analytical method or Approved Procedure and Standard Operating Procedure shall be available to each analyst and available for review upon request by the State Laboratory. Standard Operating Procedure documentation shall indicate the effective date of the document and shall be reviewed every two years and updated if changes in procedures are made. Each laboratory shall have a formal process to track and document review dates and any revisions made in all Standard Operating Procedure documents. Supporting Records shall be maintained as evidence that these practices are implemented.
- (5) Each laboratory shall develop and implement a documented training program that includes the following:
- (A) that staff have the education, training, experience, or demonstrated skills, needed to generate quality control results within method-specified limits or that meet the requirements of these Rules;
  - (B) that staff have read the laboratory Quality Assurance Manual or applicable Standard Operating Procedures;
  - (C) that staff have obtained acceptable results on Proficiency Testing samples pursuant to Rule .0803(1) of this Section or other demonstrations of proficiency.
- (6) Each facility shall have glassware, chemicals, supplies, properly maintained equipment, and a source of water that meets the criteria of the approved methodologies. Samples shall be analyzed in such a manner that contamination or error will not be introduced.
- (7) Chemical containers shall be dated when received and when opened. Reagent containers



- shall be dated, identified, and initialed when prepared. Chemicals and reagents exceeding the expiration date shall not be used. Chemicals and reagents shall be assigned expiration dates by the laboratory if not given by the manufacturer. If the laboratory is unable to determine an expiration date for a chemical or reagent, a one-year time period from the date of receipt shall be the expiration date unless degradation is observed prior to this date. The laboratory shall have a documented system of traceability for all chemicals, reagents, standards, and consumables.
- (8) If quality control results fall outside established limits or indicate an analytical problem, the laboratory shall identify the root cause of the failure. The problem shall be resolved through corrective action, the corrective action process documented and any samples involved shall be reanalyzed, if possible. If the sample cannot be reanalyzed, or if the quality control results continue to fall outside established limits or indicate an analytical problem, the results shall be qualified as such.
- (9) All temperature-measuring devices shall have accuracy appropriate for its intended use. All temperature-measuring devices shall be properly used, stored, and maintained.
- (A) Reference Temperature-Measuring Devices shall meet National Institute of Standards and Technology (NIST) specifications for accuracy and shall be recalibrated in accordance with the manufacturer's recalibration date. If no recalibration date is given, the Reference Temperature-Measuring Device shall be recalibrated every five years.
- (B) Excluding digital, incubator, and infrared temperature-measuring devices, all non-Reference Temperature-Measuring Devices shall be verified every 12 months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.
- (C) Digital temperature-measuring devices and temperature-measuring devices used in incubators shall be verified at every three months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.
- (D) Infrared temperature-measuring devices shall be verified every three months at three different temperatures over the temperature range of use against a Reference Temperature-Measuring Device and their accuracy
- shall be corrected. Each day of use, infrared temperature-measuring devices shall be verified against a non-Reference Temperature-Measuring Device that meets NIST specifications for accuracy. If the infrared temperature-measuring device does not agree within 0.5 degrees Celsius during the daily verification, corrective action must be taken.
- (10) Mechanical volumetric liquid-dispensing devices (e.g., fixed and adjustable auto-pipettors and bottle-top dispensers) shall be calibrated at least once every twelve months.
- (11) Supervisors of laboratories certified only for Field Parameters shall:
- (A) meet the requirements of Part (a)(3)(A) or (a)(3)(B) of this Rule;
- (B) possess a chemistry or related degree with two years of related environmental experience or an equivalent combination of education and work experience; or
- (C) hold any Water Pollution Control System Operator's Certification as defined by 15A NCAC 08G, et seq.
- Supervisors shall provide personal and direct supervision of the technical personnel and be held responsible for the proper performance and reporting of all analyses governed by these Rules. If the supervisor is to be absent, the supervisor shall arrange for a substitute capable of insuring the proper performance of all laboratory procedures; however, the substitute supervisor shall not be in charge for more than twelve consecutive weeks.
- (12) A certified Field Laboratory shall be subject to inspections during the Certification period and shall make all relevant records available for inspection.
- (13) A certified Field Laboratory shall supply copies of all relevant records for any investigation upon written request by the State Laboratory.
- (14) A certified Field Laboratory shall pay all applicable fees in accordance with Rule .0806 of this Section.
- (15) Application. Each Field Laboratory requesting initial Certification shall submit an application to the State Laboratory.
- (16) Proficiency Testing. Each certified Field Laboratory shall be in accordance with Subparagraph (a)(2) of this Rule.
- (17) Data Reporting. Each certified Field Laboratory shall be in accordance with Paragraph (e) of this Rule.
- (18) Issuance of Certification. A Field Laboratory shall be issued Certification in accordance with Paragraph (b) of this Rule.

- (19) Maintenance of Certification. A certified Field Laboratory shall submit written notice of any material changes in the laboratory supervisor, location, ownership, address, name and telephone number within 30 days of such changes.
- (20) Certification Renewals. Certification renewals of certified Field Laboratories shall be issued in accordance with Paragraph (d) of this Rule.
- (21) Discontinuation of Certification. A certified Field Laboratory may discontinue Certification in accordance with Paragraph (f) of this Rule.
- (22) Decertification. A certified Field Laboratory may be decertified and must meet all Decertification requirements for infractions in accordance with Rule .0807 of this Section.
- (23) Civil Penalties. Civil Penalties may be assessed against a certified Field Laboratory which violates or fails to act in accordance with any of the terms, conditions, or requirements of the Rule .0807 of this Section or of the State Laboratory.
- (24) Recertification. A decertified Field Laboratory may be recertified in accordance with Rule .0808 of this Section.

*Authority G.S. 143-215.3(a)(1); ~~143-215.3(a)(10)~~ 143-215.3(a)(10); 143-215.6A.*

#### **15A NCAC 02H .0806 FEES ASSOCIATED WITH CERTIFICATION PROGRAM**

- (a) An applicant for laboratory ~~certification~~, Certification, excluding those laboratories seeking only Field Parameter Certification ~~only~~, must shall submit to the Department of Environment and Natural Resources, Laboratory Environmental Quality, Division of Water Resources Water Sciences Section, a non-refundable fee of three hundred dollars (\$300.00) ~~for the evaluation and processing of with~~ each application.
- (b) Municipal, Industrial, and Other ~~laboratories~~ Laboratories must shall pay an annual fee of ~~fifty dollars (\$50.00)~~ eighty-five dollars (\$85.00) for each ~~inorganic parameter plus one hundred dollars (\$100.00) for each organic parameter and metals analyte~~; parameter; however, the minimum fee ~~will shall~~ be one thousand ~~three seven~~ hundred fifty dollars (~~\$1,350.00~~) (\$1,750) per year. Municipal Laboratories may cost-share among Municipal Laboratories or charge a cost recovery fee or surcharge to operate their Pretreatment Program.
- (c) Commercial ~~laboratories~~ Laboratories must shall pay an annual fee of ~~fifty dollars (\$50.00)~~ eighty-five dollars (\$85.00) for each ~~inorganic parameter plus one hundred dollars (\$100.00) for each organic parameter and metals analyte~~; however, the minimum fee will be ~~two three thousand seven five~~ hundred dollars (~~\$2,700.00~~) (\$3,500) per year.
- (d) Prior to receiving initial ~~certification~~, Certification, a Field Laboratory shall pay the required fee as specified in Paragraph (k) or (l) of this Rule and all other laboratories shall ~~laboratory must~~ pay the required fee as specified in Paragraph (b) or (c) of this Rule. ~~Initial certification~~ Excluding Field Laboratories, Certification fee will shall be prorated on a semi-annual quarterly

- ~~basis. basis to make all certification~~ All Certification renewals shall be due on the first day of January.
- (e) Once certified, a Field Laboratories shall pay a fifty dollar (\$50.00) administrative fee for each Parameter Method added to their Certified Parameters Listing, and all other laboratories ~~laboratory must shall~~ pay the full annual parameter fee for each ~~parameter~~ Parameter Method added to their ~~certificate~~. Certified Parameters Listing.
- (f) A laboratory decertified for all parameters ~~must shall~~ pay initial ~~certification~~ Certification fees prior to ~~recertification~~. Recertification.
- (g) A laboratory decertified for one or more ~~parameters~~ Parameter Methods ~~must shall~~ pay a fee of two hundred dollars (\$200.00) for each ~~parameters~~ Parameter Method for which it was decertified prior to ~~recertification~~. Recertification.
- (h) Out-of-state laboratories shall reimburse the ~~state~~ State for actual travel and subsistence costs incurred by laboratory certification staff in ~~certification~~ Certification and maintenance of ~~certification~~. Certification including travel to provide technical assistance or complaint investigations. Out-of-state laboratories shall also be assessed for expenses for an on-site inspection based on the hourly rate of the laboratory certification staff, rounded to the nearest hour and inclusive of preparation time, travel time, and inspection time.
- (i) Annual ~~certification~~ Certification fees ~~are shall~~ be due 60 days after receipt of invoice.
- (j) A fifty dollar (\$50.00) late payment fee shall be paid by Field Laboratories when annual Certification fees have not been paid by the date due. ~~A~~ For all other laboratories, a two hundred fifty dollar (\$250.00) late payment fee ~~must shall~~ be paid when annual ~~certification~~ Certification fees are not paid by the date due.
- (k) Commercial ~~facilities~~ Laboratories analyzing only samples for ~~field parameters~~ Field Parameters ~~only must shall~~ pay an annual fee of ~~two three~~ hundred dollars (~~\$200.00~~) (\$300.00) per year.
- (l) ~~Municipal and Industrial facilities~~ Municipal, Industrial, and Other Laboratories analyzing only samples for ~~field parameters~~ Field Parameters ~~only must shall~~ pay an annual fee of one hundred ~~fifty dollars (\$100.00)~~ (\$150.00) per year.
- (m) A laboratory that voluntarily discontinues Certification shall pay all applicable Certification fees as specified in Paragraphs (a), (b), (c), (d), (k), and (l) of this Rule prior to regaining Certification.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).*

#### **15A NCAC 02H .0807 DECERTIFICATION AND CIVIL PENALTIES**

- (a) Laboratory Decertification. A ~~laboratory may be decertified, for any or all parameters, for up to one year for any of the following infractions:~~ The following infractions may result in a laboratory being decertified pursuant to Paragraph (d) of this Section for any or all parameters for up to one year:
  - (1) Failing to maintain the facilities, ~~or~~ records, ~~or~~ personnel, ~~or~~ equipment, or quality control program as set forth in the application, and these Rules; ~~or~~
  - (2) Submitting inaccurate data or other information ~~subject to these Rules; or~~

- (3) Failing to pay required fees by the date due; ~~or~~
  - (4) Failing to discontinue supplying data for clients or programs described in Rule .0802 of this Section during periods when a ~~decertification~~ Decertification is in effect; ~~or~~
  - (5) Failing to submit a ~~split~~ Split sample to the State Laboratory as requested; ~~or~~
  - (6) Failing to use approved methods of analysis; ~~or~~
  - (7) Failing to report a change of laboratory supervisor ~~or equipment changes~~ within 30 ~~days; days of such changes; or~~
  - (8) Failing to report an analysis of required annual ~~performance evaluation~~ Proficiency Testing samples submitted by ~~an a EPA State Laboratory-approved approved vendor~~ Vendor within the specified time limit; ~~or~~
  - (9) Failing to allow an inspection by an authorized representative of the State Laboratory; ~~or~~
  - (10) Failing to supply all records and analytical data requested by the State Laboratory; ~~or~~
  - (11) Failing to submit a written notification amendment to the certification application within 30 days of applicable changes pursuant to Rule .0805(a)(6) and (7) and Rule .0805(g)(19) of this Section; changes; or
  - (12) Failing to meet ~~required requirements for~~ sample holding times and preservation; times; or
  - (13) Failing to respond to requests for information by the date due; ~~or~~
  - (14) Failing to comply with any other terms, conditions, or requirements of this Section or of a laboratory ~~certification~~ Certification;
  - (15) Altering or modifying the laboratory's certificate or Certified Parameters Listing;
  - (16) Sharing or comparing Proficiency Testing sample results with other laboratories prior to the study reporting deadline;
  - (17) Splitting, sending, or subcontracting a Proficiency Testing sample or a portion of a Proficiency Testing sample to another laboratory unless the practice represents the routine analysis and reporting scheme utilized by the laboratories;
  - (18) Knowingly receiving and analyzing any Proficiency Testing sample or portion of a Proficiency Testing sample from another laboratory for which the results of the Proficiency Testing sample are intended for use by that laboratory for initial or continued Certification.
  - (19) Obtaining or attempting to obtain the assigned value of any Proficiency Testing sample used to satisfy initial or continued Certification requirements prior to the closing date of the study.
  - (20) Failing to correct findings in an inspection report.
- (b) Parameter Method Decertification. A laboratory may receive ~~a parameter decertification for failing to:~~ The laboratory may be decertified pursuant to Paragraph (d) of this Rule for a Parameter Method for:
- (1) ~~Obtain acceptable results on two consecutive blind or announced performance evaluation samples submitted by an EPA accredited vendor or the State Laboratory; or obtaining two consecutive Unacceptable Proficiency Testing sample results; or~~
  - (2) ~~Obtain acceptable results on two consecutive blind or announced split samples that have also been analyzed by the State Laboratory. obtaining two consecutive unacceptable Split sample results.~~
- (c) Falsified Data. A laboratory that submits falsified data or other information may be decertified pursuant to Paragraph (d) of this Rule for all parameters for up to two ~~years. years and may be recertified per Rule .0808 of this Section.~~
- (d) Decertification Factors. In determining a period of ~~decertification, Decertification,~~ the Director shall recognize that any harm to the natural resources of the State arising from violations of ~~these the~~ the Rules in this Section may not be immediately observed and may be incremental or cumulative with no damage that can be immediately observed or documented. Decertification for periods up to the maximum ~~may shall~~ be based on any ~~and one~~ one or a combination of the ~~following factors to be considered: factors set forth at G.S. 143B-282.1(b).~~
- (1) ~~The degree and extent of harm, or potential harm, to the natural resources of the State or to the public health, or to private property resulting from the violation;~~
  - (2) ~~The duration, and gravity of the violation;~~
  - (3) ~~The effect, or potential effect, on ground or surface water quantity or quality or on air quality;~~
  - (4) ~~Cost of rectifying any damage;~~
  - (5) ~~The amount of money saved by noncompliance;~~
  - (6) ~~As to violations other than submission of falsified data or other information, whether the violation was committed willfully or intentionally;~~
  - (7) ~~The prior record of the laboratory in complying or failing to comply with any State and Federal laboratory Rules and regulations;~~
  - (8) ~~The cost to the State of investigation and enforcement procedures;~~
  - (9) ~~Cooperation of the laboratory in discovering, identifying, or reporting the violation;~~
  - (10) ~~Measures the laboratory implemented to correct the violation or abate the effect of the violation, including notifying any affected clients;~~
  - (11) ~~Measures the laboratory implemented to correct the cause of the violation;~~
  - (12) ~~Any other relevant facts.~~
- (e) Decertification Requirements.
- (1) A decertified laboratory ~~is not to~~ shall not analyze samples for the decertified ~~parameters~~ Parameter Method for programs described in

Rule .0802 of this Section or for clients reporting to these ~~programs~~, ~~programs~~ or other ~~programs~~ requiring Certified Data pursuant to this Section.

- (2) A ~~decertified commercial laboratory~~ Commercial Laboratory ~~must shall~~ supply written notification of the ~~decertification~~ its Decertification to clients ~~with Division of Water Quality~~ that are required to report to the Department of Environmental Quality ~~reporting requirements~~, under G.S. 143 Article 21. Within 30 days of Decertification, the ~~decertified laboratory must supply~~ shall provide the State Laboratory with a list of such clients ~~involved~~ and copies of the notices sent to each.
- (3) A ~~commercial laboratory~~ Commercial Laboratory that has received a ~~parameter decertification~~ Parameter Method Decertification ~~may shall~~ make arrangements to supply analysis through another ~~certified~~ certified laboratory certified by the State Laboratory for the ~~contracted parameters~~ during any decertification periods. Decertification period. The ~~decertified laboratory must supply the State Laboratory, by written notice, the name of the laboratory to be used. Within 30 days of Decertification, the decertified laboratory shall supply the State Laboratory with a list of clients involved, copies of the notices sent to each, and the name and Certification number of the certified laboratory to be used during the Decertification period.~~
- (4) A ~~commercial laboratory~~ Commercial Laboratory decertified for all parameters ~~cannot~~ shall not subcontract samples for analyses to other certified laboratories during the ~~decertification~~ Decertification period.
- (5) A ~~decertified municipal or industrial laboratory~~ Municipal or Industrial Laboratory that has received a Parameter Method Decertification ~~must shall~~ have ~~its~~ samples requiring that Parameter Method analyzed by another ~~certified~~ certified laboratory certified by the State Laboratory for the contracted Parameter Method during any ~~decertification~~ Decertification period. ~~period and supply the State Laboratory, by written notice, the name of the certified laboratory to be used. Within 30 days of Decertification, the decertified laboratory shall supply the State Laboratory with the name and Certification number of the certified laboratory to be used during the Decertification period.~~

(f) Civil Penalties. Civil penalties may be assessed against a laboratory which violates or fails to act in accordance with any of the terms, conditions, or requirements of the Rules in this Section. ~~Section or of a laboratory certification. A laboratory is subject to both civil penalties and decertification. In determining the civil penalties assessed, the Director shall recognize that any harm to~~

the natural resources of the State arising from violations of the Rules in this Section may not be immediately observed and may be incremental or cumulative with no damage that can be immediately observed or documented. Civil penalties up to the maximum may be based on any one or a combination of the factors in Paragraph (d) of this Rule.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A; 143B-282.1(b).*

#### **15A NCAC 02H .0808 RECERTIFICATION**

(a) A laboratory decertified in accordance with ~~Paragraph (a) of Rule .0807~~ .0807(a) of this Section ~~may shall~~ be recertified at the end of the Decertification ~~decertification~~ period imposed by the Division pursuant to Rule .0807(a) and (d) of this Section by showing to the satisfaction of the State Laboratory that it has corrected the ~~deficiency(ies)~~ deficiencies for which it was decertified.

(b) ~~A laboratory decertified for a parameter due to unacceptable results on two consecutive performance evaluation samples submitted by an EPA accredited vendor, or on two consecutive split samples may be recertified after 60 days by reporting acceptable results on two consecutive performance evaluation samples submitted by an EPA accredited vendor. Recertification samples may be requested from an EPA accredited vendor at any time, however, recertification must be requested in writing at the end of the 60 day period immediately following the date of decertification.~~

(c) ~~A laboratory decertified for submitting falsified data or other information may be recertified at the end of the decertification period by demonstrating compliance with all requirements of this Section.~~

(b) A laboratory decertified for a Parameter Method due to two consecutive Unacceptable Proficiency Testing Results or on two consecutive Split samples shall be recertified at the end of the 30-day period by completing all of the following:

- (1) Report acceptable results on two consecutive Proficiency Testing samples submitted by a State Laboratory-approved Vendor or report acceptable results on two consecutive samples split with the State Laboratory. Recertification samples may be requested from a State Laboratory approved Vendor at any time;
- (2) Recertification shall be requested in writing following Decertification;
- (3) The decertified laboratory shall supply the State Laboratory with the name, certification number, and address of the certified subcontract laboratory and a list of impacted clients and their contact information;
- (4) The decertified laboratory shall supply the State Laboratory with a report of the investigation of the root cause and corrective action taken;
- (5) The laboratory shall pay the required fee as specified in Rule .0806(f) or (g) of this Section; and
- (6) The laboratory shall have met all the Decertification requirements in accordance with Rule .0807(e) of this Section.

(c) After two years after Decertification, a Parameter Method Recertification shall be treated as an initial Certification in accordance with Rule .0805 of this Section.

(d) A laboratory decertified for submitting Falsified Data or Information shall be recertified at the end of the Decertification period imposed by the Division pursuant to Rule .0807(c) and (d) of this Section by demonstrating compliance with all requirements of this Section.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).*

#### **15A NCAC 02H .0809 RECIPROCITY**

(a) ~~Laboratories certified under other state certification programs of other states or other certification or accreditation bodies shall may be given reciprocity reciprocal certification Certification where if such programs or certification or accreditation bodies meet the requirements of this Section. In requesting reciprocity certification, Certification, laboratories shall include with the application required by Rule .0805(a) of this Section a copy of their certification certification, a copy of the last audit report from the certifying body, the laboratory's response to the audit report, the laboratory's scope of accreditation, and Regulation applicable regulations from the certifying agency.~~

(b) Laboratories certified by reciprocity shall pay the fees required by Rule .0806 of this Section.

(c) ~~Any time that a laboratory has its certification with the reciprocal program discontinued for any reason, If a laboratory's certification by another state's program or another certification or accreditation body is discontinued, the State Laboratory shall be notified and Certification certification under this Section shall be terminated at the same time.~~

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).*

#### **15A NCAC 02H .0810 ADMINISTRATION**

(a) ~~The Director of the Division of Water Quality, Department of Environment and Natural Resources or his delegate, is authorized to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.~~

(b) ~~Appeals. In any case where the Director of the Division of Water Quality, Department of Environment and Natural Resources or his delegate denies certification, or decertifies a laboratory, the laboratory may appeal to the N.C. Office of Administrative Hearings in accordance with Chapter 150B of the General Statutes.~~

(c) ~~The State Laboratory will maintain a current list of certified commercial laboratories.~~

(d) ~~Implementation of the October 1, 2001 changes to this Section.~~

- (1) ~~All requirements of the Rules in this Section are effective on the effective date of the amendments.~~
- (2) ~~Requests for the new parameters may be made by submitting a properly completed amendment form.~~
- (3) ~~Laboratories subject to the amended requirements of these Rules must submit a completed application, or amendment form, within three months of the effective date of the~~

~~amendments. Laboratories submitting an application or amendment form for any of the newly certifiable parameters may analyze samples for these new parameters until the State Laboratory has issued or denied certification. Fees for parameter additions requested during the initial three month period will be calculated as initial certification fees.~~

- (4) ~~Laboratory facilities, not currently certified, that are performing analyses for Field Parameters only must submit an application within three months of the effective date of the amendments. After submitting an application, these laboratories may continue to analyze samples until the State Laboratory has issued or denied certification.~~

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 150B-23.*

### **SECTION .1100 - BIOLOGICAL LABORATORY CERTIFICATION**

#### **15A NCAC 02H .1101 PURPOSE**

These Rules shall set forth the requirements for certification of commercial, industrial, and public laboratories to perform biological toxicity testing and aquatic population surveys of water and wastewater as required for National Pollutant Discharge Elimination System (NPDES) permits by G.S. 143-215.3(a)(10) and Environmental Management Commission Rules for Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina, found in ~~Subchapter 2B of this Chapter, Section .0200, 15A NCAC 02B .0200, and Rules for Surface Water Monitoring, Reporting, found in Subchapter 2B of this Chapter, Section .0500, 15A NCAC 02B .0500.~~

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

#### **15A NCAC 02H .1102 SCOPE**

~~These Rules apply to commercial, industrial, or public laboratories which perform toxicity testing of water or wastewater for persons subject to any requirements for monitoring of toxicity through direct measurement of the effects of a specific water or wastewater or aquatic organisms in laboratory tests or through field surveys.~~

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

#### **15A NCAC 02H .1103 DEFINITIONS**

The following terms as used in this Section shall have the assigned meaning:

- (1) ~~Categories are groups of parameters which differ by measured test exposure regimes (chronic and acute) and, in the case of toxicological assay, through the presence or absence of vertebrae in the species of test organisms used or being a member of the plant kingdom. All field population survey techniques are contained within one category.~~

- (1) "Approved Procedure" means an analytical procedure developed by the State Laboratory based upon relevant reference methods and approved for use for monitoring subject to G.S. 143-215.1 and G.S. 143-215.63, et seq.
- (2) "Aquatic population survey and analysis" means field sampling, laboratory identification, analysis, and metric derivation for determining biological integrity, as defined in 15A NCAC 02B .0202(11) for fish, aquatic macroinvertebrates, phytoplankton, and aquatic macrophytes using methods developed in accordance with 15A NCAC 02B .0103(b). Standard operating procedures used by the State are available for review on the Division's website.
- (2)(3) ~~Certification is~~ "Certification" means a declaration by the Division that personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicants' applicant's proficiency has been considered and found acceptable. complies with the rules in this Section.
- (3)(4) ~~Commercial Laboratory~~ "Commercial Laboratory" means any laboratory, including its employees and agents, which that analyzes, for others, wastewater samples for toxicity measurements or for their resultant impacts on the receiving waters.
- (4)(5) ~~Decertification is~~ "Decertification" means the loss of certification.
- (5)(6) ~~Director~~ "Director" means the Director of the North Carolina Division of Environmental Management, Water Resources, or his successor.
- (6)(7) ~~Division~~ "Division" means the North Carolina Division of Environmental Management, Water Resources, or its successor.
- (8) ~~Falsified data or information~~ "Falsified data or information" means data or information that that, whether by intent, or reckless disregard for accuracy, has been made untrue by alteration, fabrication, intentional altered, fabricated, or otherwise reported or recorded falsely or mischaracterized by omission or substitution, or mischaracterization, such that the value or information reported is incorrect, incomplete, or inaccurate. The agency need not prove intent to defraud to prove data is falsified.
- (9) ~~Inaccurate data or other information means data or information that is in any way incorrect or mistaken.~~
- (10)(9) ~~Industrial Laboratory~~ "Industrial Laboratory" means a laboratory, including its employees and agents, operated by an industry industrial facility to analyze samples from its wastewater treatment plants for toxicity measurements or
- ~~resultant impacts to receiving waters. waters or to conduct aquatic population surveys.~~
- (11) ~~Parameters are subgroups of categories. Parameters are unique and separate if they are in separate categories or are performed using different species of test organisms. For the category, Aquatic Population Survey, separate parameters are to be considered fish, macroinvertebrates, algae, aquatic macrophytes, and zooplankton.~~
- (7)(10) ~~Evaluation samples are samples submitted~~ "Proficiency Testing sample" means a performance evaluation sample provided by the State Laboratory or a State Laboratory approved vendor to the a commercial, municipal, industrial, or public laboratory as an unknown toxicant for measurement of toxicity toxicity, as an unknown analyte for measurement by laboratory equipment or wet chemistry methods, or as an unknown set of preserved organisms for identification to specified levels of taxonomic classification.
- (12)(11) ~~Public Laboratory~~ "Public Laboratory" means a laboratory, including its employees and agents, operated by a municipality, county, water and sewer authority, sanitary district, metropolitan sewerage district, or state or federal installation or any other governmental unit to analyze samples from its wastewater treatment plant(s) for toxicity measurements or resultant impacts to receiving waters.
- (13) ~~Recertification is reaffirmation of certification.~~
- (14)(12) ~~Split samples are samples from either a "Split samples" for surface water effluent discharge, surface water, or aquatic biological population survey which are segregated at the point of sampling or in the case of field survey, collected independently and then phytoplankton means two or more representative portions taken from a single sampling device. For aquatic macrophytes or macroinvertebrates, split sample means a single sample that is analyzed separately by both the State Laboratory and by the commercial, public public, or industrial laboratory.~~
- (15)(13) ~~State laboratory~~ "State laboratory" means the Environmental Water Sciences Branch Section of the Water Quality Section of the North Carolina Division of Environmental Management Water Resources, or its successor.
- (16)(14) ~~Toxicant Any " Toxicant" means any specific chemical or compound chemical, compound, or mixture of chemicals or compounds regulated within by an NPDES permit and/or or defined as a toxic substance in Rule .0202 of Subchapter 2B, 15A NCAC 02B .0202.~~

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

**15A NCAC 02H .1104 FEES ASSOCIATED WITH CERTIFICATION PROGRAM**

(a) Certification Fees:

- (1) Certification Fees shall be a minimum of five hundred dollars per year (\$500.00). The first category ~~will~~ shall be certified at a cost of five hundred dollars ~~(\$500.00)- (\$500.00) per year.~~ Additional categories ~~will~~ shall be certified at a cost of four hundred dollars (\$400.00) per year per category. The addition of parameters not included in the original certification ~~will~~ shall be certified at a cost of one hundred dollars (\$100.00) per year per parameter.
- (2) Certification fees are due upon application and no later than 45 days prior to the requested certification date.

(b) Renewal or Recertification Fees:

- (1) The certified laboratory ~~will~~ shall pay the state a four hundred dollar (\$400.00) per year renewal fee for each category of certification or the minimum fee of five hundred dollars (\$500.00) per year if only one category is certified. Renewal certification fees are due by November 1 annually.
- ~~(2) Recertification fees shall be four hundred dollars (\$400.00) per category recertified.~~
- ~~(3)~~ (2) Out-of-state laboratories shall reimburse the state for actual travel and subsistence costs incurred in certification, ~~recertification~~ recertification, and maintenance of certification. The certification process requires visual inspection to verify that laboratories meet the requirements established by the rules of this Section.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

**15A NCAC 02H .1105 CERTIFICATION**

~~(a) Certification is affirmation by the Director or his delegate that the requirements specified by these rules have been met for specific categories and parameters and that all fees associated with certification have been received.~~

~~(b)(a)~~ Commercial, public and industrial laboratories ~~must~~ shall obtain certification from the Division of ~~Environmental Management~~ Water Resources ~~only~~ for biological parameters ~~which will be that are required to be reported pursuant to comply with the rules and requirements as stated in~~ an administrative letter, permit condition, permit limit, special order by consent, judicial order, or the biological monitoring requirements established by the Division.

~~(e)(b)~~ For the purposes of certification and setting fees, parameters ~~are~~ shall be grouped in the following ~~five~~ categories:

- (1) Acute Toxicity Testing/Invertebrate;
- (2) Acute Toxicity Testing/Vertebrate;
- (3) Chronic Toxicity Testing/Invertebrate;
- (4) Chronic Toxicity Testing/Vertebrate;
- (5) ~~Agal~~ Algal and Aquatic Plant Toxicity Testing; and
- (6) Aquatic Population Survey and Analysis.

~~(d)(c)~~ All certifications ~~are~~ shall be designated for the period of one year after initial certification.

~~(e) Protocol Documents considered as standard methodology and facilities and equipment requirements considered as minimum acceptable resources will be listed in the Certification Criteria/Procedures Document.~~

*Authority G.S. 143-215.3(a)(1); 143-215.3(1)(10); 143-215.66.*

**15A NCAC 02H .1106 DECERTIFICATION**

~~(a) A laboratory certification may be revoked for all categories for: The Director or the Director's designee shall consider revoking a laboratory certification for a parameter for:~~

- (1) ~~Failing~~ failing to maintain the facilities, records, personnel, ~~equipment~~ equipment, or quality assurance program as set forth in the application or as required by these Rules; or
- (2) ~~Submitting~~ submitting inaccurate or falsified data reports or other information; or
- (3) ~~Failing~~ failing to pay required fees by the date due.

(b) A laboratory certification may be revoked for a category for failure to:

- (1) ~~Obtain~~ obtain acceptable results on two consecutive ~~evaluation sample submittals~~ proficiency testing samples, ~~from the Division.~~ Acceptable results on ~~performance evaluation~~ proficiency testing samples are those that ~~vary by less than two standard deviations of the value established by the Division.~~ fall within the specified acceptable range as indicated by the State Laboratory or State Laboratory approved vendor. The ~~state laboratory~~ State Laboratory may apply specific variance or statistical limits or performance criteria on performance evaluation samples or split samples for a particular testing procedure, including control population effects and taxonomic identification, as published in the ~~Certification Criteria/Procedures Document; or these Rules;~~
- (2) ~~Obtain~~ obtain acceptable results as set out in ~~Paragraph (1)~~ Subparagraph (b)(1) of this Rule on two consecutive split samples that have also been analyzed by the Division; ~~or~~
- (3) ~~Submit~~ submit a split sample to the Division as requested; ~~or~~
- (4) ~~Use~~ use approved testing techniques; ~~or~~
- (5) ~~Report to the state laboratory~~ report equipment changes that would affect ~~its~~ the laboratory's ability to perform a test category to the State Laboratory within 30 days of such change; ~~or~~
- (6) ~~Report to the state laboratory~~ report analysis of ~~performance evaluation~~ proficiency testing samples ~~submitted by the Division to the State Laboratory~~ within required time of completion; ~~or~~

- (7) ~~Maintain~~ maintain records and perform quality controls as set forth by these ~~Rules and the Division for a particular category; or Rules;~~
- (8) ~~Maintain~~ maintain equipment required for any certified parameter; ~~or~~
- (9) ~~Implement~~ implement and maintain Quality Control Programs approved in conjunction with certification; or
- (10) ~~Maintain~~ maintain a qualified ~~staff; staff, as specified in Rule .1110 of this Section.~~

(c) Decertification Requirements:

- (1) A laboratory ~~is not to~~ shall not analyze samples for parameters in decertified categories for programs ~~described in Rule .1102 governed by rules of this Section.~~
- (2) A decertified commercial laboratory ~~must~~ shall notify any clients affected by the laboratory's decertification ~~of such~~ and supply the ~~state laboratory~~ State Laboratory with a list of those clients affected and a written certification that those clients have been notified. ~~Should~~ If the decertified laboratory ~~arrange~~ arranges for a certified laboratory to perform analyses during the period of decertification, the decertified laboratory ~~must~~ shall supply the Division with the name of the replacement laboratory and the ~~client(s)~~ clients involved. The name of the ~~certified laboratory's name which~~ laboratory ~~that performs analyses~~ must shall appear on all data submitted to the Division.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

**15A NCAC 02H .1107 RECERTIFICATION**

- (a) A laboratory decertified for any ~~reason; reason~~ other than the submittal of falsified data reports or other ~~information, may~~ information shall be recertified after 30 ~~days; days~~ upon ~~satisfactory demonstration demonstrating to the state laboratory~~ State Laboratory that all deficiencies have been corrected.
- (b) In the case of a laboratory decertified for submitting falsified data reports or other information, recertification shall not occur ~~until at least prior to~~ 12 months after the decertification and then only at such time as the laboratory has ~~satisfactorily~~ demonstrated to the ~~Director or~~ Director, or their delegate, that the standards for initial certification have been met.
- (c) ~~Should decertification occur due to either failure of performance samples or split samples, If a laboratory that was decertified due to either failure of proficiency testing samples or split samples seeks recertification, the laboratory shall submit a written request must be made to the state laboratory to the State Laboratory requesting evaluations similar to for the parameters for which the laboratory was decertified. Two consecutive samples must shall be successfully evaluated to achieve recertification. The first of these samples for recertification will shall be submitted or arranged by the Division no later than 30 days after receipt of the written request. The second will shall be submitted or arranged no later than 30 days after the first.~~

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

**15A NCAC 02H .1108 RECIPROCITY**

- (a) Laboratories certified by other states or federal programs ~~may~~ shall be given reciprocal certification ~~where if~~ such programs meet the requirements of these Rules. In requesting certification through reciprocity, laboratories shall include with the application a copy of their certification and the rules of the original certifying agency.
- (b) Laboratories certified on the basis of program equivalency shall pay all fees specified by these Rules.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

**15A NCAC 02H .1109 ADMINISTRATION**

The Director of the Division of Environmental Management, Department of Environment, Health, and Natural Resources, or his delegate, is delegated authority to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.

- (a) Appeals. If the Director or their delegate denies certification, or decertifies a laboratory, the laboratory may appeal to the N.C. Office of Administrative Hearings in accordance with G.S. 150B.
- (b) The State Laboratory shall maintain a current list of certified commercial, industrial, or public laboratories.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

**15A NCAC 02H .1110 IMPLEMENTATION**

- (a) Each laboratory requesting state ~~certification or~~ certification, certification renewal renewal, or recertification shall submit an application ~~in duplicate~~ to the Division. Each application ~~will~~ shall be reviewed to determine the adequacy of personnel, equipment, records, quality control ~~procedures~~ procedures, and methodology. After receiving a completed application and prior to issuing certification, a representative of the Division ~~may visit~~ shall inspect each laboratory to verify the information in the application and the adequacy of the ~~laboratory.~~ laboratory pursuant to these Rules.
- (b) Analytical methods, sample preservation, sample ~~containers~~ containers, and sample holding times shall conform to the methodologies specified ~~in the Certification/Criteria Procedures Document. Deviations from these methods are acceptable only upon prior written approval from the state laboratory. in:~~

- (1) 40 CFR Part 136, hereby incorporated by reference and including subsequent amendments and editions. Copies of the Code of Federal Regulations, 40 CFR Part 136, may be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, D.C. 20402 and free of charge on the Internet at <http://www.ecfr.gov>; and
- (2) Rule .1111 of this Section.

- (c) The State Laboratory may develop Approved Procedures for Biological Procedures based upon the methods contained in 40 CFR Part 136 and Rule .1111 of this Section. The State Laboratory Approved Procedures for Biological Procedures document shall be available for inspection at the State Laboratory, 4401 Reedy Creek Road, Raleigh, North Carolina, 27607 or may



be obtained free of charge on the State Laboratory Certification website at <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/aquatic-toxicology-branch>.

(d) The Director, or assigned delegate, may approve other analytical procedures, parameters, or parameter methods that have been demonstrated to produce verifiable and repeatable results and that have a widespread acceptance in the scientific community.

(e) In order to maintain certification, each laboratory ~~will~~ shall demonstrate satisfactory performance on ~~evaluation~~ proficiency testing samples submitted ~~by~~ to the Division. ~~These will be~~ Demonstration of satisfactory performance by certified laboratories shall be required no more than three times annually ~~of certified laboratories~~ for each parameter certified.

(f) In order to receive and maintain certification, the following ~~minimum~~ certification criteria ~~must~~ shall be met:

(1) The supervisor of an aquatic toxicology or biological survey laboratory ~~must~~ shall have a ~~minimum of a B.S.~~ Bachelor's degree from an accredited college or university in a biological science or ~~closely-related~~ closely-related science curriculum and ~~at least~~ at least three years of cumulative laboratory experience in aquatic toxicity testing or aquatic ~~biological survey~~, population surveying, as appropriate, or a ~~M.S.~~ Master's degree in a biological or ~~closely-related~~ closely-related science and ~~at least~~ at least one year of cumulative laboratory experience in aquatic toxicity testing or aquatic ~~biological survey~~, population surveying, as appropriate.

(2) All laboratory supervisors ~~are~~ shall be subject to review by the Division. One person ~~may~~ shall ~~not~~ not serve as supervisor of ~~no~~ no more than two laboratories. The supervisor ~~is to~~ shall provide direct supervision and evaluation of all technical personnel and ~~is~~ shall be responsible for the proper performance and reporting of all analyses. Upon absence, the supervisor shall arrange for a suitable substitute who meets the requirements of Subparagraph (f)(1) of this Rule and is capable of insuring the proper performance of all laboratory procedures. Existing laboratory supervisors who do not meet the minimum requirements may shall be accepted after review by the Division if they meet all other certification requirements and previous performance is deemed adequate.

(3) All applications and fees ~~are~~ shall be due ~~45 days prior to the requested certification date.~~ pursuant to Rule .1104 of this Section. Upon the State establishing compliance with the requirements of this Section, certification shall be issued within 45 days of receipt of the fees for certification. Problems identified with the applying laboratory and resolution of these problems may extend the requested 45 day period from application to certification.

(4) Each laboratory shall develop and maintain a document outlining quality control procedures for testing of all parameters in their certification and dissolved oxygen, temperature, conductivity, and pH. All aquatic toxicology laboratories ~~must~~ shall also develop and maintain a document outlining quality control procedures for testing of total hardness and total residual chlorine. These documents ~~are to~~ shall be included with submittal of the application.

(5) Each laboratory certified for the category of Aquatic Population Survey and Analysis shall develop and maintain a document outlining quality control procedures for taxonomic identifications and life-stage determinations.

(6) Supporting records shall be maintained for five years as evidence that these practices are being effectively carried out and shall be available to the ~~state laboratory~~ State Laboratory upon request.

(7) The quality control program ~~is to~~ shall be approved in conjunction with certification by the ~~Director.~~ Director or their delegate.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.

#### **15A NCAC 02H .1111 BIOLOGICAL LABORATORY CERT/CRITERIA PROCEDURES DOCUMENT BIOLOGICAL LABORATORY CERTIFICATION AND QUALITY ASSURANCE**

~~The Biological Laboratory Certification/Criteria Procedures Document describes specific scientific reporting units, forms, test methods and procedures pertaining to certification.~~

~~The manual, and any addition thereto, shall be approved by the director before it is released to the public. The manual shall be mailed to all certified biological laboratories and to any persons on the mailing list. To be placed on the mailing list, a letter must be sent to the director.~~

~~If the manual is revised at any time, all changes shall be sent to the certified biological laboratories and those persons on the mailing list.~~

(a) To be considered for certification and to maintain certification, Aquatic Toxicology Laboratories shall have the following laboratory resources:

- (1) 200 square feet of laboratory space;
- (2) 20 linear feet of laboratory bench space;
- (3) one drained sink with hot and cold running water;
- (4) adequate control of culture environment including lighting, cooling, and heating to maintain appropriate organism requirements;
- (5) one refrigerator of adequate size which will maintain sample temperatures between 0.0 degrees Celsius and 6.0 degrees Celsius;
- (6) current copies of the approved methods and procedures for which the laboratory is requesting certification;

- (7) glassware, chemicals, supplies, and equipment to perform any procedures included in the requested certification;
  - (8) instrumentation capable of measuring dissolved oxygen, pH, temperature, conductivity, and salinity (for saltwater tests) directly from test vessels of any procedure included in certification application. Equivalent surrogate vessels may be utilized for physical measurements if injury to test organisms may result;
  - (9) instrumentation or analytical capabilities to perform measurements of total residual chlorine to a level at least as low as 0.1 mg/l and total hardness to a level at least as low as 1 mg/l;
  - (10) a dissecting microscope and a compound microscope for those laboratories requesting or maintaining either of the categories of Acute Toxicity Testing/Invertebrate or Chronic Toxicity Testing/Invertebrate. The compound microscope shall have a minimum magnification of 400x and a maximum magnification of greater than or equal to 1,000x;
  - (11) a balance capable of accurately weighting 0.0001g and Class "S" or equivalent reference weights. A balance capable of accurately weighing fish larvae to 0.00001g for those laboratories requesting or maintaining certification for the category Chronic Toxicity Testing/Vertebrate.
  - (12) Cladocerans need to be cultured in house. All other organisms can be purchased from a supplier.
  - (13) appropriate dilution water for use in whole effluent toxicity testing with chemical characteristics such that the pH is between 6.5 S.U. and 8.5 S.U. and total hardness as calcium carbonate is between 30 ppm and 50 ppm for surface water and 80 ppm and 100 ppm for synthetic lab water. If receiving waters have characteristics outside of these stated pH and hardness ranges, then alternate pH and hardness ranges shall be accepted upon demonstration to the State Laboratory that the alternate ranges are better suited to testing objectives, and that quality assurance standards have been met; and
  - (14) chain-of-custody documentation forms.
- (b) To be considered for certification and to maintain certification, Aquatic Population Survey and Analysis Laboratories shall have the following laboratory resources:
- (1) 150 square feet of laboratory space;
  - (2) 8 linear feet of laboratory bench space;
  - (3) binocular dissecting microscopes and compound microscopes suitable for survey type;
  - (4) vials, preservatives, and space to maintain representative sample collections for at least one year after collection;
  - (5) current taxonomic guides and reference materials to support identification;
  - (6) chain-of-custody documentation forms, laboratory records, and seals;
  - (7) sampling equipment to support collection of appropriate biological organisms; and
  - (8) settling tubes and one inverted microscope with a minimum magnification of 300x for those laboratories requesting or maintaining certification for the parameter algae.
- (c) To be considered for certification and to maintain certification, laboratories shall adhere to the following quality assurance requirements:
- (1) instruments used in or associated with toxicity testing, including automatic sampling equipment, pH meter, dissolved oxygen meter, and conductivity meter, shall be calibrated each day before the instrument is used. Calibrations performed shall be recorded in a designated notebook;
  - (2) a minimum of 5 valid reference toxicant tests shall be performed and entered on a control chart for each toxicity test organism and toxicity test type for which a lab is certified. A maximum of 20 data points shall be entered on a control chart;
  - (3) a reference toxicant test shall be performed:
    - (A) every two weeks for each organism used in acute whole effluent toxicity testing; or such that North Carolina National Pollutant Discharge Elimination System (NPDES) acute tests are performed within one week of an acute reference toxicant test for the organism in question. To maintain acute certification for an organism, acute reference toxicant tests shall be performed at least quarterly; and
    - (B) once per month for each organism used in chronic whole effluent toxicity testing; or such that North Carolina NPDES chronic tests are performed within two weeks of a chronic reference toxicant test for the organism in question. To maintain chronic certification for an organism, chronic reference toxicant tests shall be performed at least quarterly.
  - (4) a reference test shall be performed with each batch of organisms received from an outside supplier;
  - (5) the endpoint for chronic reference toxicant tests shall be the IC25 as determined by the linear interpolation method described in EPA-821-R-02-013 and EPA-821-R-02-014, herein incorporated by reference, including any subsequent amendments or editions. These methods are available at:

- <https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods>
- (6) acceptable alternative culture media utilized to culture the algae *Selenastrum capricornutum* for use as *Ceriodaphnia* food are as follows:
    - (A) the MBL medium as described in the Handbook of Phycological Methods: Culture Methods and Growth Measurements, 1973, J. Stein, ed. University Press, Cambridge, MA, herein incorporated by reference, including subsequent amendments and editions; and
    - (B) additional nutrients for the preparation of algae medium described in Section 13.6.15 of EPA-821-R-02-013 and Appendix A1, Section 3.10.3 of EPA-821-R-02-012, herein incorporated by reference, including any subsequent amendments and editions. The volume of nutrient stock solutions found in Table 1 on Page 147 of EPA-821-R-02-013 or Page 133 of EPA-821-R-02-012 may be adjusted so that solutions 1.A, 1.D, and 2 are added at a rate of 2 ml/l, and solutions 1.B and 1.C are added at a rate of 6 ml/l.
  - (7) a representative of each test organism cultured, including those obtained from an outside supplier, shall be taxonomically identified to the species level at least annually. Specimens shall be preserved and held for one additional year;
  - (8) when closed incubators are used for toxicity testing or test organism culturing purposes, culturing and testing activities shall not be contained within the same incubator;
  - (9) effluent samples collected for chronic *Ceriodaphnia dubia* tests shall be used within 36 hours of collection and not more than 72 hours after first use of the sample for test renewal. The beginning of this period is defined as the time of the collection of a grab sample or the time of collection of the last subsample of a composite sample to the time that the organisms are introduced to the test solution; and
  - (10) a record shall be maintained for all samples entering the laboratory that documents the sample identity and includes the following information:
    - (A) sample number;
    - (B) sample temperature at receipt;
    - (C) time and date of sample collection and receipt;
    - (D) name of person from which sample was received; and
    - (E) name of person who received the sample.
- (d) The following procedure modifications have been approved by the EPA and shall be followed by certified laboratories:
- (1) acute and chronic toxicity tests shall be conducted at 25.0 degrees Celsius plus or minus 1.0 degree Celsius, except that chronic tests for *Mysidopsis bahia* shall be conducted at 26.0 degrees Celsius plus or minus 1.0 degree Celsius. Certified laboratories may request variances for species which require alternate temperatures in accordance with EPA procedures;
  - (2) organisms used in acute toxicity tests shall have food made available for a minimum of two hours prior to initiation of testing;
  - (3) for cladoceran species, the feeding amount prior to the acute test shall be at least 0.05 ml of YCT and 0.05 ml of a solution of the algae *Selenastrum capricornutum* with a cell concentration of  $1.71 \times 10^7$  cells/ ml per 15 ml of culture solution;
  - (4) for each sample used in a toxicity test, the following parameters shall be measured and recorded from an undiluted aliquot on the day the sample is first used:
    - (A) pH;
    - (B) specific conductance; and
    - (C) total residual chlorine;
  - (5) for each sample used in a toxicity test, the following parameters shall be measured in the control and the highest toxicant concentration tested at the beginning of the test, prior to renewal, following each renewal, and at the termination of the test:
    - (A) temperature;
    - (B) dissolved oxygen; and
    - (C) pH;
  - (6) *Ceriodaphnia dubia* used in toxicity tests shall meet the following requirements:
    - (A) be obtained from individual cultures;
    - (B) be obtained from third or subsequent broods of adults not being more than 14 days in age and containing eight or more neonates with an average adult mortality not exceeding 20 percent per culture board;
    - (C) chronic *Ceriodaphnia dubia* analyses shall have an additional test acceptability criterion of complete third brood neonate production by at least 80 percent of the surviving control organisms;
    - (D) *Ceriodaphnia dubia* neonate reproduction totals from chronic tests shall include only organisms produced in the first through third broods;
    - (E) the percentage of male *Ceriodaphnia dubia* control organisms shall not exceed 20 percent in chronic *Ceriodaphnia dubia* tests; and

- (F) the Ceriodaphnia dubia control organism reproduction coefficient of variation (CV) shall be less than 40 percent for a chronic Ceriodaphnia dubia test;
- (7) "Observed-effect" in a chronic Ceriodaphnia dubia test shall be defined as:
- (A) statistical significant decrease in survival of the treatment organism as compared to the control organisms; or
- (B) 20 percent or greater decrease in treatment organisms as compared to the control organism reproduction which is also determined to be statistically different from the control organism reproduction;
- (8) acute tests shall be terminated within one hour of their stated length;
- (9) the North Carolina Pass/Fail chronic tests and Phase II Ceriodaphnia dubia chronic tests shall meet the following requirements:
- (A) follow a schedule where the test is started on day 0, renewed on day 2 and 5, and terminated no later than 7 days and 2 hours after the initiation of the test;
- (B) follow a schedule where each daily feeding shall consist of addition of 0.05 ml of yeast-Cerophyll® -trout chow (YCT) food and 0.05 ml of a solution of the algae Selenastrum capricornutum with a cell concentration of  $1.71 \times 10^7$  cells/ml per 15 ml of test solution; and
- (C) the percent reduction for chronic Ceriodaphnia dubia analysis for each treatment shall be calculated by subtracting the mean number of neonates produced by the treatment organisms from the mean number of neonates produced by the control organisms, dividing that number by the mean number of neonates produced by the control organisms, and multiplying by 100 percent;
- (10) the North Carolina Pass/Fail Ceriodaphnia dubia chronic test shall be performed as two treatments exposing 12 test organisms to each treatment. The first treatment shall be considered the control population and shall be exposed at 0 percent effluent and 100 percent dilution water;
- (11) the North Carolina Pass/Fail acute test shall be performed as two treatments with the control population specified as Treatment 1, and the effluent treatment specified as Treatment 2. Each treatment shall be tested using four identical test vessels. Each treatment shall

contain 10 test organisms, for a total of 80 test organisms; and

(12) there shall be no removal of chlorine or any other effluent constituent by either chemical or physical methods prior to testing.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02L .0403-.0409, .0502 and readopt without substantive changes the rules cited as 15A NCAC 02L .0401, .0402, .0410-.0415, .0501 and .0503-.0515.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

**Proposed Effective Date:** *May 1, 2019*

**Public Hearing:**

**Date:** *January 8, 2019*

**Time:** *6:00 p.m.*

**Location:** *Green Square Building, Room 1210, 217 West Jones Street, Raleigh, NC 27603*

**Reason for Proposed Action:** *These rule changes are necessary to correct grammatical errors, clarify ambiguous language, conform to changes made to General Statute (G.S.) 143-215.94, replace current temporary rules required by SL 2017-57 Section 13.19 as required to implement SL 2015-241 Section 14.16B, and as part of the readoption of the 15A NCAC 02L rules as required by G.S. 150B-21.3A (Periodic Review of Existing Rules).*

**Comments may be submitted to:** *Jeremy Poplawski, NCDEQ/DWM/UST Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 707-8151, fax (919) 715-1117, email [Jeremy.Poplawski@ncdenr.gov](mailto:Jeremy.Poplawski@ncdenr.gov)*

**Comment period ends:** *February 15, 2019*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m.*

on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02L - GROUNDWATER  
CLASSIFICATION AND STANDARDS**

**SECTION .0400 - RISK-BASED ASSESSMENT AND  
CORRECTIVE ACTION FOR PETROLEUM  
UNDERGROUND STORAGE TANKS**

**15A NCAC 02L .0401 PURPOSE AND SCOPE  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0402 DEFINITIONS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0403 RULE APPLICATION**

This Section ~~applies shall apply~~ to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A, ~~which that~~ is reported on or after the effective date of this Section. ~~This Section shall apply to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A which is reported before the effective date of this Section as provided in 15A NCAC 02L .0416 of this Section.~~ The requirements of this Section shall apply to the owner and operator of the underground storage tank from which the discharge or release occurred, a landowner seeking reimbursement from the Commercial Leaking Underground Storage Tank Fund or the Noncommercial Leaking Underground Storage Tank Fund under G.S. 143-215.94E, and any other person responsible for the assessment or cleanup of a discharge or release from an underground storage tank, including any person who has conducted or controlled an activity ~~which that~~ results in the discharge or release of petroleum or petroleum products as defined in G.S. 143-215.94A(10) to the groundwaters of the State, State or in proximity thereto; these persons shall be collectively referred to for purposes of this Section as the "responsible party." This Section shall be applied in a manner consistent with the rules found in 15A NCAC ~~2N~~ 02N in order to assure that the State's requirements regarding assessment and cleanup from

underground storage tanks are no less stringent than Federal requirements.

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.*

**15A NCAC 02L .0404 REQUIRED INITIAL  
ABATEMENT ACTIONS BY RESPONSIBLE PARTY**

(a) A responsible party for a commercial underground storage tank shall:

- (1) take ~~immediate~~ action to prevent ~~any all~~ further discharge or release of petroleum from the underground storage tank; identify and mitigate ~~any all~~ fire, explosion or explosion, and vapor hazards; remove any free product; and comply with the requirements of Rules 15A NCAC 02N .0601 through .0604 and .0604, .0701 through .0703, .0703, and .0705 of Subchapter 02N; within 24 hours of discovery;
- (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Item (3) of this Paragraph or the limited site assessment report required under ~~15A NCAC 02L Rule .0405~~ 15A NCAC 02L Rule .0405 of this Section, whichever is applicable. ~~Such The~~ The submittals shall constitute compliance with the reporting requirements of 15A NCAC 02N .0704(b);
- (3) submit within 90 days of the discovery of the discharge or release a soil contamination report containing information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels ~~which that~~ exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to ~~15A NCAC 02L Rule .0411~~ 15A NCAC 02L Rule .0411 of this Section, whichever is lower. If ~~such the~~ the showing is made, the discharge or release shall be classified as low risk by the Department; Department as defined in Rules .0406 and .0407 of this Section.

(b) A responsible party for a noncommercial underground storage tank shall:

- (1) take necessary actions to protect public health, safety, and welfare and the environment, including actions to prevent all further discharge or release of petroleum from the noncommercial underground storage tank; to identify and mitigate all fire, explosion, and vapor hazards; and to report the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), G.S. 143-215.84(a), G.S. 143-215.85(b), and G.S. 143-215.94E; and
- (2) provide or otherwise make available any information required by the Department to determine the site risk as described in Rules .0405, .0406, and .0407 of this Section.

(c) The Department shall notify the responsible party for a noncommercial underground storage tank that no cleanup, no further cleanup, or no further action shall be required without requiring additional soil remediation pursuant to Rule .0408 of this Section if the site is determined by the Department to be low risk. This classification shall be based on information provided to the Department that:

- (1) describes the source and type of the petroleum release, site-specific risk factors, and risk factors present in the surrounding area as defined in Rules .0406 and .0407 of this Section;
- (2) demonstrates that no remaining risk factors are present that are likely to be affected per G.S. 143-215.94V(b); or
- (3) documents that soils remaining onsite do not contain contaminant levels that exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to Rule .0411 of this Section, whichever is lower.

The Department shall reclassify the site as high risk, as defined in Rule .0406(1) of this Section, upon receipt of new information related to site conditions indicating that the discharge or release from a noncommercial underground storage tank poses an unacceptable risk or a potentially unacceptable risk to human health or the environment, as described in Rule .0407 of this Section.

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.*

#### **15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT**

If the required showing for a commercial underground storage tank cannot be made or if the Department determines that a release from a noncommercial underground storage tank represents an unacceptable risk under 15A NCAC 02L Rule .0404 of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release, or within such other greater time limit approved by the Department, a report containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under 15A NCAC 02L Rule .0406 of this Section. When considering a request from a responsible party for additional time to submit the report, the Department shall consider the extent to which the request for additional time is due to factors outside of the control of the responsible party, the previous history of the person submitting the report in complying with deadlines established under the Commission's rules, the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors, and the necessity for action to eliminate an imminent threat to public health or the environment. Such The report shall include, at a minimum: include:

- (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge

and depicting all water supply wells and, wells, surface waters, and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. 42 U.S.C. 300h-7(e), is incorporated by reference including subsequent amendments and editions.

Copies may be obtained at no cost from the U.S. Government Bookstore's website at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap6A-subchapXII-partC-sec300h-7.htm>.

The material is available for inspection at the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603. For purposes of this Section, source area means the point of release or discharge from the underground storage tank system;

- (2) a determination of whether the source area of the discharge or release is within a designated wellhead protection area as defined in 42 U.S.C. 300h-7(e);
- (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer which that is being used or may be used as a source of drinking water;
- (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space or pose any other serious threat to public health, public safety, safety, or the environment;
- (5) scaled site map(s) maps showing the location of the following which that are on or adjacent to the property where the source is located: site boundaries, roads, buildings, basements, floor and storm drains, subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring wells, borings and the sampling points;
  - (a) site boundaries;
  - (b) roads;
  - (c) buildings;
  - (d) basements;
  - (e) floor and storm drains;
  - (f) subsurface utilities;
  - (g) septic tanks and leach fields;
  - (h) underground and aboveground storage tank systems;
  - (i) monitoring wells;
  - (j) water supply wells;
  - (k) surface water bodies and other drainage features;
  - (l) borings; and
  - (k) the sampling points;

- (6) the results from a limited site assessment ~~which~~ that shall include:
- (a) the analytical results from soil samples collected during the construction of a monitoring well installed in the source area of each confirmed discharge or release from a noncommercial or commercial underground storage tank and either the analytical results of a groundwater sample collected from the well or, if free product is present in the well, the amount of free product in the well. The soil samples shall be collected every five feet in the unsaturated zone unless a water table is encountered at or greater than a depth of 25 feet from land surface in which case soil samples shall be collected every 10 feet in the unsaturated zone. The soil samples shall be collected from suspected worst-case locations exhibiting visible contamination or elevated levels of volatile organic compounds in the borehole;
- (b) if any constituent in the groundwater sample from the source area monitoring well installed in accordance with Sub-item (a) of this Item, for a site meeting the high risk classification in ~~15A NCAC 02L .0406(1)~~, Rule .0406(1) of this Section, exceeds the standards or interim standards established in ~~15A NCAC 02L Rule .0202 of this Subchapter~~ by a factor of 10 and is a discharge or release from a commercial underground storage tank, the analytical results from a groundwater sample collected from each of three additional monitoring wells or, if free product is present in any of the wells, the amount of free product in such well. The three additional monitoring wells shall be installed as follows: ~~as best as can be determined~~, one upgradient of the source of contamination and two downgradient of the source of contamination ~~must~~ shall be located such that groundwater flow direction can be determined; and
- (c) potentiometric data from all required wells;
- (7) the availability of public water supplies and the identification of properties served by the public

- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) a discussion of ~~site-specific~~ site-specific conditions or possible actions ~~which that~~ which that could result in lowering the risk classification assigned to the release. ~~Such~~ The discussion shall be based on information known or required to be obtained under this Paragraph; and
- (10) names and current addresses of all owners and operators of the underground storage tank systems for which a discharge or release is confirmed, the ~~owner(s)~~ owners of the land upon which such systems are located, and all potentially affected real property owners. ~~When considering a request from a responsible party for additional time to submit the report, the Division shall consider the extent to which the request for additional time is due to factors outside of the control of the responsible party, the previous history of the person submitting the report in complying with deadlines established under the Commission's rules, the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors, and the necessity for immediate action to eliminate an imminent threat to public health or the environment.~~

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.*

#### **15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS**

The Department shall classify the risk of each known discharge or release as high, ~~intermediate~~ intermediate, or low risk unless the discharge or release has been classified under ~~15A NCAC 02L .0404(3)~~ Rule .0404(a)(3) or (c) of this Section. For purposes of this Section:

- (1) "High risk" means that:
- (a) a water supply well, including one used for non-drinking purposes, has been contaminated by ~~the~~ a release or discharge;
- (b) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or ~~release~~; release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)a., (7);
- (c) a water supply well not used for drinking water is located within 250

- feet of the source area of a confirmed discharge or ~~release~~; release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)a., (7);
- (d) the groundwater within 500 feet of the source area of a confirmed discharge or release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)a., (7) has the potential for future use in that there is no source of water supply other than the groundwater;
- (e) a water supply well, including one used for non-drinking purposes, is located within 150 feet of the source area of a confirmed discharge or release from a noncommercial underground storage tank storing heating oil for consumptive use on the premises;
- ~~(e)(f)~~ the vapors from ~~the~~ a discharge or release pose a serious threat of explosion due to accumulation of the vapors in a confined space; or
- ~~(f)(g)~~ ~~the~~ a discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
- (a) surface water is located within 500 feet of the source area of a confirmed discharge or release from a commercial underground storage tank and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of 10;
- (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, the source area of a confirmed discharge or release from a commercial underground storage tank is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer ~~which that~~ the Department determines is being used or may be used as a source of drinking water;
- (c) the source area of a confirmed discharge or release from a commercial underground storage tank is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
- (d) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for any contaminant except ethylene dibromide, ~~benzene~~ benzene, and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in ~~15A NCAC 02L .0202~~, Rule .0202 of this Subchapter, whichever is lower; or
- (e) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard set out in 40 CFR 141. 40 CFR 141 is incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's website at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol23/pdf/CFR-2015-title40-vol23-part141.pdf>. The material is available for inspection at the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603.
- (3) "Low risk" means that:
- (a) the risk posed does not fall within the ~~high or intermediate risk categories;~~ high risk category for any underground storage tank, or within the intermediate risk category for a commercial underground storage tank; or
- (b) based on review of site-specific information, limited ~~assessment~~ assessment, or interim corrective actions, ~~the Department determines that~~ the discharge or release poses no significant risk to human health or the environment.
- If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk level identified in ~~15A NCAC 02L Rule .0407~~ of this Section.
- Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.*



**15A NCAC 02L .0407 RECLASSIFICATION OF RISK LEVELS**

(a) It shall be a continuing obligation that each responsible party shall notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party, including changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release. The Department may shall reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions which that the Department believes will result in a lower risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes that might affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes shall include, but shall not be limited to, changes in zoning of real property, use of real property or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release, if such change could cause the Department to reclassify the risk.

(b) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), ~~(g)(g)~~, and (h) of this Subchapter and 15A NCAC 02N .0706 and .0707. The goal of ~~any a~~ required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in ~~15A NCAC 02L .0202, Rule .0202 of this Subchapter,~~ or as closely thereto as is economically and technologically feasible. In ~~any a~~ corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent ~~possible. possible, when the benefits of its use shall not increase the risk to the environment and human health.~~ If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

(c) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of ~~15A NCAC 02L Rule .0106(c) and (g) of this Subchapter~~ and 15A NCAC 02N .0706. As part of the comprehensive site assessment, the responsible party shall evaluate, based on ~~site-specific~~ site-specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in ~~15A NCAC 02L Rule .0106(h) of this Subchapter~~ and 15A NCAC 02N .0707. Discharges or releases ~~which that~~ are classified as intermediate risk shall be remediated,

at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in ~~15A NCAC 02L .0202, Rule .0202 of this Subchapter,~~ whichever is ~~lower lower,~~ for any groundwater contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard ~~set out in 40 CFR 141,~~ as referenced in 15A NCAC 18C .1518 incorporated by reference including subsequent amendments and editions, and available free of charge at [http://reports.oah.state.nc.us/ncac/title\\_15a\\_-\\_environmental\\_quality/chapter\\_18\\_-\\_environmental\\_health/subchapter\\_c/15a\\_ncac\\_18c\\_1518.pdf](http://reports.oah.state.nc.us/ncac/title_15a_-_environmental_quality/chapter_18_-_environmental_health/subchapter_c/15a_ncac_18c_1518.pdf). Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in ~~15A NCAC 02L Rule .0202 of this Subchapter~~ in a deep aquifer as described in ~~15A NCAC 02L Rule .0406(2)(b) of this Section;~~ and
- (3) the standards contained in ~~15A NCAC 02L Rule .0202 of this Subchapter~~ at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent ~~possible. possible, if the benefits of its use will not increase the risk to the environment and human health.~~

(d) If the risk posed by a discharge or release is determined ~~by the Department~~ to be a low risk, the Department shall notify the responsible party that no cleanup, no further ~~cleanup cleanup,~~ or no further action will be required by the Department unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification ~~will shall~~ be issued pursuant to this Paragraph, however, until the responsible party ~~has completed soil remediation pursuant to 15A NCAC 02L .0408 of this Section except as provided in 15A NCAC 02L .0416 of this Section or as closely thereto as economically or technologically feasible. has:~~

- (1) completed soil remediation pursuant to Rule .0408 of this Section or as closely thereto as economically or technologically feasible;
- (2) submitted proof of public notification, if required; and
- (3) recorded all required land-use restrictions.

~~The issuance by the Department of a notification under this Paragraph shall not affect any private right of action by any party which may be affected by the contamination.~~

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648,s. 1.

# 15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES

Assessment and remediation of soil contamination shall be addressed as follows:

- (1) At the time that the Department determines the risk posed by the discharge or release, the Department shall also determine, based on site-specific information, whether the site is "residential" or "industrial/commercial." For the purposes of this Section, a site is presumed residential, but may be classified as industrial/commercial if the Department determines based on site-specific information that exposure to the soil contamination is limited in time due to the use of the site and does not involve exposure to children. For the purposes of this Paragraph, "site" means both the property upon which the discharge or release has occurred and any property upon which soil has been affected by the discharge or release.
- (2) ~~The~~ For a discharge or release from a commercial underground storage tank, or for a discharge or release from a noncommercial underground storage tank classified by the Department as high risk, the responsible party shall submit a report to the Department assessing the vertical and horizontal extent of soil ~~contamination.~~ contamination in excess of the lower of:
  - (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to Rule .0411 of this Section; or
  - (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to Rule .0411 of this Section.
- (3) For a discharge or release from a commercial underground storage tank classified by the Department as low risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to either the residential or industrial/commercial maximum soil contaminant concentration established by the Department pursuant to ~~15A NCAC 02L~~ Rule .0411 of this Section, whichever is applicable.
- (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible party shall submit a report

demonstrating that soil contamination has been remediated to the lower of:

- (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to ~~15A NCAC 02L~~ Rule .0411 of this Section; or
- (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to ~~15A NCAC 02L~~ Rule .0411 of this Section.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648,s. 1.

# 15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS

(a) A responsible party who submits a corrective action plan ~~which that~~ proposes natural ~~attenuation or attenuation~~, to cleanup groundwater contamination to a standard other than a standard or interim standard established in ~~15A NCAC 02L .0202, Rule .0202 of this Subchapter,~~ or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration established pursuant to this Section, whichever is lowest, shall give notice to: ~~the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing the contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.~~

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

~~Such~~ The notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of ~~30~~ 60 days following receipt of the request so that the Department may consider ~~comments submitted.~~ comments. The responsible party shall, within ~~a time frame determined by the Department to be sufficient,~~ 30 days, provide the Department with a copy of the notice and proof of receipt of each required ~~notice,~~ notice or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party ~~may shall~~ shall give notice ~~by posting such notice prominently in a manner designed to give actual notice to the occupants.~~ as provided in G.S. 1A-1, Rule 4(i) or 4(j1). If notice is made to occupants by posting, the responsible party shall

provide the Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(b) A responsible party who receives a notice from the Department pursuant to 15A NCAC 02L Rule .0404(c) or .0407(d) of this Section for a discharge or release which that has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under 15A NCAC 02L Rule .0411 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to: the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

Notification shall be made by certified mail. The responsible party shall, within a time frame determined by the Department, 60 days of receipt of the original notice from the Department, provide the Department with proof of receipt of the copy of the notice, notice or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may shall give notice by posting such notice prominently in a manner designed to give actual notice to the occupants, as provided in G.S. 1A-1, Rule 4(j) or 4(j1). If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which such the posted notice was given.

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.*

**15A NCAC 02L .0410 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0411 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0412 ANALYTICAL PROCEDURES FOR SOIL SAMPLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0413 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0414 REQUIRED LABORATORY CERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0415 DISCHARGES OR RELEASES FROM OTHER SOURCES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0500 – RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM RELEASES FROM ABOVEGROUND STORAGE TANKS AND SOURCES**

**15A NCAC 02L .0501 PURPOSE AND SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0502 DEFINITIONS**

The definitions as set out in Rule .0102 of this Subchapter apply to this Section, in addition the following definitions and the following definitions shall apply throughout this Section:

- (1) "Aboveground storage tank" or "AST" means any one or a combination of tanks (including underground tanks, including pipes connected thereto) thereto, that is used to contain an accumulation of petroleum.
- (2) "AST system" means an aboveground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
- (3) "Discharge" includes any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into groundwater or surface water or upon land in such proximity to such water that it is likely to reach the water and any discharge upon land which is intentional, knowing, or willful.
- (4) "Non-UST means as defined in G.S. 143-215.104AA(g) and excludes underground storage tank releases governed by G.S. 143-215.94V.
- (5) "Operator" means any person in control ~~of~~ of or having responsibility for the daily operation of the AST system.
- (6) "Owner" means any person who owns a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, used for storage, use, dispensing, or transport.
- (7) "Person" means an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.
- (8) "Petroleum" or "petroleum products" means as defined in G.S. 143-215.94A(10).
- (9) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing

into groundwater, surface water, or surface or subsurface soils.

- (10) "Tank" means a device used to contain an accumulation of petroleum and constructed of non-earthen ~~materials (e.g., materials, such as concrete, steel, plastic)~~ plastic, that provides structural support.

*Authority G.S. 143-212(4); 143-215.3(a)(1); 143-215.77; 143B-282; 143-215.84; 143-215.104AA.*

**15A NCAC 02L .0503 RULE APPLICATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0504 REQUIRED INITIAL RESPONSE  
AND ABATEMENT ACTIONS BY RESPONSIBLE  
PARTY (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

**15A NCAC 02L .0505 REQUIREMENTS FOR LIMITED  
SITE ASSESSMENT (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0506 DISCHARGE OR RELEASE  
CLASSIFICATIONS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0507 RECLASSIFICATION OF RISK  
LEVELS (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

**15A NCAC 02L .0508 ASSESSMENT AND  
REMEDATION PROCEDURES (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0509 NOTIFICATION  
REQUIREMENTS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0510 DEPARTMENTAL LISTING OF  
DISCHARGES OR RELEASES (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0511 ESTABLISHING MAXIMUM  
SOIL CONTAMINATION CONCENTRATIONS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0512 ANALYTICAL PROCEDURES  
FOR SOIL SAMPLES (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0513 ANALYTICAL PROCEDURES  
FOR GROUNDWATER SAMPLES (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0514 REQUIRED LABORATORY  
CERTIFICATION (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**15A NCAC 02L .0515 DISCHARGES OR RELEASES  
FROM OTHER SOURCES (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to repeal the rules cited as 15A NCAC 02T .1601, .1602, .1604-.1608.*

*Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rules are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/news/events/public-notice-hearings>

**Proposed Effective Date:** July 1, 2019

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): If a public hearing is requested, contact Michael Rogers, UIC Program Manager, Division of Water Resources, Animal Feeding Operations and Groundwater Protection Branch at [Michael.Rogers@ncdenr.gov](mailto:Michael.Rogers@ncdenr.gov)*

**Reason for Proposed Action:** *The repeal of 15A NCAC 02T .1600 is proposed because 15A NCAC 02C .0225 rule, which had already been approved by the Environmental Management Commission to go to public hearing, would encompass the requirements for both the 15A NCAC 02C .0225 rule and the 15A NCAC 02T .1600 rules.*

**Comments may be submitted to:** 2C Rule Comments, Department of Environmental Quality, Division of Water Resources, Animal Feeding Operations and Groundwater Protection Branch, 1636 Mail Service Center, Raleigh, NC 27699-1636

**Comment period ends:** February 15, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02T – WASTE NOT DISCHARGED TO SURFACE WATERS**

**SECTION .1600 – GROUNDWATER REMEDIATION SYSTEMS**

- 15A NCAC 02T .1601 SCOPE**
- 15A NCAC 02T. 1602 DEFINITIONS**

*Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.*

**SECTION .1600 – GROUNDWATER REMEDIATION SYSTEMS**

- 15A NCAC 02T .1604 APPLICATION SUBMITTAL**
- 15A NCAC 02T .1605 DESIGN CRITERIA**
- 15A NCAC 02T .1606 SETBACKS**
- 15A NCAC 02T .1607 MONITORING AND REPORTING REQUIREMENTS**
- 15A NCAC 02T .1608 REQUIREMENTS FOR CLOSURE**

*Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.*

**TITLE 19A – DEPARTMENT OF TRANSPORTATION**

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Transportation intends to readopt without substantive changes the rules cited as 19A NCAC 02D .1101-.1112.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdot.gov/about-us/how-we-operate/policy-process/rules/pages/default.aspx>

**Proposed Effective Date:** April 1, 2019

**Public Hearing:**

**Date:** Tuesday, January 29, 2019

**Time:** 3:00 p.m.

**Location:** *Transportation Mobility and Safety Conference Room  
161, 750 Greenfield Parkway, Garner, NC 27529*

**Reason for Proposed Action:** *Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 19A NCAC 02B, 02D and 02E these proposed rules were determined as "Necessary With Substantive Public Interest" thus necessitating readoption.*

*Upon review for the readoption process, the agency deemed the following rules to be necessary without substantive changes and are recommended for readoption: 02D .1101-.1112.*

**Comments may be submitted to:** *Hanna D. Jernigan, 1501 Mail Service Center, Raleigh, NC 27699-1501, phone (919) 707-2821, email [Rulemaking@ncdot.gov](mailto:Rulemaking@ncdot.gov)*

**Comment period ends:** February 18, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

**CHAPTER 02 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 02D – HIGHWAY OPERATIONS**

**19A NCAC 02D .1101 PURPOSE AND SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1102 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1103 CERTIFICATION OF FIRMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1104 RENEWAL OF CERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1105 CHANGE IN OWNERSHIP OR CONTROL (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1106 DECERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1107 APPEALS OF DENIAL OF CERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1108 GOALS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1110 NON-ATTAINMENT OF GOALS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1111 PERFORMANCE RELATED REPLACEMENT OF ELIGIBLE FIRMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .1112 REPLACEMENT OF A FIRM REMOVED BY DECERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

---

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 57 - APPRAISAL BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Appraisal Board intends to amend the rules cited as 21 NCAC 57A .0204, .0211, .0407; 57B .0306, and .0606.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncappraisalboard.org](http://www.ncappraisalboard.org)

**Proposed Effective Date:** *June 1, 2019*

**Public Hearing:**

**Date:** *March 26, 2019*

**Time:** *9:00 a.m.*

**Location:** *5830 Six Forks Road, Raleigh, NC 27609*

**Reason for Proposed Action:** *21 NCAC 57A .0204 is internally inconsistent, and the amendment clarifies the rule. 21 NCAC 57A .0211, the agency currently requires a letter of good standing. The change will allow the agency to rely on the ASC National Registry to verify an appraiser's credential. On 21 NCAC 57A .0407, the agency has seen instances where more than one trainee has claimed experience credit for the same appraisal report. This*

*amendment would make it clear that only one trainee may get credit for an appraisal report. Currently, 21 NCAC 57B .0306 and .0606 both refer to providing a videotape. In order to keep up with current technology, the rule would allow a recording in any format.*

**Comments may be submitted to:** *Donald T. Rodgers, 5830 Six Forks Road, Raleigh, NC 27609, email don@ncab.org*

**Comment period ends:** *9:00 a.m. on March 26, 2019*

**Procedure for Subjecting a Proposed Rule to Legislative**

**Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

**SUBCHAPTER 57A - REGISTRATION, LICENSING, CERTIFICATION AND PRACTICE**

**SECTION .0200 - TRAINEE REGISTRATION AND APPRAISER LICENSING AND CERTIFICATION**

**21 NCAC 57A .0204 CONTINUING EDUCATION**

(a) All registered trainees, real estate appraiser licensees, and certificate holders shall, upon the renewal of their registration, license, or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee, and certificate holder who must complete continuing education pursuant to Paragraph (a) of this Rule ~~must~~ shall complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education ~~must~~ shall have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board

to offer such courses. Such education ~~must~~ shall relate to real estate appraisal and ~~must~~ shall contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose status has been upgraded to the level of licensed residential, certified residential, or certified general appraiser since the issuance or most recent renewal of their registration, license, or ~~certificate, and courses taken to satisfy the requirements of a higher level of certification shall not be applied toward the continuing education requirement.~~ certificate. Trainees, licensees, and certificate holders shall not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course ~~must~~ shall involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, licensee, or certificate holder ~~must~~ shall have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee, and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule ~~must~~ shall, as part of the 28 hours of continuing education required in Paragraph (b) of this Rule, complete the seven hour National USPAP update course between October 1 of an odd-numbered year and June 1 of an even numbered year, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent. USPAP is updated every even numbered year, and each trainee, licensee, and certificate holder shall take the most recent USPAP update course prior to June 1 of every even numbered year.

(e) A trainee, licensee, or certificate holder who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors ~~must~~ shall provide a certificate of course completion to each trainee, licensee, and certificate holder successfully completing a course. In addition, course sponsors ~~must~~ shall send directly to the Board a certified roster of all who successfully completed the course. This roster ~~must~~ shall be sent within 15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, license, or certificate in a timely manner, the Board must receive proof of satisfaction of the continuing education requirement prior to processing a registration, license, or certificate renewal application. Proof of satisfaction shall be made by receipt of a roster from a school or course sponsor showing the courses completed by the applicant or by submission of an original certificate of course completion. If proof of having satisfied the continuing education requirement is not provided, the registration, license, or certificate shall expire and the trainee, licensee, or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee, or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee, or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) as set out in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee, or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal education activities. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit are deemed to have taken an equivalent course and are not subject to the fee prescribed in G.S. 93E-1-8 (d), provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee, or certificate holder who teaches a Board-approved continuing education course ~~may~~ shall not receive continuing education credit for the same course more than once every two years, regardless of how often he or she teaches the course. Requests for equivalent approval for continuing education credit ~~must~~ shall be received before June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and shall only be granted for a minimum of 7 hours.

(h) A trainee, licensee, or certificate holder may receive continuing education credit by taking any of the Board-approved precertification courses, other than Basic Appraisal Principles and Basic Appraisal Procedures, or their approved equivalents. Trainee, licensees, and certificate holders who wish to use a precertification course for continuing education credit ~~must~~ shall comply with the provisions of 21 NCAC 57B .0604.

(i) A licensee or certificate holder who resides in another state, is currently credentialed in another state, and is active on the National Registry in another state may satisfy the requirements of this Section, other than the seven hour National USPAP update course requirement in Paragraph (d) of this Rule, by providing a current letter of good standing from another state showing that the licensee or certificate holder has met all continuing education requirements in the other state. A licensee or certificate holder who became licensed in North Carolina by licensure or certification with another state and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the appraiser moved to North Carolina on or after January 1 of an odd numbered year. If an appraiser was a resident of this state before January 1 of an odd-numbered year, the appraiser ~~must~~ shall comply with the requirements of this section regardless of how the license or certificate was obtained.

(j) A trainee, licensee, or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year is allowed to renew his or her registration, license, or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education ~~must~~ shall be completed within 180 days of when the trainee, licensee, or certificate holder returns from active duty. Failure to complete the required continuing education within 180 days is grounds for revocation. This Rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

*Authority G.S. 93B-15; 93E-1-7(a); 93E-1-10.*

**21 NCAC 57A .0211 APPLICANTS CERTIFIED IN ANOTHER STATE**

(a) Applicants for certification who are not residents of North Carolina shall file an application as stated in Rule .0101 of this Subchapter. The application may be found on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org). The application requires the name, contact information, educational background of the applicant, an experience log when required for licensure or certification, answers to questions regarding character (regarding both disciplinary matters and criminal offenses), and a sworn statement that the information in the application is correct. In addition, nonresident applicants shall also consent to service of process in this State and file an affidavit of residency with the application. If the applicant is not currently active on the Appraisal Subcommittee's National Registry, licensed by the appraiser licensing board of the applicant's resident state, the applicant shall also file with the application a letter of good standing from the appraiser licensing board of any state where the applicant is currently certified ~~the resident state~~ that was issued by that licensing board no later than 30 days prior to the date application is made in this State.

(b) Applicants for certification who are residents of North Carolina and who are certified in another state shall file an application as stated in Rule .0101 of this Subchapter. The application may be found on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org). The applicant shall file a letter of good standing from the other state that that was issued by that licensing board no later than 30 days prior to the date application is made in this State.

(c) Applicants for registration or certification shall obtain a criminal records check that complies with the requirements of Rule .0202(e) of this Subchapter. This records check shall have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the reporting service for the cost of these reports.

(d) An appraiser whose certification is suspended in North Carolina shall not apply for certification in this State under this Rule while the certification is suspended. An appraiser whose certification was revoked in North Carolina shall not apply for certification in this State under this Rule for five years after the date of revocation.

*Authority G.S. 93E-1-9(a) and (b); 93E-1-10; 12 U.S.C. 3351(a).*

**SECTION .0400 – GENERAL APPRAISAL PRACTICE**

**21 NCAC 57A .0407 SUPERVISION OF TRAINEES**

(a) A certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the appraiser:

- (1) has been certified for at least three years;
- (2) has no more than three trainees working under him or her at any one time. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. A certified general appraiser may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor shall inform the Board of the name of the trainee by filing a Supervisor Declaration Form with the Board. The form may be found on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org). The supervisor shall also inform the Board when a trainee is no longer working under his or her supervision by using the Supervisor Declaration Form;
- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) reviews and signs the trainee's log of appraisals, which ~~must~~ shall be updated at least every 30 days. In addition, the supervisor shall make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous three years. For the purposes of this Section, disciplinary action means an active suspension, a downgrade of a credential, a revocation, or any



other action that affects a supervisor's ability to engage in appraisal practice.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor shall accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 1500 hours of experience, whichever comes first, for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the supervisor is satisfied that the trainee is competent to perform those inspections, and that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor shall accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee shall maintain a log on a form that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the experience hours claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject property. The log shall show all appraisals performed by the trainee and shall be updated at least every 30 days. A log form is available on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org).

(d) An appraiser who wishes to supervise a trainee shall attend an education program regarding the role of a supervisor before such supervision begins. This course shall be taught only by instructors approved by the Board in accordance with 21 NCAC 57B .0614.

(e) Trainees shall assure that the Appraisal Board has received the Supervisor Declaration Form on or before the day the trainee begins assisting the supervising appraiser by contacting the Board by telephone or email at [ncab@ncab.org](mailto:ncab@ncab.org). The form may be found on the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org). Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

(f) Supervising appraisers shall not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and thus is noted in the report as having provided such assistance, the appraiser signing the report shall have notified the Appraisal Board before the appraisal is signed that he or she is the supervisor for the trainee. If more than one appraiser signs the report, the appraiser with the highest level of credential shall be the declared supervisor for the trainee. If all appraisers signing the report have the same level of credential, at least one of them shall be declared as the trainee's supervisor before the report is signed.

(h) Only one trainee may receive credit for providing significant real property appraisal assistance on an appraisal report.

## **SUBCHAPTER 57B - REAL ESTATE APPRAISAL EDUCATION**

### **SECTION .0300 – COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION**

#### **21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS**

(a) Except as indicated in Paragraph (b) of this Rule, all qualifying courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 200 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and two years' full-time experience as a certified residential or general real estate appraiser within the previous five years. At least one-half of such experience ~~must~~ shall be in residential property appraising. Instructors ~~must~~ shall also be certified as a residential or general real estate appraiser.
- (2) General appraiser courses: 300 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years. At least one-half of such experience ~~must~~ shall be in income property appraising. Instructors ~~must~~ shall also be a certified general real estate appraiser and have been so certified for at least five years.
- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course. The instructor ~~must~~ shall be a certified residential or a certified general appraiser. If a USPAP instructor fails to renew or loses his or her certification by the Appraiser Qualifications Board, the instructor ~~must~~ shall immediately stop teaching and notify the Appraisal Board of the loss of certification.
- (4) Statistics, modeling and finance: ~~must~~ shall have previously completed this class, or ~~must~~ shall have completed 3 semester hours of statistics in an accredited college or university.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area the lecturer is teaching.

*Authority G.S. 93E-1.6.1; 93E-1-10; 93E-1-12.*

(c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
- (2) The ability to present instruction in an accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students;
- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor ~~must~~ shall submit to the Board a ~~videotape or DVD recording~~ in a manner and format which depicts the instructor teaching portions of a qualifying course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Paragraph (c) of this Rule.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive), or a revocation.

(g) Proposed qualifying course instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, ~~must~~ shall supply the Board with copies of sample appraisal reports or other evidence of experience.

(h) Persons desiring to become instructors for qualifying courses ~~must~~ shall file an application for approval with the Board. The application may be accessed at the Board's website at [www.ncappraisalboard.org](http://www.ncappraisalboard.org). There is no fee for application for

instructor approval. Once an instructor has been approved to teach a specific qualifying course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer qualifying courses.

(i) Current Appraisal Board members shall not be eligible to teach qualifying courses during their term of office on the Board.

*Authority G.S. 93E-1-8(a); 93E-1-10.*

## **SECTION .0600 - CONTINUING EDUCATION COURSES**

### **21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS**

Course sponsors ~~must~~ shall at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and ~~must~~ shall also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses ~~must~~ shall be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session. A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour ~~must~~ shall be scheduled and taken at reasonable times.
- (2) Course sponsors ~~must~~ shall not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina ~~must~~ shall specify the number of continuing education credit hours awarded by the Board for the course.
- (3) Course sponsors ~~must~~, shall, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.
- (4) Courses ~~must~~ shall be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom ~~must~~ shall be of sufficient size to accommodate comfortably all enrolled students, must contain a student desk or sufficient worktable space for each student, ~~must~~ shall have adequate light, heat, cooling and ventilation, and ~~must~~ shall be free of distractions that would disrupt class sessions. Sponsors ~~are required to~~ shall comply with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board

- with inspection reports from appropriate local building, health and fire inspectors upon the request of the Board. Sponsors ~~must~~ shall supply separate restroom facilities for males and females. Classes ~~may~~ shall not be held in a personal residence under any circumstances.
- (5) The course sponsor ~~must~~ shall require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance ~~must~~ shall be monitored during all class sessions to assure compliance with the attendance requirement. Instruction ~~must~~ shall be given for the number of hours for which credit is given. Instructors ~~may~~ shall not accumulate unused break time to end the class early.
- (6) Instructors ~~must~~ shall require reasonable student attentiveness during class sessions. Students ~~must~~ shall not be permitted to engage in activities that are not related to the instruction being provided.
- (7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section ~~must~~ shall fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts ~~must~~ shall be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students ~~must~~ shall be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.
- (8) Upon request of the Board, the course sponsor ~~must~~ shall submit to the Board a recording videotape in a manner and format which depicts the instructor teaching portions of any continuing education course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.
- (9) Course sponsors shall provide the Board with the dates and locations of all classes the sponsor is or will be offering in the State of North Carolina at least 30 calendar days before such class is offered, unless circumstances beyond the control of the course sponsor require that the course be rescheduled. If the dates or location of the classes change after such information is provided to the Board, the course sponsor ~~must~~ shall notify the Board of such changes.
- (10) Course sponsors shall provide each student with contact information for the Appraisal Board so that students may contact the Board with questions or concerns regarding the course.

- (11) If an instructor has any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or if the instructor has been convicted of or pleaded guilty to any criminal act, the school or course sponsor ~~must~~ shall report that fact to the Board within 15 business days.
- (12) All courses, except those taught on-line via the Internet, ~~must~~ shall have a minimum number of five students enrolled in the course.

Authority G.S. 93E-1-8(c); 93E-1-10.

## TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rules cited as 25 NCAC 01E .0210, .0704, .0705; 01I .1702, .1805, .1902, .1903, .1905, .2003, .2302, .2303, .2304, .2305, .2306, .2307 and .2310, and repeal the rule cited as 25 NCAC 01I .2105.*

**NOTE:** Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://oshr.nc.gov/about-oshr/state-hr-commission/proposed-rulemaking>

**Proposed Effective Date:** April 1, 2019

**Public Hearing:**

**Date:** January 3, 2019

**Time:** 2:00 p.m.

**Location:** Office of State Human Resources, Department of Administration, 116 Jones Street, Raleigh, NC 27603

### **Reason for Proposed Action:**

**25 NCAC 01E .0210 - Separation:** Payment of Vacation Leave - is amended to align with 25 NCAC 01I .2005 regarding vacation and sick leave accumulated during first twelve months of workers' compensation leave and bonus leave granted at any time during leave when employee is separated and excess vacation leave over 240 hours maximum if employee returns to permanent duty after workers' compensation leave.

**25 NCAC 01E .0704 - Coverage** - is amended to define what State employees and other person shall be covered under the State's self-insured workers' compensation program and deleting language regarding employer statutory duties of handling work-related injuries under G.S. Chapter 97. 25 NCAC 01E .0705 - Administration - is amended to clarify the Office of State Human Resources' responsibility to administer the State's self-insured workers' compensation program including contracting with vendors for workers' compensation claims services, vendor contracts monitoring, acting as liaison between vendors and State

agencies, monitoring claim status, issuing claim handling guidelines, and providing training materials for use in State agencies.

**25 NCAC 01I .1702 - Employment of Relatives** - is amended to align with the North Carolina Administrative Code at 25 NCAC .01H .0641.

**25 NCAC 01I .1805 - Provisions for Tentative Temporary Classification** - is amended to remove outdated "flat-rate" language to align with the North Carolina Administrative Code.

**25 NCAC 01I .1902 - Posting and Announcement of Vacancies** - is amended to change posting from 7 work days to 7 calendar days pursuant to best practices, update the NC Works name and replacing shall with may as to posting with NC Works, GS 96 -29 applies only to state agencies.

**25 NCAC 01I .1903 - Applicant Information and Application**, is amended to remove NC Works posting information and update language to match practice as indicated by minor edits.

**25 NCAC 01I .1905 - Selection** is amended to align with state admin codes: H .0634, H .0635.

**25 NCAC 01I .2003 - Promotion** is amended to align with state admin code (where applicable): D .0301 and comply with G.S. 126 probationary period language and deletes outdated language.

**25 NCAC 01I .2105 - Other Pay** - is deleted as it is no longer utilized.

**25 NCAC 01I .2302 - Dismissal for Unsatisfactory Job Performance of Duties** - is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0605.

**25 NCAC 01I .2303 - Dismissal for Grossly Inefficient Job Performance** - is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0606.

**25 NCAC 01I .2304 - Dismissal for Unacceptable Personal Conduct** - is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0608.

**25 NCAC 01I .2305 - Written Warning** - is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0610.

**25 NCAC 01I .2306 - Disciplinary Suspension Without Pay** - is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0611.

**25 NCAC 01I .2307 - Demotion** - is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0612.

**25 NCAC 01I .2310 - Appeals** - is amended to align with North Carolina Administrative Code (a), (b) and (c) and (d) added for

process clarity to provide consistent timeframe for FAD and updates language to comply with statute/practice.

**Comments may be submitted to:** Lars Nance, Office of State Human Resources, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4890, email lars.nance@nc.gov

**Comment period ends:** February 15, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

## CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

### SUBCHAPTER 01E - EMPLOYEE BENEFITS

#### SECTION .0200 - VACATION LEAVE

#### **25 NCAC 01E .0210 SEPARATION: PAYMENT OF VACATION LEAVE**

- (a) The agency shall pay an employee in a lump sum for vacation leave only at the time of separation.
- (b) When separated from state service due to resignation, dismissal, or death, an employee shall be paid in a lump sum for accumulated vacation leave not to exceed a maximum of 240 hours. The employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation.
- (c) When separated from state service due to service retirement, early retirement, or reduction in force, an employee may, at the discretion of the employee's supervisor, elect to exhaust vacation leave after the last day of work but prior to the effective date of the separation. All benefits accrue while leave is being exhausted including holidays that occur during the period. Unused leave not

exhausted shall be paid in a lump sum not to exceed 240 hours. An employee who was reduced in force and who had over 240 hours of vacation leave at the time of separation shall have the excess leave reinstated when reemployed within one year. The date of separation is as follows:

- (1) If leave is exhausted, the last day of leave is the date of separation.
- (2) If no leave is exhausted, the last day of work is the date of separation.

(d) If an employee separates and is overdrawn on leave, the employing agency shall deduct the value of the overdrawn leave from the final salary check.

(e) The employing agency shall make a retirement deduction from all leave payments.

(f) Receipt of lump sum leave payment and retirement benefit is not considered as dual compensation.

(g) In the case of a deceased employee, the employing agency shall make a payment for unpaid salary, leave, and travel, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, the employing agency must make a payment in accordance with the provisions of G.S. 28A-25-6.

(h) In the case of an employee separated due to a workers' compensation injury pursuant to 25 NCAC 01C .2007, vacation and sick leave accumulated only during first 12 months of workers' compensation leave will be exhausted by lump sum payment, along with other unused vacation/bonus leave which was on hand at time of injury, as well as any bonus leave granted subsequently.

(i) If employee returns to permanent duty after workers' compensation leave, excess vacation leave over 240 hour maximum to be carried forward to next calendar year may be used after returning to work or carried on leave account until end of calendar year at which time any excess vacation shall be converted to sick leave. If employee separates during period excess vacation is allowed, vacation leave exceeding 240 hours to be paid in lump sum may not exceed amount accumulated during first 12 months of workers' compensation leave.

*Authority G.S. 28A-25-6(a),(c); 126-4.*

## **SECTION .0700 - WORKER'S COMPENSATION LEAVE**

### **25 NCAC 01E .0704 COVERAGE**

All North Carolina State Government employees and officers of the state including elected officials, members of the General Assembly, and persons appointed to serve on a per diem, part-time or fee basis are covered under the State's self-insured workers' compensation program administered by the Office of State Human Resources. ~~North Carolina Workers' Compensation Act. Those covered include all employees and officers of the state including elected officials, members of the General Assembly, and persons appointed to serve on a per diem, part time or fee basis. Any employee who suffers an accidental injury or contracts an occupational disease within the meaning of the Workers' Compensation Act is entitled to benefits provided by the Act. The employee is entitled to medical benefits and compensation for time lost from work and any disability which results from the~~

~~injury. The state has a "self insured" program and expenditures are paid from current operating budgets.~~

*Authority G.S. 126-4.*

### **25 NCAC 01E .0705 ADMINISTRATION**

~~(a) Each State agency The Office of State Human Resources shall administer a self-insured workers' compensation program for workers' compensation claims arising in State agencies, which may include third party administration of claims. The agency shall ensure the employee of the benefits provided by the Workers' Compensation Act and control costs related to on the job injuries and illnesses.~~

~~(b) The Office of State Human Resources self-insured workers' compensation program for State agencies shall: shall measure and evaluate the effectiveness of the workers' compensation program at each agency and recommend changes to achieve optimum results and ensure consistent application of coverage and compensation. It shall maintain contract oversight, monitoring and evaluation of the effectiveness of third party administration of claims, and act as intermediary between the third party administrator and the State. It shall maintain a statistical database summarizing a statewide analysis of total expenditures and injuries, and develop training and educational materials for use in training programs for the agencies.~~

(1) Contract with vendor(s) for services for workers' compensation claims arising in State agencies.

(2) Act as intermediary between vendor(s) and State agencies.

(3) Monitor contracted vendor(s) performance.

~~(c) Each State agency shall pay for workers' compensation expenditures from current operating budgets.~~

~~(d) The Office of State Human Resources shall:~~

(1) Monitor status of workers' compensation claims arising in State agencies.

(2) Issue claim handling guidelines for workers' compensation claims arising in State agencies.

(3) Issue workers' compensation related educational materials for use in State agencies.

*Authority G.S. 126-4; 143-580; 143-581; 143-582; 143-583.*

## **SUBCHAPTER 01I - SERVICE TO LOCAL GOVERNMENT**

### **SECTION .1700 - LOCAL GOVERNMENT EMPLOYMENT POLICIES**

#### **25 NCAC 01I .1702 EMPLOYMENT OF RELATIVES**

~~(a) The employment of close relatives within the same department or work unit of a local government agency subject to G.S. Chapter 126 is to be avoided unless significant recruitment difficulties exist. If there are fewer than three other available eligibles for a vacancy and it is necessary for relatives to be considered for employment or if two individuals are already employed and marry, the following will apply:~~

~~Two members of an immediate family shall not be employed within the same department or work unit of a local government~~

agency subject to G.S. Chapter 126 if such employment will result in one supervising a member of his immediate family or where one member occupies a position which has influence over the other's employment, promotion, salary administration and other related management or personnel considerations.

(b) ~~The term "immediate family" shall be understood to refer to that degree of closeness of relationship which would suggest that problems might be created within the work unit or that the public's philosophy of fair play in providing equal opportunity for employment to all qualified individuals would be violated. This would include wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step, half and in-law relationships as appropriate based on the above listing.~~

Members of an immediate family shall not be employed within the same agency if the employment results in one member supervising another member of the employee's immediate family, or if one member will occupy a position that has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This includes employment on a permanent, temporary, or contractual basis. The term "immediate family" includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Rule. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position that requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

Authority G.S. 126-4.

## **SECTION .1800 - GENERAL PROVISIONS**

### **25 NCAC 01I .1805 TENTATIVE AND FLAT-RATE PROVISIONS FOR TENTATIVE TEMPORARY CLASSIFICATION**

The State Human Resources Director is authorized to establish temporary classifications with tentative pay grades ~~or flat rate salaries~~ when insufficient information is available to make permanent classification and pay recommendations to the State Human Resources Commission. When sufficient information is available, the Director will make a recommendation to the State Human Resources Commission which will incorporate the temporary class and pay into the permanent classification plan and pay plan. Such temporary ~~classes, classes and~~ tentative pay grades ~~and flat rate salaries~~ shall be administered according to all applicable rules and regulations approved by the State Human Resources Commission.

Authority G.S. 126-4.

## **SECTION .1900 - RECRUITMENT AND SELECTION**

### **25 NCAC 01I .1902 POSTING AND ANNOUNCEMENT OF VACANCIES**

(a) Vacant positions to be filled will be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply.

(b) Vacancies which will be filled from within the agency workforce shall have an application period of not less than seven calendar days. These vacancies will be prominently posted in an area known to employees, and employees and will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum training and experience standard, and contact person for each position to be filled. An exception to this posting requirement will be permissible where a formal, pre-existing "understudy" arrangement has been established by management.

(c) Any vacancy for which an agency wishes to consider outside applicants or outside applicants concurrently with the internal workforce ~~shall~~ may be listed with the local ~~Job Service Office of the Employment Security Commission~~ NCWorks Career Center of the Division of Employment Security. Listings will include the appropriate announcement information and vacancies so listed shall have an application period of not less than seven ~~work~~ calendar days.

(d) If an agency makes an effort to fill a vacancy from within, and is unsuccessful, the listing with the ~~Employment Security Commission~~ Division of Employment Security ~~would~~ may take place when the decision is made to recruit outside. A vacancy which an agency will not fill for any reason shall not be listed; if conditions change, it shall then be treated as a new vacancy.

Authority G.S. 126-4.

### **25 NCAC 01I .1903 APPLICANT INFORMATION AND APPLICATION**

~~(a) The primary source of public information and referral for vacancies in subject local government programs is the Employment Security Commission. Interested persons may contact their local ESC Job Service Office. Other sources may also be designated by local departments and agencies.~~

~~(a)(b)~~ (b) Persons applying for a local vacancy must complete and submit the official application form designated by the hiring authority. ~~authority and approved by the reviewing state agency.~~ It is not necessary for local agencies to accept official application forms in the absence of an actual vacancy under active recruitment.

~~(b)(c)~~ (c) Each agency shall be responsible for evaluating the accuracy of statements made in an application and may seek job-related evidence of the applicant's suitability for employment.

~~(c)(d)~~ (d) An applicant may be disqualified if ~~he~~ they:

- (1) ~~lack lacks~~ any of the preliminary qualifications established for the class of the position being applied for;
- (2) ~~has~~ have made a false statement of material fact in the application process;
- (3) ~~fails~~ failed to submit ~~an~~ a completed application ~~correctly or~~ within the prescribed time limits;
- (4) ~~lack lacks~~ the physical or mental ability to perform the essential duties of the position even with reasonable accommodation.

Authority G.S. 126-4.

## 25 NCAC 01I .1905 SELECTION

### (a) ~~Selection of Applicants:~~

- (1) ~~The selection of applicants for appointment will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be best qualified and hiring authorities must shall reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.~~
- (2) ~~Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. In any vacancy instance, the same selection process will be used consistently with all the applicants. Equal employment consideration will be afforded. Reference checking and other means of verifying applicant qualifications may be employed as necessary. It should be recognized and explained to persons applicants selected that the probationary period is a required extension of the selection process.~~

### (b) ~~Minimum Qualifications:~~

- (1) ~~The employee or applicant must possess at least the training and experience requirements, or their minimum equivalent, set forth in the state class specification for the class of the position to be filled. This shall apply in new appointments, — promotions, — demotions, transfers, and reinstatements.~~
- (2) ~~The training and experience requirements serve as indicators of the possession of the skills, knowledges, and abilities which have been shown through job evaluation to be important to successful performance, and as a guide to primary sources of recruitment. It is recognized that a specific quantity of formal education or numbers of years of experience does not always guarantee possession of the necessary skills, knowledges, and abilities for every position. Qualifications necessary to perform successfully may be attained in a variety of combinations. In evaluating qualifications, reasonable substitutions of formal education and job related experience, one for the other, will be made upon request by the local appointing authority to the appropriate state review agency.~~
- (3) ~~Management is responsible for determining the vacancy specific qualifications that are an addition to minimum class standards. Such qualification requirements must bear a logical and job related relationship to the minimum standard. Management shall be accountable for the adverse effects resulting from the use of qualification standards that are +unreasonably construed.~~

- (4) ~~The review authority for qualifications in questionable selection situations rests first with the respective Regional Personnel Office and Central Office of the Department of Human Resources, or in the state Office of Crime Control and Public Safety, and finally with the Office of State Human Resources.~~

### (a) Selection of Applicants:

- (1) Agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence.
- (2) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications including selective criteria. "Selective criteria" are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants. The individual selected for the position shall be from among the most qualified applicants.
- (3) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.
- (4) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most qualified pool.

### (b) Minimum Qualifications:

- (1) The employee or applicant must possess at least the minimum qualifications set forth in the class specification of the vacancy being filled. Additional minimum qualifications, if any, included on the specific vacancy announcement must also be met. The additional qualifications shall have a documented business need. Qualifications include training, experience, competencies and knowledge, skills and abilities. The minimum qualifications on the vacancy announcement shall bear a direct and logical relationship to the minimums on the class specification, class administration guidelines developed by the Office of State Human Resources, and the specific position description. This requirement shall apply in new appointments, promotions, demotions or reassignments, transfers, and reinstatements.
- (2) Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable substitutions of formal training and job-related experience, one for the other, may be made.

- (3) Agency management is responsible for determining and defending the vacancy-specific qualifications that are in addition to minimum training and experience requirements. Such vacancy-specific qualifications shall bear a logical and job-related relationship to the minimum requirements.
- (4) The Office of State Human Resources shall make the final determination as to whether the employee or applicant meets the minimum qualifications in questionable selection situations.

Authority G.S. 126-4.

## SECTION .2000 - APPOINTMENT AND SEPARATION

### 25 NCAC 01I .2003 PROMOTION

- (a) ~~A promotion is a change to a classification at a higher level. Promotion is an advancement from one position to another with a higher salary grade. This may result from movement to another position or by the present position being reallocated to a higher classification as a result of increases in the level of duties and responsibilities.~~
- (b) When it is practical and feasible, a vacancy should be filled by promotion of a qualified ~~permanent~~ employee. Selection for promotion should be based upon demonstrated capacity, and quality of services. If promotion results from movement to another position, the candidate must possess the minimum training and experience for the class. If the promotion results from the present position being reallocated to a higher classification, the employee may be promoted by waiver of the stated training and experience requirements. ~~requirements if he has satisfactorily performed for a minimum of three months prior to the reallocation.~~
- (c) An employee in a work-against appointment cannot be promoted, upon reallocation of his position, by waiver of training and experience requirements until he has served at least one year in the work-against class or until qualified for the new class. The incumbent in a work-against situation must be promoted as soon as he meets the qualifications for the higher class or the position must be reallocated to the lower class.
- (d) An employee in probationary or trainee status may be promoted to another position in a higher classification if the person is qualified for such an appointment. The employee's probationary period will continue until performance meets the required standard, as certified by the appointing authority, except that in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status). ~~for the duration defined in G.S. 126-1.1.~~
- (e) An employee in probationary status occupying a position at the time it is reallocated upward may be promoted to the new class if the person possesses the minimum training and experience requirements; if not qualified the employee shall remain at the former level working against the higher classification or be separated. If promoted during the probationary period, the employee will continue in probationary status until performance meets the required standard, ~~but in no case shall the duration be~~

~~longer than nine months after the duration defined in G.S. 126-1.1 has been satisfied, beginning with the initial probationary appointment. (unless the person is in trainee status).~~

Authority G.S. 126-4.

## SECTION .2100 - COMPENSATION

### 25 NCAC 01I .2105 OTHER PAY

Authority G.S. 126-4; 126-5; 126-9.

## SECTION .2300 - DISCIPLINARY ACTION: SUSPENSION, DISMISSAL AND APPEALS

### 25 NCAC 01I .2302 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES

- (a) Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or agency.
- (b) The intent of this Section is to assist and promote improved employee performance, rather than to punish. This Rule covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.
- (c) In order to be dismissed for a current incident of unsatisfactory job performance, an employee must first receive at least two prior disciplinary actions: First, one or more written warnings, followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.
- (d) Prior to the decision to dismiss an employee, the agency director or designated management representative must conduct a ~~pre-dismissal~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of the Section.
- (e) An employee who is dismissed must receive written notice of the specific reasons for the dismissal as well as notice of any applicable appeal rights.
- (f) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432.~~ 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Authority G.S. 126-4; 126-35.



**25 NCAC 01I .2303 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE**

(a) ~~Gross Inefficiency (Grossly Inefficient Job Performance)~~ Grossly Inefficient Job Performance occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency and that failure results in:

- (1) ~~the creation of the potential for death or serious harm bodily injury to a client(s), an employee(s), members of the public or to a person(s) death or serious harm or the creation of the potential for death or serious harm, to a client(s), an employee(s), members of the public or to a person(s)~~ over whom the employee has responsibility; or
- (2) the loss of or damage to agency property or funds that result in a serious impact on the agency or work unit.

(b) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(c) Prior to dismissal of an employee with permanent career status on the basis of grossly inefficient job performance, there shall be a ~~pre-dismissal~~ pre-disciplinary conference between the employee and the agency director or designated management representative. This conference shall be held in accordance with the provisions of 25 NCAC 01I .2308.

(d) Dismissal for grossly inefficient job performance requires written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432, 25 NCAC 01J .1316~~. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

*Authority G.S. 126-4(7a).*

**25 NCAC 01I .2304 DISMISSAL FOR UNACCEPTABLE PERSONAL CONDUCT**

(a) Employees may be dismissed for a current incident of unacceptable personal ~~conduct~~. conduct without any prior active disciplinary actions.

(b) Unacceptable personal conduct is:

- (1) conduct on or off the job that is reasonably related to the employee's job duties and responsibilities for which no reasonable person should expect to receive prior warning; ~~or~~
- (2) ~~job-related~~ conduct which constitutes violation of state or federal law; ~~or~~
- (3) conviction of a felony ~~or an offense involving moral turpitude~~ that is detrimental to or impacts the employee's service to the agency; ~~or~~

- (4) the willful violation of known or written work rules; ~~or~~
- (5) conduct unbecoming an employee that is detrimental to the agency's service; ~~or~~
- (6) the abuse of client(s), patient(s), ~~student(s)~~ or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the agency; ~~or~~
- (7) falsification of an employment application or other employment documentation; or
- (8) insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning; ~~or~~
- (9) absence from work after all authorized leave credits and benefits have been ~~exhausted~~. exhausted;
- (10) failure to maintain or obtain necessary credentials or certifications.

(c) Prior to dismissal of an employee with permanent career status on the basis of unacceptable personal conduct, there shall be a ~~pre-dismissal~~ pre-disciplinary conference between the employee and the agency director or designated management representative. This pre-disciplinary conference shall be held in accordance with the provisions of 25 NCAC 01I .2308.

(d) Dismissals for unacceptable ~~job performance~~ personal conduct require written notification to the employee. Such written notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432, 25 NCAC 01J .1316~~. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

*Authority G.S. 126-4. ~~126-34.~~*

**25 NCAC 01I .2305 WRITTEN WARNING**

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and ~~acceptable standards of personal conduct~~. assure that employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee ~~must~~ shall receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning ~~must~~ shall:

- (1) Inform the employee in writing that this is a written warning, and not some other non-disciplinary process such as counseling;
- (2) Inform the employee of the specific issues that are the basis for the warning;
- (3) Tell the employee what specific ~~improvements~~ corrections, if applicable, must be made to address these specific issues;
- (4) Tell the employee the time frame allowed for making the required ~~improvements/corrections~~ corrections. ~~Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance.~~ Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct;
- (5) Tell the employee the consequences of failing to make the required ~~improvements/corrections~~ corrections; and
- (6) Tell the employee of any appeal rights provided by agency policy.

(b) A written warning ~~must shall~~ be issued in accordance with the procedural requirements of this Section. ~~Section, including any applicable appeal rights.~~

*Authority G.S. 126-4.*

#### **25 NCAC 01I .2306 DISCIPLINARY SUSPENSION WITHOUT PAY**

(a) An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or without any prior warning for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without ~~pay~~ pay, the agency director or designated a management representative shall conduct a ~~pre-suspension pre-disciplinary~~ conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

(b) An agency ~~may impose~~ has the option of imposing the same periods of disciplinary suspension without pay ~~for~~ upon all employees as long as the period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

*Authority G.S. 126-4(6); 126-35.*

#### **25 NCAC 01I .2307 DEMOTION**

(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

- (b)(1) Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job

performance after the employee has received at least one prior disciplinary action.

- (e)(2) Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.

- (d)(3) Unacceptable Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.

- (e)(4) An employee who is demoted ~~must shall~~ receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

- (f)(b) Disciplinary demotions may be accomplished in three ways:

- (1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary range for the new lower pay ~~grade~~ grade; or

- (2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary rate for the new lower pay grade; or

- (3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade. ~~grade or the special entry rate, if in effect.~~

- (g)(c) Prior to the decision to demote an employee for disciplinary reasons, the agency director or ~~designated a~~ management representative ~~must shall~~ conduct a ~~pre-demotion pre-disciplinary~~ conference with the employee in accordance with the procedural requirements of this Section.

*Authority G.S. 126-4.*

#### **25 NCAC 01I .2310 APPEALS**

(a) An employee with ~~permanent career~~ status as defined in G.S. 126-1.1 who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency ~~or county~~ grievance ~~procedure, procedure whichever is applicable.~~ If an employee does not appeal his demotion, suspension or dismissal through the agency grievance procedure within 15 calendar days, then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-35. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days in which to take remedial action, if any, unless the agency has waived the 60 day period, and the employee has acknowledged such waiver. An appeal to the State Human

~~Resources Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.~~

~~(b) Grievances which allege discrimination not including unlawful workplace harassment may at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Human Resources Commission (SHRC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SHRC. A direct appeal to the SHRC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.~~

~~(b) If an employee appeals his demotion, suspension or dismissal through the agency grievance procedure, then the initial dismissal letter written notice of such action shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure.~~

~~(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36, and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after written notification of remedial action, if any, taken by the agency must be dismissed. (a) An A An career state employee with permanent status with career status as defined in N. C. G. S. 126-1.1 who has been demoted, suspended without pay as a disciplinary measure or dismissed shall have 15 calendar~~

~~days from the date of his or her receipt of written notice of such action to file an appeal with his or her agency or county grievance procedure, whichever is applicable. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days in which to take remedial action, if any, unless the agency has waived the 60 day period, and the employee has acknowledged such waiver. An appeal to the State Human Resources Commission Office of Administrative Hearings of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.~~

~~(c) Grievances that allege discrimination, harassment or retaliation shall follow the agency grievance procedure. Employees who do not follow the agency grievance procedure shall have no right to file a contested case with the Office of Administrative Hearings.~~

~~(d) If the employee has completed the agency grievance process and is not satisfied with the Final Agency Decision, or is unable to obtain a final agency decision within 90 days from the date the grievance was filed, the employee may file a Petition for Contested Case Hearing in the Office of Administrative Hearings. A Petition for Contested Case Hearing must be filed within 30 calendar days after the grievant receives the final agency decision.~~

~~Authority G.S. 126-35; 126-36; 126-38; 150B-23; 150B-36.~~

*This Section contains information for the meeting of the Rules Review Commission November 15 and November 26, 2018 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jeffrey A. Poley  
Brian P. LiVecchi

**Appointed by House**

Garth Dunklin (Chair)  
Andrew P. Atkins  
Anna Baird Choi  
Paul Powell  
Jeanette Doran (2<sup>nd</sup> Vice Chair)

**COMMISSION COUNSEL**

Amber Cronk May (919)431-3074  
Amanda Reeder (919)431-3079  
Jason Thomas (919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

January 17, 2019      February 21, 2019  
March 21, 2019      April 18, 2019

---

**RULES REVIEW COMMISSION MEETING  
MINUTES****November 15, 2018**

The Rules Review Commission met on Thursday, November 15, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Paul Powell.

Commissioner Poley was not present during the discussion or vote on any matters coming before the Commission, except for the follow-up matter for DHHS/ Division of Medical Assistance.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the October 18, 2018 meeting and the October 29, 2018 special meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS****Commission of Navigation and Pilotage for the Cape Fear River and Bar**

04 NCAC 15 .0119, .0121, .0123, .0124, .0127, and .0128 – All rules were unanimously approved.

**Board of Elections and Ethics Enforcement**

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107. No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she has a matter pending before the Board.

**DHHS/Division of Medical Assistance**

10A NCAC 22F .0301 was approved with Commissioners Doran and Hyde voting against. Pursuant to G.S. 150B-21.12(c), the Commission found that the submission was responsive to the Commission's objection; however, the Commission also found that the changes were substantial requiring the revised rule to be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

10A NCAC 22J .0106 was unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 10A NCAC 22J .0106.

Prior to the review of the rules from DHHS/Division of Medical Assistance, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because his law firm represents a party.

Matt Wolfe, a Partner with Parker Poe Adams & Bernstein, addressed the Commission.

Jeff Horton, the Executive Director of the North Carolina Senior Living Association, addressed the Commission.

Kathy McGraw, with the Attorney General's Office representing the agency, addressed the Commission.

Matthew Cochran, with the Law Firm of Ott Cone & Redpath, addressed the Commission.

Ronnie Cook, with the North Carolina Healthcare Association, addressed the Commission.

Richard Rutherford, Senior Manager with SebraCare, Inc., addressed the Commission.

Steve Keene, General Counsel with the Medical Society, addressed the Commission.

Ryan Eppenberger, the rulemaking coordinator with DHHS/Division of Health Benefits, addressed the Commission.

**Commission for the Blind**

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

**Criminal Justice Education and Training Standards Commission**

12 NCAC 09B .0203, .0301; 09G .0102, .0504, .0505, and .0701 were unanimously approved.

12 NCAC 09B .0101 and 09G .0304 were withdrawn at the request of the agency.

The agency is addressing the objection to 12 NCAC 09G .0103. No action was required by the Commission.

**Department of Public Safety**

14B NCAC 07A .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0115, .0116, .0118, and .0119 – The agency is addressing the technical change requests from the October meeting. No action was required by the Commission.

The agency is addressing the objections for 14B NCAC 01C .0401 and .0402. No action was required by the Commission.

**Water Pollution Control System Operator Certification Commission**

15A NCAC 08F .0406 and 08G .0802 – All rules were unanimously approved.

**Commission for Public Health**

15A NCAC 18E .0601, .0602, .0701, .0702, .0703, .0901, .0902, .0903, .0904, .0905, .0906, .0907, .0908, .0909, .0910, .0911, .1001, .1002, .1101, .1102, .1103, .1104, .1105, .1106, .1201, .1202, .1203, .1204, .1205, .1206, .1302, .1303, .1304,

.1305, .1306, .1307, .1701, .1702, .1703, .1704, .1705, .1706, .1707, .1709, .1710, .1711, .1712, and .1713 – The rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 15A NCAC 18E .1002, .1101, .1102, .1104, .1105, .1106, 1202, .1203, .1204, .1205, .1206, .1303, .1304, .1305, .1306, .1307, .1701, .1702, .1703, .1704, .1705, .1706, .1707, .1709, .1710, .1711, .1712, and .1713.

#### **Board of Registration for Foresters**

21 NCAC 20 .0103 and .0104 – All rules were unanimously approved.

#### **LOG OF FILINGS (PERMANENT RULES)**

##### *Pre-Reviewed Rules*

#### **DHHS - Division of Health Service Regulation**

All rules were unanimously approved.

#### **Environmental Management Commission 15A NCAC 02K**

15A NCAC 02K .0212 was unanimously approved.

#### **Environmental Management Commission 15A NCAC 13B**

All rules were unanimously approved.

#### **Water Treatment Facility Operators Certification Board**

15A NCAC 18D .0206 was unanimously approved.

#### **Medical Board**

21 NCAC 32Y .0101 was unanimously approved.

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rule because of a conflict.

##### *Non Pre-Reviewed Rules*

#### **Department of Insurance**

All rules were unanimously approved.

#### **Industrial Commission**

All rules were unanimously approved.

#### **Sheriffs Education and Training Standards Commission**

All rules were unanimously approved.

#### **Alcoholic Beverage Control Commission**

All rules were unanimously approved.

#### **Board of Nursing**

The Commission extended the period of review for these Rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Board of Nursing to extend the period in order to allow the agency to make technical changes and submit the rewritten rules at a later meeting.

Prior to the review of the rules from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board, including questions on rulemaking from time to time.

#### **Building Code Council**

All rules were unanimously approved.

#### **EXISTING RULES REVIEW**

#### **DHHS/Division of Health Service Regulation**

10A NCAC 14C – The Commission unanimously approved the report as submitted by the agency.

**Department of Insurance**

11 NCAC 05 - The Commission unanimously approved the report as submitted by the agency.  
11 NCAC 07 - The Commission unanimously approved the report as submitted by the agency.

**Commission for Public Health**

15A NCAC 18A - The Commission did not address the report based upon the October 29<sup>th</sup> meeting.

**Private Protective Services Board**

14B NCAC 16 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than April 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

**Environmental Management Commission**

15A NCAC 02L - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2022 pursuant to G.S. 150B-21.3A(d)(2).

**Department of Environmental Quality**

15A NCAC 07O - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

**Auctioneer Licensing Board**

21 NCAC 04 - The agency requested an extension of the schedule for readoption until February 29, 2020 for rules subject to readoption in 21 NCAC 04.

The extension request was approved, with Commissioner Doran voting against.

The Commission rescheduled the date of readoption for the rules subject to readoption in 21 NCAC 04. The agency will readopt the rules no later than February 29, 2020 pursuant to G.S. 150B-21.3A(d)(2).

The Chair called the meeting into a brief recess at 10:19 a.m. The meeting resumed at 10:27 a.m.

**COMMISSION BUSINESS**

At 11:52 a.m., upon a motion and second, and unanimous vote, the Commission ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the Department of Health and Human Services against the Rules Review Commission.

The Commission came out of closed session and reconvened at 1:25 p.m.

The meeting adjourned at 1:25 p.m.

The next regularly scheduled meeting of the Commission is Thursday, December 13<sup>th</sup> at 9:00 a.m.

---

Alexander Burgos, Paralegal

---

Minutes approved by the Rules Review Commission:  
Garth Dunklin, Chair

**November 15, 2018**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Phillip Reynolds	NC DOJ
Jennifer Everett	DEQ
Kathy McGraw	NC DOJ
Ryan Eppenberger	NC DHB (Medicaid)
Richard Rutherford	Sembra Care, Inc.
Matthew Jordan Cochran	Off Cone & Redpath, P.A.
Marie Enitt	NC DOJ
BRENDA EADG	NC DOJ
Matt Wolfe	Parker Poe
Doug Lassiter	NC STA
Nancy Deal	DHHS DPH
Nadine Pfeiffer	DHHS DHSR
STEVE REID	NC DWR
Jeff Huxar	NC Senior Living Assoc.
Charmineque Williams	CJETS
Loretta Bunch	NC DOJ
Charlie Diehl	NC ALB
BARRY GUPTON	NC DOI/NCBCC
Harry Michael	NC DHHS
Virginia Nicholas	NC DHHS
Ang SL	NC DWR



**November 15, 2018**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Tracie Angeli	DPH/OLUP
Angela Ellis	NC BON
Amy Fitzhugh	NC BON
Ronnie Cole	NCHA
Thomas Campbell	DOJ
Jessica Montie	DEQ/DWM
Whitney Belich	NCDQ
Ashley Snyder	Industrial Comm.
Jon Risgaard	NC-DWR
John P. Barkley	DOJ-B, CPH, DTHS
Jay Frick	DWR
Steve Kane	NEMS
Margaret McDall	DPS
JOHN THOMPSON	DHB - MEDICAL
WALKER REAGAN	ABC Commission
Christy Goebel	DEQ
AC Phillips	DHB
Jeff Hunt	PPSRB : <u>Cape Fear Pilots</u> <del>Assoc.</del>



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 15, 2018

Jeff Gray  
Private Protective Services Board  
Baily & Dixon, LLP  
PO Box 1351  
Raleigh, North Carolina 27602

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **14B NCAC 16**

Dear Mr. Gray:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 15, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than April 30, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
August 16, 2018  
APO Review: October 21, 2018  
Private Protective Services Board  
Total: 95**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<a href="#"><u>14B NCAC 16 .0101</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0102</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0103</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0104</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0105</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0106</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0107</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0108</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0109</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0110</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0111</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0112</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0113</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0114</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0201</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0202</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0203</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0204</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0205</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0301</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0302</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0401</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0402</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0403</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0404</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0405</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0501</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0502</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0503</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0504</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0601</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0602</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0603</u></a>	Necessary with substantive public interest

<a href="#"><u>14B NCAC 16 .0701</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0702</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0703</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0704</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0705</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0706</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0707</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0801</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0802</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0803</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0804</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0805</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0806</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0807</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0808</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0809</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0901</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0902</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0903</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0904</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0905</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0906</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0907</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0908</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0909</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0910</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0911</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .0912</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1001</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1002</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1003</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1101</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1102</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1103</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1104</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1105</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1106</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1107</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1108</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1201</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1202</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1203</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1204</u></a>	Necessary with substantive public interest
<a href="#"><u>14B NCAC 16 .1205</u></a>	Necessary with substantive public interest

<u>14B NCAC 16 .1206</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1207</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1301</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1302</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1303</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1304</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1305</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1306</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1307</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1308</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1401</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1402</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1403</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1404</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1405</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1406</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1407</u>	Necessary with substantive public interest
<u>14B NCAC 16 .1408</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 15, 2018

Jennifer Everett  
Environmental Management Commission  
1601 Mail Service Center  
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 02L**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 15, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2022.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
February 15, 2018  
APO Review: March 06, 2018  
Environmental Management Commission  
Total: 43**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>15A NCAC 02L .0101</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0102</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0103</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0104</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0106</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0107</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0108</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0109</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0110</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0111</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0112</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0113</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0114</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0401</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0402</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0403</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0404</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0405</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0406</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0407</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0408</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0409</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0410</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0411</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0412</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0413</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0414</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0415</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0501</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0502</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0503</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0504</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0505</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0506</u>	Necessary with substantive public interest

<u>15A NCAC 02L .0507</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0508</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0509</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0510</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0511</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0512</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0513</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0514</u>	Necessary with substantive public interest
<u>15A NCAC 02L .0515</u>	Necessary with substantive public interest





STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

November 15, 2018

Jennifer Everett  
Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 070**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 15, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2021.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW**

**June 15, 2017**

**APO Review: August 19, 2017**

**Environmental Quality, Department of**

**Total: 5**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>15A NCAC 07O .0101</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0103</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0104</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0201</u>	Necessary with substantive public interest
<u>15A NCAC 07O .0202</u>	Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES**

**November 15, 2018 Meeting**

**NAVIGATION AND PILOTAGE FOR THE CAPE FEAR RIVER AND BAR, COMMISSION OF**

<u>Number of Pilots</u>	04 NCAC	15	.0119
<u>Apprenticeship</u>	04 NCAC	15	.0121
<u>Incidents or Accidents Involving Pilots</u>	04 NCAC	15	.0123
<u>Movement of Vessels</u>	04 NCAC	15	.0124
<u>Pilotage Rates</u>	04 NCAC	15	.0127
<u>Fees</u>	04 NCAC	15	.0128

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

<u>Definitions</u>	10A NCAC	14C	.2101
<u>Performance Standards</u>	10A NCAC	14C	.2103

**HHS - MEDICAL ASSISTANCE, DIVISION OF**

<u>Provider Billing of Patients who are Medicaid Recipients</u>	10A NCAC	22J	.0106
---	----------	-----	-------

**INSURANCE, DEPARTMENT OF**

<u>Consent To Rate Procedures: Rate Bureau Coverages</u>	11 NCAC	10	.0602
<u>Consent To Rate Procedures: Commercial Coverages</u>	11 NCAC	10	.0603
<u>Consent To Rate Auto Liability Coverage</u>	11 NCAC	10	.0605
<u>Consent To Rate Procedures</u>	11 NCAC	10	.0606

**INDUSTRIAL COMMISSION**

<u>Location of Main Office and Hours of Business</u>	11 NCAC	23A	.0101
<u>Official Forms</u>	11 NCAC	23A	.0102
<u>Notice of Accident and Claim of Injury or Occupational Di...</u>	11 NCAC	23A	.0103
<u>Electronic Filings with the Commission; How to File</u>	11 NCAC	23A	.0108
<u>Required Contact Information from Carriers</u>	11 NCAC	23A	.0302
<u>Safety Rules</u>	11 NCAC	23A	.0411
<u>Notice of Last Payment Filing Requirement</u>	11 NCAC	23A	.0503
<u>Request for Hearing</u>	11 NCAC	23A	.0602
<u>Responding to a Party's Request for Hearing</u>	11 NCAC	23A	.0603
<u>Statement of Incident Leading to Claim</u>	11 NCAC	23A	.0608
<u>Medical Motions and Emergency Medical Motions</u>	11 NCAC	23A	.0609A
<u>Pre-Trial Agreement</u>	11 NCAC	23A	.0610
<u>Hearings Before the Commission</u>	11 NCAC	23A	.0611
<u>Disqualification of a Commissioner or Deputy Commissioner</u>	11 NCAC	23A	.0618

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Admission of Trainees</u>	12 NCAC	09B	.0203
<u>Certification of Instructors</u>	12 NCAC	09B	.0301
<u>Definitions</u>	12 NCAC	09G	.0102
<u>Suspension: Revocation: or Denial of Certification</u>	12 NCAC	09G	.0504
<u>Period of Suspension: Revocation: or Denial</u>	12 NCAC	09G	.0505
<u>Report: Application: and Certification Forms</u>	12 NCAC	09G	.0701

**SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Documentation of Educational Requirement</u>	12 NCAC	10B	.0302
<u>Evaluation for Training Waiver</u>	12 NCAC	10B	.0505
<u>Training for School Resource Officers</u>	12 NCAC	10B	.0510
<u>Minimum Training Requirements</u>	12 NCAC	10B	.2005

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Definitions</u>	14B NCAC	15A	.2201
<u>Collector Transport or Sale Permits</u>	14B NCAC	15A	.2202
<u>Permissible Sales Under Collector Transport or Sale Permit</u>	14B NCAC	15A	.2203
<u>Special Auction Permits</u>	14B NCAC	15A	.2204
<u>Conditions of Sale Under Special Auction Permits</u>	14B NCAC	15A	.2205

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Additional Design Requirements</u>	15A NCAC	02K	.0212
---------------------------------------	----------	-----	-------

**WATER POLLUTION CONTROL SYSTEM OPERATOR CERTIFICATION COMMISSION**

<u>Revocation, Relinquishment or Invalidation of Certification</u>	15A NCAC	08F	.0406
<u>Disciplinary Actions</u>	15A NCAC	08G	.0802

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Definitions</u>	15A NCAC	13B	.1101
<u>Application Fee and Annual Permit Fee</u>	15A NCAC	13B	.1102
<u>Generator of Scrap Tires</u>	15A NCAC	13B	.1103
<u>General Conditions</u>	15A NCAC	13B	.1104
<u>Permit Required</u>	15A NCAC	13B	.1105
<u>Scrap Tire Collection Site Permit Requirements</u>	15A NCAC	13B	.1106
<u>Scrap Tire Collection Site Operational Requirements</u>	15A NCAC	13B	.1107
<u>Scrap Tire Disposal Site Permit and Operational Requirements</u>	15A NCAC	13B	.1108
<u>Closure of Non-Conforming Sites</u>	15A NCAC	13B	.1109
<u>Scrap Tire Processing Facilities</u>	15A NCAC	13B	.1110

**WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD**

<u>Certified Operator Required</u>	15A NCAC	18D	.0206
------------------------------------	----------	-----	-------

**PUBLIC HEALTH, COMMISSION FOR**

<u>Location of Wastewater Systems</u>	15A NCAC	18E	.0601
<u>Applicability of Setbacks</u>	15A NCAC	18E	.0602
<u>Collection Sewers</u>	15A NCAC	18E	.0701
<u>Raw Sewage Lift Stations</u>	15A NCAC	18E	.0702
<u>Pipe Materials</u>	15A NCAC	18E	.0703
<u>General Design and Installation Criteria for Subsurface D...</u>	15A NCAC	18E	.0901
<u>Conventional Wastewater Systems</u>	15A NCAC	18E	.0902
<u>Bed Systems</u>	15A NCAC	18E	.0903
<u>Large Diameter Pipe Systems</u>	15A NCAC	18E	.0904
<u>Prefabricated Permeable Block Panel Systems</u>	15A NCAC	18E	.0905
<u>Sand Lined Trench Systems</u>	15A NCAC	18E	.0906
<u>Low Pressure Pipe Systems</u>	15A NCAC	18E	.0907
<u>Drip Dispersal Systems</u>	15A NCAC	18E	.0908

<u>Fill Systems</u>	15A NCAC 18E .0909
<u>Artificial Drainage Systems</u>	15A NCAC 18E .0910
<u>Privies</u>	15A NCAC 18E .0911
<u>Alternative Toilets</u>	15A NCAC 18E .1001
<u>Reclaimed Water Systems</u>	15A NCAC 18E .1002
<u>General Dosing System Requirements</u>	15A NCAC 18E .1101
<u>Pump Dosing</u>	15A NCAC 18E .1102
<u>Control Panels</u>	15A NCAC 18E .1103
<u>Siphon Dosing</u>	15A NCAC 18E .1104
<u>Timed Dosing</u>	15A NCAC 18E .1105
<u>Pressure Dosed Gravity Distribution Devices</u>	15A NCAC 18E .1106
<u>Advanced Pretreatment System Standards</u>	15A NCAC 18E .1201
<u>Siting and Sizing Criteria for Advanced Pretreatment Syst...</u>	15A NCAC 18E .1202
<u>Siting and Sizing Criteria for Advanced Pretreatment Syst...</u>	15A NCAC 18E .1203
<u>Advanced Pretreatment Dispersal Systems</u>	15A NCAC 18E .1204
<u>Advanced Pretreatment Sand Lined Trench Systems</u>	15A NCAC 18E .1205
<u>Advanced Pretreatment Bed Systems</u>	15A NCAC 18E .1206
<u>Operation and Maintenance of Advanced Pretreatment Systems</u>	15A NCAC 18E .1302
<u>Owner Responsibilities for Wastewater System Operation an...</u>	15A NCAC 18E .1303
<u>Management Entity Responsibilities for Wastewater System ...</u>	15A NCAC 18E .1304
<u>Local Health Department Responsibilities for Wastewater S...</u>	15A NCAC 18E .1305
<u>System Malfunction and Repair</u>	15A NCAC 18E .1306
<u>Wastewater Systems Abandonment</u>	15A NCAC 18E .1307
<u>General</u>	15A NCAC 18E .1701
<u>Application</u>	15A NCAC 18E .1702
<u>Department of Commission Application Review</u>	15A NCAC 18E .1703
<u>Approval Criteria for Provisional Systems</u>	15A NCAC 18E .1704
<u>Approval Criteria for Innovative Systems</u>	15A NCAC 18E .1705
<u>Approval Criteria for Accepted Systems</u>	15A NCAC 18E .1706
<u>Design and Installation Criteria for Provisional, Innovat...</u>	15A NCAC 18E .1707
<u>Wastewater Sampling Requirements for Advanced Pretreatmen...</u>	15A NCAC 18E .1709
<u>Compliance Criteria for Advanced Pretreatment Systems</u>	15A NCAC 18E .1710
<u>Provisional and Innovative Approval Renewal</u>	15A NCAC 18E .1711
<u>Authorized Designers, Installers, and Management Entities</u>	15A NCAC 18E .1712
<u>Local Health Department Responsibilities</u>	15A NCAC 18E .1713

#### **FORESTERS, BOARD OF REGISTRATION FOR**

<u>Qualifications for Registration</u>	21 NCAC 20 .0103
<u>Examinations</u>	21 NCAC 20 .0104

#### **MEDICAL BOARD**

<u>Reporting Criteria</u>	21 NCAC 32Y .0101
---------------------------	-------------------

#### **BUILDING CODE COUNCIL**

<u>2018 NC Residential Code/Tying and bracing of wood piles</u>	R4603.6
<u>2018 NC Residential Code/Girder Connection to Side of Post</u>	AM105.1
<u>2018 NC Fire Prevention Code/Vehicles</u>	314.4
<u>2018 NC Building Code/Stairway Doors</u>	1010.1.9.11

---

**RULES REVIEW COMMISSION**

---

2017 NC Electrical Code/Definition. Closet Storage Space	410.2
2017 Electrical Code/Luminaires in Clothes Closets	410.16

---

**RRC Determination  
Periodic Rule Review  
November 15, 2018  
Necessary with substantive public interest**

<b>HHS - Health Service Regulation, Division of</b>	<u>10A NCAC 14C .2003</u>	<u>10A NCAC 14C .2803</u>
<u>10A NCAC 14C .0202</u>	<u>10A NCAC 14C .2101</u>	<u>10A NCAC 14C .3701</u>
<u>10A NCAC 14C .0203</u>	<u>10A NCAC 14C .2103</u>	<u>10A NCAC 14C .3703</u>
<u>10A NCAC 14C .0205</u>	<u>10A NCAC 14C .2201</u>	<u>10A NCAC 14C .3801</u>
<u>10A NCAC 14C .0303</u>	<u>10A NCAC 14C .2203</u>	<u>10A NCAC 14C .3803</u>
<u>10A NCAC 14C .1102</u>	<u>10A NCAC 14C .2301</u>	<u>10A NCAC 14C .3901</u>
<u>10A NCAC 14C .1401</u>	<u>10A NCAC 14C .2303</u>	<u>10A NCAC 14C .3903</u>
<u>10A NCAC 14C .1403</u>	<u>10A NCAC 14C .2401</u>	<u>10A NCAC 14C .4001</u>
<u>10A NCAC 14C .1601</u>	<u>10A NCAC 14C .2403</u>	<u>10A NCAC 14C .4003</u>
<u>10A NCAC 14C .1603</u>	<u>10A NCAC 14C .2501</u>	
<u>10A NCAC 14C .1701</u>	<u>10A NCAC 14C .2503</u>	<b>Insurance, Department of</b>
<u>10A NCAC 14C .1703</u>	<u>10A NCAC 14C .2601</u>	<u>11 NCAC 05B .0301</u>
<u>10A NCAC 14C .1901</u>	<u>10A NCAC 14C .2603</u>	<u>11 NCAC 05D .0113</u>
<u>10A NCAC 14C .1903</u>	<u>10A NCAC 14C .2701</u>	<u>11 NCAC 05D .0114</u>
<u>10A NCAC 14C .2001</u>	<u>10A NCAC 14C .2703</u>	<u>11 NCAC 05D .0115</u>
	<u>10A NCAC 14C .2801</u>	

---

**RRC Determination  
Periodic Rule Review  
November 15, 2018  
Necessary without substantive public interest**

<b>HHS - Health Service Regulation, Division of</b>	<u>11 NCAC 05A .0604</u>	<u>11 NCAC 05B .0402</u>
<u>10A NCAC 14C .0102</u>	<u>11 NCAC 05A .0701</u>	<u>11 NCAC 05B .0501</u>
<u>10A NCAC 14C .0204</u>	<u>11 NCAC 05A .0702</u>	<u>11 NCAC 05B .0502</u>
<u>10A NCAC 14C .0402</u>	<u>11 NCAC 05A .0703</u>	<u>11 NCAC 05C .0101</u>
	<u>11 NCAC 05A .0705</u>	<u>11 NCAC 05C .0102</u>
	<u>11 NCAC 05A .0801</u>	<u>11 NCAC 05C .0103</u>
<b>Insurance, Department of</b>	<u>11 NCAC 05B .0101</u>	<u>11 NCAC 07 .0101</u>
<u>11 NCAC 05A .0101</u>	<u>11 NCAC 05B .0102</u>	<u>11 NCAC 07 .0105</u>
<u>11 NCAC 05A .0103</u>	<u>11 NCAC 05B .0103</u>	<u>11 NCAC 07 .0106</u>
<u>11 NCAC 05A .0202</u>	<u>11 NCAC 05B .0201</u>	<u>11 NCAC 07 .0303</u>
<u>11 NCAC 05A .0302</u>	<u>11 NCAC 05B .0202</u>	<u>11 NCAC 07 .0304</u>
<u>11 NCAC 05A .0303</u>	<u>11 NCAC 05B .0302</u>	<u>11 NCAC 07 .0305</u>
<u>11 NCAC 05A .0602</u>	<u>11 NCAC 05B .0303</u>	<u>11 NCAC 07 .0306</u>
<u>11 NCAC 05A .0603</u>	<u>11 NCAC 05B .0401</u>	

---

**RRC Determination  
Periodic Rule Review  
November 15, 2018  
Unnecessary**

<b>HHS - Health Service Regulation, Division of</b>	<u>10A NCAC 14C .0208</u>	<u>10A NCAC 14C .0502</u>
<u>10A NCAC 14C .0101</u>	<u>10A NCAC 14C .0209</u>	<u>10A NCAC 14C .1201</u>
<u>10A NCAC 14C .0206</u>	<u>10A NCAC 14C .0301</u>	<u>10A NCAC 14C .1203</u>
<u>10A NCAC 14C .0207</u>	<u>10A NCAC 14C .0304</u>	<u>10A NCAC 14C .1301</u>
	<u>10A NCAC 14C .0501</u>	<u>10A NCAC 14C .1303</u>

---

10A NCAC 14C .1501  
10A NCAC 14C .1503  
10A NCAC 14C .2901  
10A NCAC 14C .2903  
10A NCAC 14C .3401  
10A NCAC 14C .3403  
10A NCAC 14C .3601  
10A NCAC 14C .3603

**Insurance, Department of**  
11 NCAC 05D .0101  
11 NCAC 05D .0102  
11 NCAC 05D .0103  
11 NCAC 05D .0104  
11 NCAC 05D .0105  
11 NCAC 05D .0106  
11 NCAC 05D .0107

11 NCAC 05D .0108  
11 NCAC 05D .0109  
11 NCAC 05D .0110  
11 NCAC 05D .0111  
11 NCAC 05D .0112  
11 NCAC 07 .0201

---

**RULES REVIEW COMMISSION SPECIAL MEETING  
MINUTES  
November 26, 2018**

The Rules Review Commission met for a Special Telephonic Meeting on Monday, November 26, 2018. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, Jeff Poley, and Paul Powell. The telephonic meeting was broadcast in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina.

Staff members present were Alex Burgos and Commission Counsel Amber May.

The meeting was called to order at 2:01 p.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

At 2:02 p.m., upon a motion and second, and unanimous vote, the Commission ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the Department of Health and Human Services and the Commission for Public Health against the Rules Review Commission.

The Commission came out of closed session and reconvened at 2:24 p.m.

During the telephonic closed session meeting, Commissioner LiVecchi disconnected from the telephonic meeting and did not participate in the remainder of the meeting.

Upon a motion and second, and unanimous vote, the Commission voted to adopt the following language for proposed legislative action:

The rules adopted by the Commission for Public Health, codified in 15A NCAC 18A, which rules were determined to expire pursuant to G.S. 150B-21.3A(b) on November 15, 2018 by decision of the Rules Review Commission (such decision having been stayed by Consent Temporary Restraining Order entered in Wake County Superior Court (18 CVS 13854) shall not expire pursuant to G.S. 150B-21.3A(b), provided that the Commission for Public Health shall conduct the review process under G.S. 150B-21.3A(c), preserving comments made in the prior public comment period per G.S. 150B-21.3A(c)(1), and submit the report to the Rules Review Commission on or before the 15th of April 2019 to be reviewed at the Rules Review Commission meeting in May 2019. In the event that the report is not submitted to the Rules Review Commission on or before the 15th of April 2019, the rules adopted by the Commission for Public Health, codified in 15A NCAC 18A, shall expire and shall be removed from the Code.

The meeting adjourned at 2:26 p.m.

The next regularly scheduled meeting of the Commission is December 13<sup>th</sup> at 9:00 a.m.

---

Alexander Burgos, Paralegal

---

Minutes approved by the Rules Review Commission:  
Garth Dunklin, Chair

---

**CONTESTED CASE DECISIONS**

---

*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](mailto:oah.clerks@oah.nc.gov) or phone 919-431-3000.*

**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  
Tenisha Jacobs

A. B. Elkins II  
Selina Malherbe  
J. Randolph Ward  
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
17	ABC	06296	10/24/2018; 10/25/2018	NC Alcoholic Beverage Control Commission	v.	Bees Town Inc T/A Bees Town	Ward
17	DHR	04630	8/6/2018; 10/9/2018	Managed Health Resources, Inc(MHR), controlled by The Charlotte Mecklenburg Hospital Authority (CMHA) d/b/a Atrium Health	v.	Cardinal Innovations Healthcare Solutions	Malherbe
18	DHR	01530	10/22/2018	Juaneza Kay Gooch	v.	North Carolina Department of Health and Human Services DSS Program Integrity Food Stamps	Ward
18	DHR	02146	10/26/2018	Emma P Williams	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Sutton
18	DHR	02983	10/10/2018	Carla Denise Cook	v.	Department of Health and Human Services	Malherbe
18	DOJ	00592	10/10/2018	Jeffrey Laine Guyton	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	02968	10/30/2018	Robert O Laney Jr	v.	NC Sheriffs Education and Training Standards Commission	May
18	DOJ	02974	10/30/2018	Tyler Stockton	v.	NC Sheriffs Education and Training Standards Commission	May
18	DOL	01666	10/8/2018	Signature Payroll Services LLC D/B/A	v.	NC Department of Labor	Ward



**CONTESTED CASE DECISIONS**

				Signature Payroll Services			
				<u>UNPUBLISHED</u>			
18	ABC	03296	10/24/2018	NC Alcoholic Beverage Control Commission	v.	Diversified Corp T/A Mansion	Elkins
18	BOG	05185	10/23/2018	Donald Bruce Nothdurft	v.	North Carolina Board for Licensing of Geologists	Malherbe
18	CPS	04672	10/19/2018	Patricia Nevins	v.	NC Crime Victims Compensation Commission	Mann
18	CRA	04538	10/8/2018	Clinton Driggers Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	03326	10/3/2018	Derrick Nicholson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	03671	10/23/2018	William O Martin	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	DHR	03320	10/23/2018	Kezmit Howard	v.	The Division of Child Development and Early Education- Department of Health and Human Services	Malherbe
18	DHR	03448	10/24/2018	Joyce Sykes Fitch	v.	NC Department of Health and Human Services Division of Public Health Environmental Health Section	Overby
18	DHR	03872	10/11/2018	Jennifer R Lewis Executive Director Youth Focus Inc	v.	NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification	May
18	DHR	04155	10/5/2018	Luis Reyes	v.	NC Office of EMS/Dept of Health & Human Services	Mann
18	DHR	04248	10/16/2018	Vanessa Diane Bradley	v.	DHHS Healthcare Registry	Jacobs
18	DHR	04614	10/11/2018	Sharpe and Williams Kesha Spaulding	v.	NC Department of Health and Human Services, Division of Health Service Regulation	May
18	DHR	04728	10/19/2018	Christopher D Quick	v.	Medicaid	Mann
18	DHR	04880	10/4/2018	Jesusito Rondon Guzman Tienda Mexicana La Posadita 2	v.	WIC Agency	Elkins
18	DHR	05125	10/24/2018	Paulette Powell	v.	Department of Health and Human Services, Division of Health Service Regulation	Jacobs
18	DHR	05140	10/3/2018	Dianne Clark	v.	Dept of Health and Human Services, Division of Health Service	Overby
18	DHR	05220	10/25/2018	Daniel J Hall	v.	Department of Health and Human Services, Division of Health Service Regulation	Jacobs

**CONTESTED CASE DECISIONS**

18	DHR	05228	10/24/2018	Paradigm Inc Jason T Barnett Jeannette Barnett	v.	NCDHHS/ Office of Admin Hearing	Jacobs
18	DOJ	04889	10/10/2018	John Edward Suttles Jr.	v.	NC Criminal Justice Education and Training Standards Commission	Sutton
18	DOJ	05016	10/10/2018	Derrick Demond Lee	v.	NC Sheriffs Education and Training Standards Commission	Jacobs
18	DOJ	05261	10/19/2018	Stephen D Watson	v.	NC Sheriffs Education and Training Standards Commission	Sutton
18	DOT	02605	10/5/2018	Jannett Stickland Smith	v.	NC Department of Transportation	Mann
18	INS	04329	10/26/2018	Jennifer Weider	v.	North Carolina State Health Plan for Teachers and State Employees	Overby
18	INS	05085	10/31/2018	Robert Michael Absher	v.	State Health Plan of NC	May
18	OSP	04572	10/19/2018	Sanita Jefferies	v.	Murdoch Developmental Center	Mann
18	SOS	04165	10/5/2018	Paul Edward Nichols	v.	State of North Carolina Department of the Secretary of State	Jacobs
18	UNC	03931	10/5/2018	Lisa M Seaton	v.	UNC Hospital Patient Account Services	Mann