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The **NORTH CAROLINA REGISTER**

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IN THIS ISSUE

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ISSUE DATE: JULY 15, 1987

Volume 2 • Issue 4 • Pages 199-285



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any amendment which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
 (April 1987 - March 1988)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****	*****
04 15 87	03 26 87	04 02 87	05/15 87	06 14 87	09 01/87
05 15 87	04 27 87	05 04 87	06 14 87	07 14 87	10 01 87
06 15 87	05 26 87	06 02 87	07 15 87	08 14 87	11 01 87
07 15 87	06 25 87	07 02 87	08 14 87	09 13 87	12 01 87
08 14 87	07 27 87	08 03 87	09 13 87	10 13 87	01 01 88
09 15 87	08 26 87	09 02 87	10 15 87	11 14 87	02 01 88
10 15 87	09 25 87	10 02 87	11 14 87	12 14 87	03 01 88
11 16 87	10 27 87	11 03 87	12 16 87	01 15 88	04 01 88
12 15 87	11 23 87	12 02 87	01/14 88	02 13 88	05 01 88
01/15 88	12 28 87	01/04 88	02 14 88	03 15 88	06 01 88
02 15 88	01 26 88	02 02 88	03 16 88	04 15 88	07 01 88
03 15 88	02 24 88	03 02 88	04 14 88	05 14 88	08 01 88

* The "Earliest Effective Date" is computed assuming that the agency files the rules with The Administrative Rules Review Commission the same calendar month as adoption by the agency and ARRC approves the rules at the next calendar month meeting.

**EXECUTIVE
ORDER**

EXECUTIVE ORDER NUMBER 50

**AMENDMENT TO EXECUTIVE ORDER
NUMBER 43**

**"NORTH CAROLINA EMERGENCY
RESPONSE COMMISSION"**

The North Carolina Emergency Response Commission was established by Executive Order Number 43 pursuant to the Emergency Planning Community Right to Know Act of 1986 enacted by the United States Congress and was amended under Executive Order Number 48.

It has been made to appear that the Commissioner of the North Carolina Department of Agriculture or his designee should be a member of this commission.

THEREFORE, by authority vested in me as Governor by the laws and

the Constitution of North Carolina and the laws of the United States, IT IS ORDERED:

Section 1. AMENDMENT

That portion of Section 1 of Executive Order 43 that describes the persons that are to compose the commission is amended after the words "the Commissioner of the Department of Labor or his designee;" by inserting the following language:

the Commissioner of the Department of Agriculture of his designee.

Section 2. Continuation of Previous Executive Orders

All sections and provisions of Executive Orders Number 43 and 48 not inconsistent herewith shall remain in effect.

Done in Raleigh, North Carolina,
this 17th day of June, 1987.

VOTING RIGHTS ACT FINAL DECISION LETTERS

[G.S. 120-30.911, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:HIBK:gmh
DJ 166-012-3
R9262

May 29, 1987

David A. Holec, Esq.
City Attorney
P. O. Box 1388
Lumberton, North Carolina 28359-1388

Dear Mr. Holec:

This refers to the March 16, 1987, annexation to the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended 42 U.S.C. 1973c. We received your submission on March 30, 1987.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See Section 51.41 of the Procedures for the Administration of Section 5 [52 Fed. Reg. 496 (1987)].

Future submissions under Section 5 should be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Submission under Section 5 of the Voting Rights Act. See also Section 51.24 [52 Fed. Reg. 493 (1987)].

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

U.S. Department of Justice
Washington, D.C. 20530

WBR:SSC:AJD:dvs
DJ 166-012-3
S0543-0552
S0906
S2658-2659

June 22, 1987

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 991 (1967) which increases the compensation for school board members; Chapter 972 (1967), as amended by Chapter 1301 (1969), which provides for the direct election of a five-member board on an at-large, nonpartisan basis for staggered, four-year terms with a plurality vote requirement; the increase in the length of terms from two to four years, the implementation schedule, the elimination of the residency requirement, the change in the starting date for terms of office from the first Monday in April to the first Monday in June, and the procedures for filling vacancies; Chapter 759 (1971) which increases the number of board members from five to seven; and Chapter 338 (1975) which increases the compensation for board of education members in Northampton County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on April 22, 1987; supplemental information was received on May 6 and June 11, 1987.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See Sections 51.41 and 51.43 of the Procedures for the Administration of Section 5 [52 Fed. Reg. 493 (1987)].

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

cc: Edwin M. Speas, Esq.
Special Deputy Attorney General

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:KIF:gmh
DJ 166-012-3
S0692-0697
S0700-0702

June 26, 1987

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 175 (1965) which increased the size of the school board from three to five members and provided for staggered, four-year terms; and Chapter 972 (1967), as amended by Chapter 1301 (1969), which provided for direct elections on an at-large, nonpartisan basis with a plurality vote requirement, the implementation schedule, the starting date for terms of office, and the method of filling vacancies for the board of education in Hertford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on April 27, 1987; supplemental information was received on May 6 and June 11, 1987.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See Sections 51.41 and 51.43 of the Procedures for the Administration of Section 5 [52 Fed. Reg. 496 (1987)].

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

cc: Edwin M. Speas, Jr., Esq.
Special Deputy Attorney General

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to adopt and repeal regulations cited as 1 NCAC 4A .0601 through .0603; .0701 through .0705; .0801 through .0806; and .0901.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 10:00 a.m. on August 14, 1987 at Policy and Planning Conference Room, Administration Building, Fifth Floor, 116 W. Jones Street, Raleigh, North Carolina 27603-8003.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Fran Tomlin, Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27603-8003, (919) 733-7232.

CHAPTER 4 - AUXILIARY SERVICES

**SUBCHAPTER 4A - STATE-OWNED
PARKING LOTS**

**SECTION .0600 - MISCELLANEOUS
PROVISIONS**

- .0601 REPORTING VIOLATIONS
(REPEALED)**
- .0602 ENFORCEMENT OF RULES
(REPEALED)**
- .0603 VISITOR PARKING (REPEALED)**

*Statutory Authority G. S. 143-340
(18) (19).*

SECTION .0700 - DEFINITIONS

- .0701 STATE PARKING COORDINATOR**
The person in state government who is charged with the responsibility for ensuring the application of the following rules and regulations.

*Statutory Authority G. S. 143-340
(18) (19).*

- .0702 DEPARTMENT PARKING
COORDINATOR**

The person in each department who is charged with the responsibility for ensuring the application of the following rules and regulations.

*Statutory Authority G. S. 143-340
(18) (19).*

.0703 SERVICE PERSONNEL

Any person who is an employee of the State of North Carolina and whose duties include repair, maintenance or installation of equipment necessary for the continued operation of state buildings or offices or any person who has a contractual arrangement with the state for the same. Such person remains on the premise only until such time as the requested services are completed.

*Statutory Authority G. S. 143-340
(18) (19).*

.0704 HONOREES

Any person who is to be specially recognized by the Governor of North Carolina with a mark, token, plaque or gesture of respect or distinction and requests the use of the state-owned parking lot immediately before, during and after the ceremony at which they are to be distinguished.

*Statutory Authority G. S. 143-340
(18) (19).*

.0705 VOLUNTEERS

An individual(s) who performs services for the State of North Carolina without remuneration and of his or her free will.

*Statutory Authority G. S. 143-340
(18) (19).*

**SECTION .0800 - STATE-OWNED
VISITOR PARKING LOTS
ADMITTANCE PROCEDURES**

**.0801 LOCATION AND HOURS OF
OPERATION**

State-owned visitor parking lots are located in the downtown area at 400 Salisbury Street and on the corner of Wilmington and Edenton Streets, Raleigh, North Carolina. The hours of operation are from 8:00 a.m. - 5:00 p.m. Monday through Friday.

*Statutory Authority G. S. 143-340
(18) (19).*

.0802 REASONABLE FEE CHARGE

Visitors seeking entrance to the Visitor Parking locations will be charged a reasonable fee. Persons exempt from payment of an entrance fee include but are not limited to volunteers with current identification cards, docents, pages, service personnel, appointees and honorees of the Governor.

Statutory Authority G. S. 143-340 (18) (19).

.0803 RESERVATION OF PARKING SPACES BY THE PUBLIC

Advance reservation of parking spaces by visitors are prohibited. Exception is extended to pre-school kindergarten children, honorees and appointees of the Governor of the state. Arrangements are to be made through the State Parking Coordinator prior to arrival.

Statutory Authority G. S. 143-340 (18) (19).

.0804 OFFICIAL PARKING SPACES

A specific number of parking spaces located in Visitor Parking are reserved for official use only. The Governor of the State of North Carolina or the Governor's designee has discretion in prescribing proper procedure for use of the reserved spaces by approved individuals.

Statutory Authority G. S. 143-340 (18) (19).

.0805 INFORMATION VERIFICATION

Certain situations require that additional information be placed on tickets issued to visitors seeking entrance into parking lots. The State Parking Coordinator reserves the right to inquire into the accuracy of information obtained for the purpose of monitoring the proper usage of the parking facilities.

Statutory Authority G. S. 143-340 (18) (19).

.0806 AUTHORIZED VEHICLES

State-owned visitor parking lots are for the admittance of passenger motor vehicles, pick-up trucks, vans, service vehicles and the like. Buses

will be refused entrance to the facilities.

Statutory Authority G. S. 143-340 (18) (19).

SECTION .0900 - PARKING VIOLATIONS

.0901 ENFORCEMENT OF RULES

(a) The State Parking Coordinator shall notify the state government security of parking violations occurring in Visitor Parking locations.

(b) Enforcement of these rules shall be the responsibility of state government security.

Statutory Authority G. S. 143-340 (18) (19).

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulation cited as 2 NCAC 9G .0101; 20B .0401.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 10:00 a.m. on September 16, 1987 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 9G - MILK AND MILK PRODUCTS

SECTION .0100 - PASTEURIZED MILK ORDINANCE

.0101 ADOPTION BY REFERENCE

The following are adopted by reference:

(1) "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," 37 Fed. Reg.

PROPOSED RULES

7046 (1972) as amended in 50 Fed. Reg. 34726 (1985). A farmstead shall be exempt from all mandatory milk testing except the mastitic milk test and the appearance and odor test. For the purposes of this Section, "farmstead" means a milk or milk product production facility that uses only milk from its own animals in its product production and has no other source of milk.

Statutory Authority G.S. 106-139; 106-267; 106-267.2.

CHAPTER 20 - THE NORTH CAROLINA STATE FAIR

SUBCHAPTER 20B - REGULATIONS OF THE STATE FAIR

SECTION .0400 - OPERATION OF STATE FAIR FACILITIES

.0401 AVAILABILITY

Use of buildings and grounds shall be subject to the approval of the Manager of the State Fair on the basis of the following:

- (2) not in conflict with activities arranged and conducted as a part of the program for year-round use of the State Fair grounds; and
- (3) use by a reputable organization, group, firm or individual accepting by execution of a written contract the rules and regulations and rental schedules herein prescribed;
- (4) manager may limit the booking of similar events when deemed by him to be in the best interest of State Fair; and
- (5) at the option of the manager, an event may have first refusal on the same corresponding date in a subsequent year.

Statutory Authority G.S. 106-503.

Notice is hereby given in accordance with G.S. 150B-12 that the Structural Pest Control Committee intends to amend regulation cited as 2 NCAC 34 .0313.

The proposed effective date of this action is January 1, 1988.

The public hearing will be conducted at 1:00 p.m. on September 11, 1987

at Auditorium I & II, Agricultural Extension Service, 700 N. Tryon Street, Charlotte, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Chairman of the Structural Pest Control Committee, P.O. Box 27647, Raleigh, North Carolina 27611.

CHAPTER 34 - STRUCTURAL PEST CONTROL DIVISION

SECTION .0300 - LICENSING AND CERTIFICATION

.0313 INFORMATION ON OPERATOR'S IDENTIFICATION CARDS

(c) A licensee applying for the issuance or renewal of an operator's identification card for his employee shall certify to the division that the employee has completed employee training approved by the committee in structural pest control work.

(d) In the event the committee approves employee training materials produced by the division, such materials shall be purchased by all structural pest control licensees at a cost determined by the committee.

Statutory Authority G.S. 106-65.29.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to adopt, amend and repeal regulations cited as 2 NCAC 38 .0604; .0701; 43H .0001; .0003; .0004; 43L .0301; .0302; .0303; .0304; .0305; 52B .0204; .0206; .0207; .0302; 52E .0209.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 10:00 a.m. on September 16, 1987 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North

Carolina Board of Agriculture, P.O.
Box 27647, Raleigh, NC 27611.

CHAPTER 38 - STANDARDS DIVISION

SECTION .0600 - SALE OF PETROLEUM
PRODUCTS

.0604 PRICE POSTING/CASH
DISCOUNTS FOR RETAIL
MOTOR FUEL SALES

(c) At those locations where the same dispenser is used for cash and credit card sales, the following shall apply:

(1) If the dispenser is ~~not capable of computing both cash and credit sales, the rate of cash discount or set at the cash price, the credit surcharge rate (either per gallon, percentage, or per gallon credit price)~~ shall be clearly and conspicuously displayed;

(2) If the dispenser is set at the credit price, the cash discount rate (either per gallon, percentage, or per gallon cash price) shall be clearly and conspicuously displayed;

(4) Any cash discount calculation shall be based upon the total sale or the actual quantity purchased.

Note: For subparagraph (c) (1) of this Rule, Public Law 97-25 requires that the dispenser be set at the credit card price.

Statutory Authority G.S. 81A-2; 81A-23.

SECTION .0700 - STANDARDS FOR
STORAGE: HANDLING AND
INSTALLATION OF LP GAS

.0701 ADOPTION BY REFERENCE

The following are adopted by reference as standards for storage, handling and installation of liquefied petroleum gas:

(1) National Fire Protection Association, Pamphlet No. 58, 1983 1986 edition, "Storage and Handling of Liquefied Petroleum Gases," with the following additions and exceptions:

(a) When two or more containers are manifolded to a single service, each container shall be considered independent of the other and all rules and regu-

lations relating to a single container shall apply;

(b) All cut-off valves and regulating equipment exposed to rain, sleet, or snow shall be protected against such elements either by design or by a hood;

(c) "Firm Foundation" as used in Chapter 3 of Pamphlet 58 means that the foundation material has a level top surface, rests on solid ground, is constructed of a masonry material or wood treated to prevent decay by moisture rot and will not settle, creen or deteriorate;

(d) No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air in spray guns or other pressure operated equipment; and

(e) Piping, tubing or regulators shall be considered well supported when they are rigidly fastened in their intended position.

(2) National Fire Protection Association, Pamphlet No. 54, 1980 1984 edition, "National Fuel Gas Code," with the addition that underground service piping shall rise above ground immediately before entering a building.

Copies of this Rule Pamphlet No. 54 and Pamphlet No. 58 are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by contacting the publisher at the following address: by contacting National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269.

Statutory Authority G.S. 119-55; 150B-14.

CHAPTER 43 - MARKETS

SUBCHAPTER 43II - MARKETING OF
SHELL EGGS

.0001 DEFINITIONS

(1) "Inedible Eggs" means black rots, yellow rots, white rots, mixed rots, (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring stage) and any eggs that are adulterated as such term is defined

pursuant to the Federal Food, Drug and Cosmetic Act.

(2) "Leaker" means eggs that have a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

(2) (3) "Loss Eggs" means eggs that are inedible, ~~smashed, or broken so that contents are leaking,~~ cooked, frozen, contaminated or containing bloody whites, blood spots, meat spots, or other foreign material. material.

Statutory Authority G.S. 106-245.16; 106-245.21.

.0003 STANDARDS FOR SHELL EGGS

(a) The United States Standards, Grades, and Weight Classes for Shell Eggs, Title 7, Part 56 (AMA 1946, 60 Stat. 1087; 7 U.S.C. 1621 et. seq.) 7 C.F.R. Sections 56.200 to 56.218 inclusive, effective October 1, 1981, (1987), shall apply to all shell eggs sold, offered for sale, or advertised for sale in the state except the term "ungraded eggs" may be used to designate eggs purchased from eligible persons.

(b) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use (except as an "institutional consumer"). Said sales shall be made only at the premises of production or processing.

(d) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet [except as permitted by 2 NCAC 43H .0001(3) and 2 NCAC 43H .0003(a)].

Statutory Authority G.S. 106-245.16; 106-245.21.

.0004 SANITATION AND MATERIALS

(a) The sanitation requirements of G.S. 106-245.22 shall be deemed to be met when facilities conform to the requirements of Title 7, Part 56 (AMA 1946, 60 Stat. 1087; 7 U.S.C. 1621 et. seq.) 7 C.F.R. Section 56.76 effective October 29, 1973, entitled Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs. (1987). Approved washing compounds and sanitizers shall be used

for egg washing except as provided in ~~General Statutes~~ G.S. 106-245.22.

Statutory Authority G.S. 106-245.16; 106-245.21; 106-245.22.

SUBCHAPTER 43L - MARKETS

SECTION .0300 - FEES: WESTERN NORTH CAROLINA HORSE AND LIVESTOCK FACILITY FEE SCHEDULE

.0301 HORSE FACILITY (Repealed)

.0302 LIVESTOCK FACILITY (Repealed)

Statutory Authority G.S. 106-22; 106-530.

.0303 CLASSIFICATION OF EVENT

For the purposes of applying equitable rental rates based on the purposes for which the facilities are used, an event shall be classified in one of the following categories by Western North Carolina Agricultural Center Manager:

- (1) Agricultural. Any event in which the central theme of the event relates to agriculture in North Carolina or any event given by an agriculture-related organization or group.
- (2) Non-Agricultural. Any event that does not fall within the classification of agricultural event.

Statutory Authority G.S. 106-22; 106-530.

.0304 HORSE FACILITY

(a) Fees for non-agricultural events are as follows:

- (1) Fees for use of the show arena are five hundred dollars (\$500.00) per show day or ten percent of the gate, whichever is greater, provided that for the show arena to be opened before 6:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of two hundred dollars (\$200.00).
- (2) Fees for use of the covered practice ring shall be two hundred dollars (\$200.00) per day; provided that it is used in conjunction with the show arena. The covered practice ring may be rented separately for three hundred dollars (\$300.00) per

- show day if a show is held within 120 days of the booking date.
- (3) The open practice ring shall be rented at the ground rental rate as set forth in .0305(d).
- (b) Fees for agricultural events are as follows:
- (1) Fees for use of the show arena are four hundred dollars (\$400.00) per show day or ten percent of the gate, whichever is greater; provided that for the show arena to be opened before 6:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of two hundred dollars (\$200.00). Rental of the show arena shall include the covered practice ring and the open practice ring.
 - (2) The covered practice ring may be rented separately for one hundred and fifty dollars (\$150.00) per show day if a show is held within 120 days of the booking date. Rental of the covered practice ring shall include the open practice ring.
 - (3) The covered practice ring may be rented separately for one hundred and fifty dollars (\$150.00) per show day if the show is held more than 120 days from the booking date; provided that a minimum of one thousand dollars (\$1,000) revenue is guaranteed to the Agricultural Center. Rental of the covered practice ring shall include the open practice ring.
 - (4) Fees for stalls are set according to the following schedule:

Days	Fees
(A) 1, 2	\$16.00;
(B) 3	\$24.00;
(C) 4	\$28.00; and
(D)	\$2.00 per additional day thereafter.
 - (5) Agricultural youth organizations may receive a 50 percent discount for stall rentals and a 25 percent discount on show arena rental when participation is restricted to youth. Educational clinics and seminars may receive a 50 percent discount on show arena rates when left in clean condition. The Agricultural Center Manager will decide what qualifies as educational clinics and seminars.
 - (6) A fee of fifty dollars (\$50.00) per day is required for use of the facility's jumps.
 - (7) A fee of ten dollars (\$10.00) per hour is required for use of the facility's motorized grounds equipment.
 - (8) Fees for use of the facility's office equipment, if available, is charged on an expense incurred basis.
 - (9) Fees for security and other support services at any event is charged on a cost plus ten percent basis. The need for security is to be determined by facility management in consultation with show management.
 - (10) A fee of eight dollars (\$8.00) per night is required for any camper parking overnight on facility grounds. Any horse trailer connected to a power outlet at the facility will be charged the same fee as a camper.
 - (11) Miscellaneous horse facility equipment is available according to the following fee schedule:
 - (A) metal livestock panels - two dollars (\$2.00) each per show;
 - (B) small livestock panels - one dollar (\$1.00) per panel or if installed, four dollars (\$4.00) per pen;
 - (C) center ring set-up - thirty-five dollars (\$35.00);
 - (D) removal of end gates - fifty dollars (\$50.00);
 - (E) farm wagon for staging - twenty-five dollars (\$25.00) each;
 - (F) chairs - thirty cents (\$0.30) each per day;
 - (G) tables - one dollar and fifty cents (\$1.50) each per day; and
 - (H) paper table coverings - thirty-five cents (\$0.35) each.
 - (12) A fee of twenty-five dollars (\$25.00) per concessionaire is required.
 - (13) A lessee must have prior approval of the Agricultural Center Manager before catering services will be allowed on the grounds. A fifty dollar (\$50.00) fee is charged for catering services that serve no more than

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200 plates. For each plate served in excess of 200 plates, a fee of thirty-five cents (\$0.35) per plate shall be charged.

- (14) The Agricultural Center Manager shall have the right to set a fair rental rate for any fees not mentioned.

Statutory Authority G.S. 106-22; 106-530.

.0305 LIVESTOCK FACILITY

(a) Fees for rental of the livestock facility are set according to the following schedule:

- (1) Non-agricultural groups shall be charged two hundred dollars (\$200.00) per day for use of the sales arena only or three hundred dollars (\$300.00) per day for the sales arena and barn;
 - (2) Agricultural youth groups shall be charged fifty dollars (\$50.00) per day for use of the sales arena only or one hundred dollars (\$100.00) per day for the sales arena and barn;
 - (3) Agricultural groups shall be charged one hundred dollars (\$100.00) per day for use of the sales arena only or two hundred dollars (\$200.00) per day for the sales arena and barn;
 - (4) Use of the facility's kitchen is set at thirty dollars (\$30.00) per day for agricultural groups;
 - (5) Use of the facility's kitchen is set at thirty dollars (\$30.00) per day or 30.5 percent of gross receipts after taxes, whichever is the greater, for non-agricultural groups.
- (b) Fees for the use of folding chairs, tables, livestock panels and paper table coverings shall be based on the fee schedule set forth in .0304(b)(11) of this Section.
- (c) A fifty dollar (\$50.00) charge for removing bedding or straw from the barn is required.
- (d) Fees for use of the Youth Building are set at twenty-five dollars (\$25.00) per day.
- (e) Ground rental shall be at the rate of five cents (\$0.05) per square yard or one hundred dollars (\$100.00) per day whichever is greater.
- (f) Ticketed event charges shall be at the daily rate of the facility or ten

percent of gate receipts, whichever is greater.

(g) Food catering fees shall be provided at the rate set forth in .0304(b)(13) of this Section.

Statutory Authority G.S. 106-22; 106-530.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

.0204 IMPORTATION REQUIREMENTS: BRUCELLOSIS

(b) In addition to the requirements of (a) of this Rule, cattle imported from brucellosis-free and class-A states shall comply with the following:

- (2) All test eligible cattle shall

Cattle from Free states which originate from the farm of origin and move directly to an approved stock-yard or farm in North Carolina in compliance with this part are not required to be tested within 45 to 120 days after entry. However, the State Veterinarian strongly recommends a retest and retests may be performed by a representative of the State Veterinarian at no expense to the owner. Eligible cattle which have been commingled in a stockyard prior to importation must in addition to the requirements of this part pass a negative retest within 45 to 120 days after arrival in this State.

(d) In addition to the requirements of (a) of this Rule, cattle imported from a class C state shall comply with the following:

- (3) All test eligible cattle shall

be quarantined upon arrival and shall pass a negative retest within 45 to 120 days after arrival and all female cattle which are imported from a "C" state shall remain under quarantine until tested negative 20 to 45 days post calving or slaughtered.

- (4) Feeder heifers must also be spayed and "spayed branded" or be "F" branded. Feeder heifers are subject to item (3) of this Paragraph.

Statutory Authority G.S. 106-22; 106-307.5; 106-396.

.0206 IMPORTATION REQUIREMENTS: EQUINE

(a) Horses, ponies, mules, asses, zebras, and all other equine species may be imported into the state when accompanied by an official health certificate giving an accurate description of them and certifying that as determined by a physical examination they are free from any evidence of an infectious or transmissible disease and have not been exposed recently to any ~~infectious~~ infectious or transmissible disease, and attesting that ~~they have~~ any animal over nine months of age has passed a negative official test for equine infectious anemia within six 12 months prior to entry, provided that stallions imported into North Carolina from any country where contagious equine metritis (CEM) is recognized by the U.S. Department of Agriculture to exist must also comply with requirements of Paragraph (e) of this Rule. Horses, ponies, mules and asses which originate in a state bordering Mexico must in addition to the foregoing requirements be accompanied by suitable evidence of vaccination against Venezuelan equine encephalomyelitis within the past 18 months unless this requirement is waived by the State Veterinarian of North Carolina. The EIA test form shall list one horse only.

(b) No health certificate will be required for horses, ponies, mules and asses which are consigned to a race track or entering the state temporarily for the purpose of exhibition, provided such animals are accompanied by certificates verifying a negative test for equine infectious anemia ~~and vaccination against Venezuelan equine encephalomyelitis as required under Paragraph (a) of this Rule, within 12 months prior to entry.~~

Statutory Authority G.S. 106-307.5; 106-405.17.

.0207 IMPORTATION REQUIREMENTS: SWINE

(b) Breeding swine shall originate from a "Validated Brucellosis-Free"

herd or a "Validated Brucellosis-Free" State and pass a negative official blood test for pseudorabies within 30 days prior to entry into the state or originate from a "Qualified Pseudorabies-Free" herd as defined in Title 9, Parts 78.1 and 85 of the Code of Federal Regulations. A permit issued by the State Veterinarian of North Carolina is required for all breeding swine entering the state. The permit number must be shown on the interstate health certificate accompanying each shipment. All swine imported into the state, except for immediate slaughter, shall be accompanied by a statement from a state, federal or accredited veterinarian that the swine were tested and found negative for pseudorabies within 30 days prior to importation or the swine originated from either a qualified feeder pig herd or a qualified pseudorabies negative herd and that no pseudorabies vaccine has been used in the herd of origin. For qualified feeder pig herd pseudorabies testing purposes, the following guidelines apply:

- (1) In herds of ten or fewer animals, all animals must test negative within 12 months prior to importation.
- (2) In herds of 11 to 35 animals, ten randomly selected animals must test negative within 12 months prior to importation.
- (3) In herds over 36 animals, either 30 or 30 percent of the total herd, whichever is less, randomly selected animals must test negative within 12 months prior to importation.
- (4) All animals in a herd shall be subject to random selection.

Any animal shipped or moved within the state in violation of this regulation shall be subject to quarantine.

Statutory Authority G.S. 106-317.

SECTION .0300 - BRUCELLOSIS REGULATIONS

.0302 BRUCELLOSIS REQUIREMENTS FOR SALE OF CATTLE AND SWINE

(a) All cattle offered for public sale must be tested and test negative for brucellosis within 30 days preceding

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the date of sale except those cattle listed as follows:

- (2) native heifers and bulls less than ~~eight~~ 18 months of age;

Statutory Authority G.S. 106-389; 106-396.

SUBCHAPTER 52E - MARKETING OF LIVESTOCK

SECTION .0200 - PUBLIC LIVESTOCK MARKET REGULATIONS

.0209 CERTIFICATES: CATTLE AND SWINE REMOVED FOR NON-SLAUGHTER

(a) No cattle except those for immediate slaughter shall be removed from a public livestock market unless they are accompanied by a certificate issued by an approved veterinarian or an employee of the veterinary division of the North Carolina Department of Agriculture or Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture. The certificate shall show that such animals are apparently healthy and come directly from a certified brucellosis-free herd or that eligible cattle listed have passed an approved test for brucellosis within 30 days prior to sale. (Steers, spayed heifers, and ~~calves~~ native cattle under eight 18 months of age are exempt from this requirement.) Every animal shall be identified by an approved numbered ear tag or tattoo or by other means approved by the State Veterinarian. No brucellosis test will be required on official brucellosis vaccinates less than 20 months of age of the dairy breeds and less than 24 months of age of the beef breeds, provided that all parturient or post parturient cattle regardless of age shall be tested for brucellosis. Official calfhood vaccinates must be identified by ear tag, tattoo and/or official vaccination certificate. At the discretion of the Commissioner of Agriculture, the required test age for cattle may be raised to two years.

Statutory Authority G.S. 106-416.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Facility Services intends to adopt regulations cited as 10 NCAC 3G. 3301- .3342.

The proposed effective date of this action is November 1, 1987.

The public hearing will be conducted at 7:00 p.m. on August 19, 1987 - Owen Conference Center, UNC-Asheville, 1 University Heights, Asheville, NC; August 20, 1987 - New Guilford County Courthouse, Courtroom 2-A, Greensboro, NC; August 20, 1987 - Mecklenburg County Dept of Environmental Health, 1200 Blythe Blvd., Charlotte, NC; August 21, 1987 - New Hanover County, Judicial Bldg. Courtroom No. 317, 4th and Princess St., Wilmington, NC; August 21, 1987 - NC Division of Facility Services, Hearing Room 201, 701 Barbour Dr., Raleigh, NC.

Comment Procedures: Comments should be addressed to: Dayne H. Brown, Chief, Radiation Protection Section, 701 Barbour Drive, Raleigh, NC 27603-2008, (919) 733-4283. Record open from July 15 through August 15, 1987.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3G - RADIATION PROTECTION

SECTION .3300 - LAND DISPOSAL OF RADIOACTIVE WASTE

.3301 PURPOSE AND SCOPE

(a) This Section establishes the procedures, criteria, and terms and conditions upon which the agency issues licenses authorizing land disposal of low-level radioactive waste received from other persons for disposal. Disposal of low-level radioactive waste by an individual specific licensee is subject to the provisions of Rule .2516 of this Subchapter.

(b) The Rules in this Section do not apply to the disposal of:

- (1) low-level radioactive waste which is higher than class C waste as defined in Rule .2525 of this Subchapter;
- (2) byproduct material as defined in Section 11c.(2) of the Atomic Energy Act of 1954, as

amended, in quantities greater than 10,000 kilograms and containing more than five millicuries of radium-226; or

- (3) licensed radioactive material pursuant to provisions of Rule .2516 of this Subchapter.

(c) This Section is designed to fulfill two objectives: (1) to meet the requirement of compatibility with the U.S. Nuclear Regulatory commission regulations, and (2) to provide general guidance for the design, operation, closure and institutional control of a low-level radioactive waste disposal facility that has features to enhance its performance and provide additional confidence in its integrity. As described in 10 CFR Part 61, Section 61.7 Concepts, land disposal is intended to further four safety objectives: (1) protection of the public from releases of radioactivity, (2) protection of an inadvertent intruder, (3) protection of workers at the facility, and (4) assurance of long-term stability after closure. There is every indication in research reports and environmental impact statements that land disposal with attention to site selection, waste classification, waste form, segregation and stability will limit radiation doses to those within the cited performance objectives of 10 CFR Part 61. Supplementary engineered barriers are included in the regulations for North Carolina, however, to fulfill a further objective, viz., (5) protection against the possibility of unforeseen differences between expected and actual behavior of the disposal system. The five goals are to be sought through the design, construction, and operation of a system that involves a carefully-chosen combination of features that are described in existing regulations plus additional requirements for engineered barriers. The total system will make use of selected processes and structures, such as compaction, solidification, packaging in high-integrity containers, placement of wastes, use of concrete for walls or fill, special trench covers, drainage systems, or other devices. The facility design objectives are to minimize contact of water with wastes, facilitate detection of water and contam-

ination, retard release of radioactive materials, suppress the migration of wastes in the geologic medium, and accommodate timely recovery of wastes if necessary. Account is to be taken of radiation dose limits for facility workers and the public, and efforts are to be made to reduce costs without sacrificing safety. The concept of "reasonable assurance" is used throughout this Section. Reasonable assurance is to be understood as placing primary emphasis on protection of public health and the environment. The cost of achieving reasonable assurance will be only a secondary consideration.

(d) persons licensed pursuant to the provisions of this Section are also subject to the Rules in Sections .2200, .2400, .2500, .3100 and .3200 of this Subchapter, except as provided otherwise in this Section.

Statutory Authority G.S. 104E-2; 104E-3; 104E-7; 104E-10; 104E-10.1; 104E-10.2.

.3302 DEFINITIONS

As used in this Section, the following definitions shall apply.

- (1) "Active maintenance" means any significant remedial activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Rules .3323 and .3324 of this Section are met. Such active maintenance includes ongoing activities such as the pumping and treatment of water from a disposal unit or one-time measures such as replacement of a disposal unit cover. Active maintenance does not include custodial activities such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.
- (2) "Buffer zone" is a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.
- (3) "Chelating agent" means

- amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxycarboxylic acids, and polycarboxylic acids (e.g., citric acid, carboic acid, and gluconic acid).
- (4) "Commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.
 - (5) "Custodial agency" means a government agency designated to act on behalf of the government owner of the disposal site.
 - (6) "Disposal" means the isolation of waste from the biospheres inhabited by man and his food chains by emplacement in a land disposal facility.
 - (7) "Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.
 - (8) "Disposal system" means the components relied on to ensure that the land disposal facility meets the performance objectives and other requirements of this Section. These components include the site and its characteristics, the facility and disposal unit design, and engineered barriers therein, the waste, facility operations and closure, intruder barriers and institutional control.
 - (9) "Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit is usually a trench.
 - (10) "Engineered barrier" means a man-made structure or device that is designed to improve the land disposal facility's ability to meet the performance objectives in this Section.
 - (11) "Explosive material" means any chemical compound, mixture, or device, which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.
 - (12) "Government agency" means any executive department, commission, independent establishment, or corporation, wholly or partly owned by the United States of America or the State of North Carolina and which is an instrumentality of the United States or the State of North Carolina; or any board, bureau, department, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.
 - (13) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 CFR Part 261.
 - (14) "Hydrogeologic unit" means any soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of groundwater.
 - (15) "Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, or other pursuits in which the person might be unknowingly exposed to radiation from the waste.
 - (16) "Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in this Section, or engineered structures that provide equivalent protection to the inadvertent intruder.
 - (17) "Institutional control" means control of the site after the site is closed and stabilized and responsibility for all disposed waste and site maintenance is assumed by the custodial agency.
 - (18) "Land disposal facility"

- means the land, buildings, and equipment which are intended to be used for the disposal of wastes.
- (19) "Low-level radioactive waste", for purpose of this definition, except as noted in Subparagraph (19) (c) of this Rule, has the same meaning as in the Low-Level Radioactive Waste Policy Amendments Act, P.L. 99-240, that is
- (a) radioactive material not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended (uranium or thorium tailings and waste);
 - (b) classified as low-level radioactive waste, consistent with existing law and in accordance with Sec.2.(9)(A) of P.L. 99-240, by the U.S. Nuclear Regulatory Commission; and
 - (c) naturally occurring and accelerator produced radioactive material which is not subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended.
- (20) "Mixed waste" means waste that satisfies the definition of low-level radioactive waste Subparagraph (19) of this Rule and contains hazardous waste that either
- (a) is listed as a hazardous waste in Subpart D of 40 CFR Part 261 or
 - (b) causes the low-level radioactive waste to exhibit any of the hazardous waste characteristics identified in Subpart C of 40 CFR Part 261.
- (21) "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.
- (22) "Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.
- (23) "Reconnaissance level information" is any information or analysis that can be retrieved or generated without the performance of new comprehensive site-specific investigations. Reconnaissance level information includes but is not limited to drilling records required by state agencies, such as the Department of Natural Resources and Community Development, and other relevant published scientific literature.
- (24) "Retrieval" means a remedial action for removal of Class B and C waste from a disposal unit.
- (25) "Shallow land burial" means below ground interment of low-level radioactive waste at depths typically up to 16 meters and in a manner which relies predominately upon hydrogeological characteristics of the burial site, along with properties of soil and natural trench liners or caps, for limiting future infiltration of water and migration or release of radioactive material.
- (26) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.
- (27) "State" means the State of North Carolina.
- (28) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.
- (29) "Waste" means low-level radioactive waste that is acceptable for disposal in a land disposal facility. For the purpose of this Subchapter, the words "waste" and "low-level radioactive waste" have the same meaning.

Statutory Authority G.S. 104E-7; 104E-10.

.3303 LICENSE REQUIRED

- (a) No person may receive, possess, and dispose of waste from other persons at a land disposal facility unless authorized by a license issued by the

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agency pursuant to the Rules in this Section and the Rules in Section .2400 of this Subchapter.

(b) Each person shall file an application with the agency pursuant to Rule .2417 of this Subchapter and obtain a license as provided in this Section before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license.

Statutory Authority G.S. 104E-7; 104E-10(b).

.3304 CONTENT OF APPLICATION

An application for a license to receive waste from other persons and possess and dispose of wastes containing or contaminated with radioactive material by land disposal shall consist of general information, specific technical information, environmental information, technical and environmental analyses, institutional information, and financial information as set forth in Rules .3305 through .3310 of this Section.

Statutory Authority G.S. 104E-7; 104E-10(b).

.3305 GENERAL INFORMATION

(a) The general information shall include each of the following:

- (1) identity of the applicant including:
 - (A) the full name, address, telephone number, and description of the business or occupation of the applicant;
 - (B) if the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;
 - (C) if the applicant is a corporation or an unincorporated association,
 - (i) the state where it is incorporated or organized and the principal location where it does business, and
 - (ii) the names and addresses of its directors and principal officers;
 - (D) if the applicant is acting as an agent or representative of another person in filing the application, all information

required under this paragraph shall be supplied with respect to the other person; and

- (E) if the applicant proposes to contract the operation of the disposal facility to another person, the full name, address, and telephone number of the management contractor, the full name and address of each applicable principal, partner, or director of the contractor, the state where it is organized, and the principal location where it does business;
- (2) qualifications of the applicant:
 - (A) the applicable organizational structure of the applicant, both off site and on site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;
 - (B) the technical qualifications, including training, experience, and professional licensure, registration or certification of the applicant and members of the applicant's staff to engage in the proposed activities, to include the minimum training, experience, and professional licensure, registration or certification requirements for personnel filling key positions described in Subparagraph (2) (a) of this Rule;
 - (C) a description of the applicant's personnel training program;
 - (D) the plan to maintain an adequate complement of trained personnel on site to carry out waste receipt, handling, and disposal operations in a safe manner;
 - (E) prior experience in the generation, processing, use, transportation or disposal of radioactive material or in the treatment, storage, transportation or disposal of hazardous waste including copies of all notices of violations; assessments of any administrative, civil, criminal or other penalties in connection therewith;

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- and all information as to any find or determination that the applicant engaged in any of the above mentioned activities without having in effect any license or permit required for such activity;
- (F) disclosure of any prior determination of civil or criminal liability with respect to any other federal or state law or regulation, including but not limited to any law or regulation governing the transfer of securities, which may reflect on the applicant's character, reputation or ability to comply with all requirements imposed on a licensee; and
 - (G) upon request by the agency, a copy of any application which the applicant may previously have submitted for any license or permit required for any activity listed in Subparagraph (a)(2)(E) of this Rule; information as to the disposition of such application including a copy of the license or permit, information as to any restriction, suspension, revocation or cancellation of any such license or permit; and any other information which may be requested by the agency as to the applicant's experience and operating practices with respect to the activities listed in Subparagraph (a)(2)(E) of this Rule;
- (3) a description of:
 - (A) the location of the proposed disposal site;
 - (B) the general character of the proposed activities;
 - (C) the types and quantities of waste to be received, possessed, and disposed of;
 - (D) plans for use of land disposal facility for purposes other than disposal of wastes during operation, after closure or both;
 - (E) the proposed facilities and equipment;
 - (F) the proposed manifest and recording system;
 - (G) the treatment of any waste to be shipped off site;
 - (H) anticipated operating life of the facility; and
 - (I) the preclicensing and operational public information program which addresses
 - (i) state and local government;
 - (ii) media and public;
 - (iii) acceptability within the community where the facility is to be located or steps which should be taken, if community acceptance is not forthcoming; and
 - (iv) the program being implemented to ensure concerns of the public are being met; and
 - (4) proposed time schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.
- (b) The following are additional requirements applicable to the information required in Subparagraphs (a)(2)(E) through (G) of this Rule:
 - (1) All information will be provided by the applicant with respect to the applicant itself, any predecessor or parent entity, any officer, director, partner or other principal of the applicant; any stockholder or other entity holding five percent or more of the stock of, or other interest in, the applicant; and any subsidiary or other entity in which the applicant has an interest.
 - (2) All information will be provided for a period of not less than 20 years or as may be determined by the agency with respect to a particular applicant or class of information.
 - (3) With the approval of the agency, the applicant may submit any of the information, except as to the disposal of low-level radioactive waste, in summary form; provided that any summary must fairly and accurately reflect the applicant's experience and operating practices and must indicate the nature and extent of all violations of law and applicable regulations.
 - (4) the agency may request that

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the applicant provide any supplemental information needed to effect the purpose of Subparagraph (a)(2)(E) through (G) of this Rule. All such supplementary information provided by or on behalf of the applicant will become a part of the application.

Statutory Authority G.S. 104E-7; 104E-10(b); 104E-10.1.

.3306 SPECIFIC TECHNICAL INFORMATION

(a) The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this Section will be met:

- (1) a description of the principal design criteria and their relationship to the performance objectives, along with identification of operating facilities of the same or similar design;
- (2) a description of the design basis natural events or phenomena and their relationship to the principal design criteria;
- (3) a description of codes and standards which the applicant has applied to the design and which will apply to construction of the land disposal facility;
- (4) a description of the design features of the land disposal facility, the disposal units and engineered barriers, to include those design features related to
 - (A) infiltration of water;
 - (B) leachate collection and removal;
 - (C) integrity of covers for disposal units, structural stability of backfill, engineered barriers, and wastes;
 - (D) contact of wastes with standing water and groundwater;
 - (E) disposal site drainage;
 - (F) disposal site closure and stabilization;
 - (G) minimization of long-term disposal site maintenance, inadvertent intrusion, occupational exposures, and disposal site monitoring;
 - (H) adequacy of the size of

the buffer zone for monitoring and potential mitigative measures; and

- (I) retrieval;
- (5) a description of the construction and operation of the land disposal facility, to include, as a minimum:
 - (A) the methods of construction of disposal units and engineered barriers;
 - (B) waste emplacement;
 - (C) the procedures for and areas of waste segregation;
 - (D) accurate drawings and descriptions of on-site buildings including, but not limited to, construction, foundation details, ventilation, plumbing and fire suppression systems, and proximity to creeks or culverts;
 - (E) types of intruder barriers;
 - (F) on-site traffic and drainage systems;
 - (G) physical security system;
 - (H) survey control program;
 - (I) methods and areas of waste storage;
 - (J) facilities for and methods of processing waste including improperly packaged shipments;
 - (K) methods to control surface water and groundwater access to the wastes;
 - (L) the description shall also include the methods to be employed in the handling and disposal of wastes containing chelating agents or other nonradiological substances that might affect the meeting of the performance objectives of this Section; and
 - (M) a flow diagram of waste processing and disposal operations, a description and accurate drawings of processing equipment, and any special handling techniques to be employed;
- (6) a description of the types, chemical and physical forms, quantities, classification, and specifications of the radioactive material proposed to be received, possessed, processed, and disposed of at the land disposal facility, which shall include:

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- (A) estimated volume and activity of each waste class to be received annually at the facility, and
- (B) method for control of the rate at which waste is received;
- (7) a description of the quality control program, including audits and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and during the receipt, handling, and emplacement of waste;
- (8) a description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Rule .3323 of this Section and occupational radiation exposure to ensure compliance with the requirements of Section .2500 of this Subchapter and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site; which description shall address
 - (A) both routine operations and accidents; and
 - (B) procedures, instrumentation, facilities, and equipment;
- (9) an emergency response plan which addresses:
 - (A) on-site response;
 - (B) public alert and notification systems;
 - (C) local, county, state and regional agencies;
 - (D) training and public information; and
 - (E) if available, copies of most current emergency response plans submitted to the U.S. Nuclear Regulatory Commission or an agreement state;
- (10) an operating and emergency procedures manual;
- (11) a description of the administrative procedures that the applicant will apply to control activities at the land disposal facility including hours of proposed operation;
- (12) a description of the radiation protection program including provisions for keeping radiation doses to workers and to members of the public as low as reasonably achievable (ALARA) and within applicable limits specified in this Subchapter.
- (13) a description of the natural disposal site characteristics as determined by disposal site selection and characterization activities where the description must include geologic, geotechnical, hydrologic, meteorologic, climatologic, air quality, natural radiation background and biotic features of the disposal site and vicinity; where the site characterization shall include sufficient and suitable data for design and performance analysis; and where the minimum requirements include, but are not limited to, the following:
 - (A) geologic description to include
 - (i) regional geologic framework including stratigraphy, tectonics, structure, physiography, seismology and geomorphology;
 - (ii) site specific stratigraphy, lithology, structural geology, geochemistry, topography, and an analysis of landforms including any evidence of destructive geomorphic processes;
 - (iii) a regional geologic map at a scale of 1:62,500;
 - (iv) a site specific topographic map at a scale of 1:1,200; and
 - (v) a site specific geologic map at a scale of 1:1,200 with accompanying cross-sections;
 - (B) geotechnical description to include
 - (i) soil and saprolite characteristics related to slope stability, cover integrity, erosion, compaction characteristics for backfill materials, foundation analyses, gradations for pro-

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- posed filter material, and possible interactions between the soils and waste containers; and
- (ii) bedrock characteristics related to foundation analyses and hydrology;
- (C) hydrologic description to include
 - (i) surface water hydrology including the upstream drainage area contributing flow across the site and the downstream drainage area to a distance of approximately ten miles;
 - (ii) an inventory of existing surface water users and public water supplies within approximately ten miles downstream of the site;
 - (iii) an inventory of potential surface water impoundments that will be precluded by siting of a disposal facility;
 - (iv) an inventory and description of all significant hydrologic units underlying the site to a depth of 100 feet below the level of waste disposal;
 - (v) site specific data sufficient to describe the characteristics, present water quality, occurrence and movement of water in both the unsaturated and saturated zones;
 - (vi) an inventory of existing groundwater users within approximately two miles of the site, both from groundwater wells and a points of groundwater discharge, e.g. springs;
 - (vii) identification of the nearest downgradient groundwater users and the nearest municipal supply relying on groundwater; and
 - (viii) an inventory of potential groundwater supplies that will be precluded by siting of a disposal facility;
- (D) meteorologic description to include
 - (i) determination of a water budget for the disposal site;
 - (ii) typical weather patterns and
 - (iii) determination of the frequency, probability, and potential consequences of severe meteorological phenomena;
- (E) climatologic description to include
 - (i) normal seasonal fluctuations and extremes predicated from historical records;
 - (ii) air temperatures and soil temperatures;
 - (iii) frost penetration; and
 - (iv) solar radiation;
- (F) air quality description to include
 - (i) measurement of suspended particulates; and
 - (ii) the level of airborne radionuclides contributed by atmospheric fallout, natural radiation released from the soil, and agricultural activities;
- (G) natural radiation background description to include
 - (i) sampling of air, soil (both on and off site), water (both on and off site), flora, fauna, and farm products (including grains and milk); and
 - (ii) both total background and contribution from individual radionuclides; and
- (H) biotic description to include
 - (i) an accurate, site-specific inventory of flora and fauna in and within three miles of the site;
 - (ii) inventory and distribution of livestock and crops within three miles of the site;
- (14) an identification of the known natural resources at the disposal site, whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control;
- (15) a description of

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- baseline, operational, and long term-environmental monitoring programs to include:
- (A) inspection and monitoring of waste packages prior to disposal;
 - (B) criteria and procedures to stop acceptance of waste at the facility, including action levels; and
 - (C) if available, a copy of the last environmental monitoring reports filed with the U. S. Nuclear Regulatory Commission or agreement state program or other authorities; and
- (16) decontamination, decommissioning and site closure plans, including:
- (A) those design features which are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance;
 - (B) schedule;
 - (C) procedure, including documentation that procedure is effective; and
 - (D) radioactive waste disposal plan; and
- (17) a description of an action plan which would be implemented in the event of unforeseen differences between expected and actual behavior of the disposal system and which includes:
- (A) a description of conditions which require remedial action, such as:
 - (i) erosion and other damage to the stability of the site;
 - (ii) failure of physical security features, equipment or procedures;
 - (iii) deterioration of trench or disposal unit covers;
 - (iv) deterioration of leachate collection system;
 - (v) clogging or siltation of monitoring and observation wells;
 - (vi) the presence of leachate in individual disposal units;
 - (vii) the migration of disposed radioactive material;
 - (viii) fires, spills or other events which result in contamination;
 - (ix) changes in site characteristics or other events which cause or threaten to cause failure of the facility to meet the performance objectives in this Section;
 - (x) specific action levels, events or other conditions for which the licensee will institute specific remedial actions; and
 - (xi) presence of radioactive concentrations in groundwater above preoperationally determined background;
 - (B) provisions for early identification of conditions requiring remedial action, such as:
 - (i) detection of water in any disposal unit;
 - (ii) detection of radioactive contamination in ground water with sufficient sampling locations and frequencies to permit identification of the disposal unit(s) causing the contamination;
 - (iii) establishment of specific sampling locations, sampling frequencies and sample types as part of the licensee's environmental monitoring program;
 - (iv) methods and frequencies for detection of water or leachate in disposal units or trenches;
 - (v) any methods and associated frequencies for inspecting, testing, maintaining or otherwise assessing the condition and performance of disposal units, trenches and covers;
 - (vi) method and frequency for monitoring condition and physical stability of the site;
 - (vii) any special monitoring, inspection or testing which the licensee will institute in response to specific natural or man-made occurrences which may affect the ability

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- of the facility to meet the performance objective of this Section; and
- (viii) any periodic or ongoing evaluation of site characteristics or changes in site characteristics which relate to the ability of the facility to meet the performance objectives of this Section;
- (C) a description of the corrective measures that will be taken to correct the condition and otherwise assure compliance with the performance objectives and technical requirements of this Section, such as:
 - (i) continued vigilance;
 - (ii) water and leachate detention;
 - (iii) pumping or repair of the disposal unit;
 - (iv) procedures for timely repair or waste retrieval after problem detection;
 - (v) redesign of disposal units;
 - (vi) repair or redesign of engineered barriers;
 - (vii) revision of site operating procedures, site personnel training, waste segregation practices, and monitoring and testing programs;
 - (viii) revision of disposal methodology and
 - (ix) revision of site waste acceptability criteria; and
- (D) identification of facility features which facilitate remedial actions, such as:
 - (i) design of disposal units and engineered barriers which allows access for remedial action; and
 - (ii) other features necessary to implement the action plan.
- (b) Prior to implementation of detailed site investigations, the applicant (or siting agency) shall develop a site characterization plan and submit it for approval by the agency to ensure that:
 - (1) all available data on the site is obtained;
 - (2) unnecessary laboratory

- and field investigations are not done;
- (3) required or desired data is obtained;
- (4) a proper sequencing and timely acquisition of the required or desired data is planned and executed;
- (5) site survey data stations will be designed and located, insofar as feasible, so as to serve as planned permanent monitoring stations as necessary; and
- (6) technical and administrative coordination of laboratory and field efforts is planned and executed.
- (c) As site characterization proceeds, the applicant (or siting agency) and the agency shall together review the site characterization results and the site characterization plan at least once every 90 days to ensure that the plan is still valid. The site characterization plan shall be modified as required by the agency.
- (d) Time-variant site characteristics that require site-specific measurements shall be measure at such frequency and duration so as to adequately define the seasonal range of the values. The minimum period of measurement shall be one year and shall be supplemented, where possible with regional data covering a longer time period.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-10(b).

.3307 ENVIRONMENTAL INFORMATION

A license application for land disposal of waste shall include site specific environmental information (or reconnaissance level information when appropriate) which addresses and quantifies to the extent practicable, but is not limited to, the following:

- (1) statement of need and a description of the proposed activities identifying the location of the proposed site, the character of the proposed activities, and any plans for use of the facility for purposes other than processing and disposal of waste;
- (2) area and site characteristics including:

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- (a) historical and cultural landmarks, state and national parks, wilderness and wilderness study areas, archaeology, and demography;
- (b) all buildings to a three mile radius;
- (c) existing and projected populations and land use in the general area to a ten mile radius;
- (d) nearby drinking water supply watersheds, groundwater recharge areas, flood plains, wetland areas and other natural resources such as endangered species habitats, proximity to parks, forests, wilderness areas and historical sites, and air quality; and
- (e) proximity to other low-level radioactive waste or hazardous waste facilities;
- (3) any irreversible or irretrievable commitments of natural resources which would be involved should the area be developed as a disposal site;
- (4) to the extent performed by the applicant, site selection process, including considerations of alternative sites and the interrelationships between location of waste generators, transportation costs and means, site characteristics, and compatibility with current land uses;
- (5) to the extent performed or selected by the applicant, project alternatives, including a discussion of the alternatives considered by the applicant for processing and disposal of waste;
- (6) radiological and nonradiological impacts of the proposed action, including:
 - (a) surface and groundwater impacts;
 - (b) socioeconomic impacts;
 - (c) short- and long-term impacts on public health and safety;
 - (d) impacts resulting from irreversible or irretrievable commitments of resources; and
 - (e) aesthetic factors such as the visibility, appearance and noise level of the facility;
- (7) transportation routes, route safety, method of transportation, and environmental effects of postulated operational and transportation accidents to include:
 - (a) identification of accident modes with complete failure modes and effects analysis;
 - (b) all credible accidents and projected off-site impacts, including those occurring in transportation of the waste to or from the facility; and
 - (c) mitigation of accidents and protection of the public;
- (8) a list of all governmental permits, licenses, approvals, and other entitlements obtained or which must be obtained in connection with the proposed action along with the current status of applications for and issuance of such permits, licenses, approvals, and other entitlements;
- (9) a description of the maximum projected quantity and concentration of each radionuclide and toxic or hazardous constituent of the waste released annually to the air, to the water and to the soil;
- (10) a description of the maximum projected radiation doses to off-site populations; and
- (11) a description of the maximum projected off-site radionuclide concentrations in air, soil, water and food.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-10(b); 104E-15.

.3308 TECHNICAL AND ENVIRONMENTAL ANALYSES

The specific technical and environmental information shall also include the following analyses needed to demonstrate that the performance objectives of this Section will be met:

- (1) pathways analyzed in demonstrating protection of the general population from releases of radioactivity shall include air, soil, groundwater, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall:
 - (a) clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes; and
 - (b) clearly demonstrate that there

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is reasonable assurance that the potential exposures to humans from the release of radioactivity will not exceed the limits set forth in Rule .3323 of this Section.

- (2) Analyses of the protection of individuals from inadvertent intrusion shall include demonstration that there is reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.
- (3) Analyses of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analyses shall provide reasonable assurance that exposures will be controlled to meet the requirements of Section .2500 of this Subchapter.
- (4) Analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after closure shall be based upon analyses of active natural processes such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal units and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-10(b).

.3309 INSTITUTIONAL INFORMATION

The institutional information shall include:

- (1) a certification by the state or federal government which owns the disposal site that the state or federal government is prepared to accept transfer of the license when the provisions of Rule .3320 of this Section are met, and will assume responsibility for custodial care after site closure and postclosure observation and maintenance;

- (2) evidence that arrangements have been made for assumption of ownership in fee by the state or federal government before the agency issues a license where the proposed disposal site is on land not owned by the state or federal government;
- (3) a description of the ownership of the land and fixtures that are part of the proposed disposal site; which description must include a plat plan describing the site and identifying the ownership of the surface and subsurface estates included, and, where portions of the site have been leased or will be leased to others, the terms of the lease agreement; and
- (4) a description of the contractual terms and conditions of any agreement for the management or operation of the proposed disposal site.

Statutory Authority G.S. 104E-6.1; 104E-7; 104E-10(b); 104E-10.2.

.3310 FINANCIAL INFORMATION

(a) The financial information shall be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements of this Section. In addition to information required in Rule .3305 of this Subchapter, the applicant shall provide the following financial information:

- (1) financial organization of the company;
- (2) a list of all subsidiary companies and their locations;
- (3) audited financial statements for the most recent calendar or fiscal year;
- (4) interim statements, if it has been six months or more since the end of the reporting year;
- (5) a detailed schedule of liability insurance coverage applicable to low-level radioactive waste, listing:
 - (A) each insurance company's name;
 - (B) amount of coverage;
 - (C) any limitations on coverage;
 - (D) duration of insurance

- policies; and
- (E) whether the company is licensed by the North Carolina Insurance Commissioner;
- (6) status and nature of any outstanding civil action to which the applicant is a party, and of any administrative or criminal proceeding against the applicant; and the same information with respect to any business entity which holds an interest of five percent or more in the applicant, or in which the applicant holds any interest; subject to the following provisions:
- (A) upon request by the agency, the information required by this Subparagraph shall include a copy of any document which is a part of public record in any such action or proceeding;
- (B) with the approval of the agency, the applicant may submit any of the information required by this Subparagraph in summary form, provided that any summary must fairly and accurately reflect the scope and content of such information;
- (C) with the approval of the agency, the applicant may exclude information which would otherwise be required by this Subparagraph provided that the applicant identifies the types of information to be omitted and satisfies the agency that such types of information are not material to the applicant's ability to operate a facility under this Section; and
- (D) unless specifically requested by the agency, the following types of actions if brought in North Carolina, or equivalent types of actions if brought in any other jurisdiction, are excluded from the reporting requirements of this Subparagraph:
- (i) small claims actions as defined in G.S. 7A-210,
- (ii) infractions as defined in G.S. 14-3.1, and
- (iii) misdemeanors under

Chapter 20 (Motor Vehicles) of the General Statutes; and

- (7) details of any other resources such as reserves or bonds to cover potential damages.
- (b) The applicant shall describe the financial responsibility and liability coverage for:
 - (1) all injuries to public, property, workers and environment;
 - (2) failure to operate as designed; and
 - (3) post-closure monitoring and surveillance.
- (c) The information required in Paragraphs (a) and (b) of this Rule shall be updated annually to the extent that such information is not provided in the annual certified financial statement required in Rule 3338 of this Section.

Statutory Authority G.S. 104E-7;
104E-10(b); 104E-10.1(2).

3311 FILING AND DISTRIBUTION OF APPLICATION

- (a) An application for a license under this Section, and any amendments thereto, shall be filed with the agency, and shall be signed under oath by the applicant or the applicant's authorized representative who shall furnish documentation conferring authority. The application filed with the agency shall consist of one signed original and 12 true copies.
- (b) Additional copies of the application shall be retained by the applicant for distribution in accordance with written instructions from the agency.

Statutory Authority G.S. 104E-7;
104E-10.

3312 ELIMINATION OF REPETITION

In its application, the applicant may incorporate, by reference, information contained in previous applications, statements, or reports filed with the agency if these references are clear and specific.

Statutory Authority G.S. 104E-7;
104E-9(3).

3313 UPDATING OF APPLICATION

- (a) The application shall be as

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complete as possible in the light of information that is available at the time of submittal.

(b) It shall be the responsibility of the applicant to supplement its application in a timely manner in order to reflect any material changes in the information required as a part of the application or available to the applicant, so as to permit the agency to review any such information prior to issuance of a license.

Statutory Authority G.S. 104E-7; 104E-9(3).

.3314 STANDARDS FOR ISSUANCE OF A LICENSE

A license for the receipt, possession, and disposal of waste containing or contaminated with radioactive material will be issued by the agency upon finding that the issuance of the license and operation of the facility will not constitute an unreasonable risk to the health and safety of the public or have a long-term detrimental impact on the environment, and that:

- (1) the applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that adequately protects public health and minimizes danger to life, property or the environment;
- (2) the applicant's proposed disposal site, disposal design, land disposal facility operations (including equipment, facilities, and procedures), disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that the general population will be protected from releases of radioactivity as specified in this Section;
- (3) the applicant's proposed disposal site, disposal site design, land disposal facility operations (including equipment, facilities, and procedures), disposal site closure, and postclosure institutional control are adequate to protect the public health and safety in that they will provide reasonable assurance that individual inadvertent intruders are pro-

tected in accordance with this Section;

- (4) the applicant's proposed land disposal facility operations (including equipment, facilities, and procedures) are adequate to protect the public health and safety in that they will provide assurance that the standards for radiation protection set out in Section .2500 of this Subchapter will be met;
- (5) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and postclosure institutional control are adequate to protect the public health and safety and the environment in that they will provide reasonable assurance that long-term stability of the disposed waste and the disposal site will be achieved and will eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure;
- (6) the applicant has provided reasonable assurance that the applicable technical requirements of this Section will be met;
- (7) the applicant's proposal for institutional control provides reasonable assurance that such control will be provided for the length of time found necessary to ensure the findings in Subparagraphs (2) through (5) of this Rule and that the institutional control meets the requirements in this Section;
- (8) the information on financial assurances meets the requirements of this Section;
- (9) any additional information as requested by the agency pursuant to Rule .2417 of this Subchapter is adequate; and
- (10) the requirements of this Section have been met.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-10(b); 104E-12; 104E-13(a); 104E-18.

.3315 CONDITIONS OF LICENSE

(a) A license issued under this Section, or any right thereunder, may not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indi-

rectly, through transfer of control of the license to any person, unless the agency finds, after securing full information, that the transfer is in accordance with the provisions of North Carolina Radiation Protection Act (act) and gives its consent in writing in the form of a license amendment.

(b) At any time before termination of the license, the licensee shall submit written statements under oath upon request of the agency to enable the agency to determine whether or not the license should be modified, suspended, or revoked.

(c) The license will be terminated only on the full implementation of the final closure plan as approved by the agency, including postclosure observation and maintenance.

(d) The licensee shall be subject to the provisions of the act now or hereafter in effect, and to all rules and orders of the agency. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules and orders issued in accordance with terms of the act.

(e) Any license may be revoked, suspended or modified in whole or in part for any material false statement in the application or any misstatement of fact required under the act, or because of conditions revealed by any application or statement of fact or any report, record, or inspection or other means which would warrant the agency to refuse to grant a license to the original application, or for failure to operate the facility in accordance with the terms of the license, or for any violation of, or failure to observe any of the terms and conditions of the act, or any rule, license or order of the agency.

(f) Each person licensed by the agency pursuant to the Rules in this Section shall confine possession and use of radioactive materials to the locations and purposes authorized in the license.

(g) No waste may be disposed of until the agency has inspected the land disposal facility and has found it to be in conformance with the description, design, and construction

described in the application for a license.

(h) The agency may incorporate in any license at the time of issuance, or thereafter, by appropriate rule or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as it deems appropriate or necessary in order to:

- (1) protect the health and safety of the public and the environment, or minimize danger to life or property; and
- (2) require reports and the keeping of records, and to provide for inspections of activities under the license that may be necessary or appropriate to effectuate the purposes of the act and rules thereunder.

(i) The agency may incorporate in any license at the time of issuance, or thereafter, by appropriate rule or order, a requirement that the licensee provide the agency with continuing information with respect to any information required as a part of the license application.

(j) Each license will be issued for a period of five years from the date of issuance. The authority to dispose of wastes expires on the date stated in the license except as provided in Rule .3317 of this Section.

Statutory Authority G.S. 104E-7; 104E-10(b); 104E-12; 104E-13(a).

.3316 AMENDMENT OF LICENSE

(a) An application for amendment of a license shall be filed in accordance with Rules .3311, .3312 and .3313 of this Section, and shall fully describe the changes desired.

(b) In determining whether an amendment to a license will be approved, the agency will apply the criteria set forth in Rule .3314 of this Section.

Statutory Authority G.S. 104E-7; 104E-10(b).

.3317 APPLICATION FOR RENEWAL OR CLOSURE

(a) Any expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the

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licensee of responsibility for implementing site closure, postclosure observation, and transfer of the license to the custodial agency. An application for renewal or an application for closure under Rule .3318 of this Section shall be filed at least 30 days prior to license expiration.

(b) Applications for renewal of a license shall be filed in accordance with Rules .3304 through .3313 of this Section. Applications for closure shall be filed in accordance with Rules .3311, .3312, .3313 and .3318 of this Section.

(c) In any case in which a licensee has timely filled an application for renewal of a license, the license for continued receipt and disposal of licensed materials shall not expire until the agency has taken final action on the application for renewal.

(d) In determining whether a license will be renewed, the agency will apply the criteria set forth in Rule .3314 of this Section.

(e) Upon approval of an application for renewal pursuant to provisions of this Rule, the agency will issue the license renewal amendment to expire five years from the date of final agency action on the application for renewal.

Statutory Authority G.S. 104E-7; 104E-10; 104E-10.1; 104E-18.

.3318 CONTENTS OF APPLICATION FOR CLOSURE

(a) Prior to final closure of the disposal site, or as otherwise directed by the agency, the applicant shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under Rule .3306(16) that includes each of the following:

- (1) any additional geologic, geochemical, hydrologic, or other data obtained during the operational period pertinent to the long-term containment of emplaced wastes;
- (2) the results of tests, experiments, or any other analyses relating to backfill of excavated areas, closure and sealing,

waste migration and interaction with emplacement media, or any other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

- (3) any proposed revision of plans for:
 - (A) decontamination and dismantlement of surface facilities;
 - (B) backfilling of excavated areas; or
 - (C) stabilization of the disposal site for postclosure care; and
- (4) any significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(b) Upon review and consideration of an application to amend the license for closure submitted in accordance with Subparagraph (a) of this Rule, the agency may issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of this Section will be met.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-10; 104E-10.1; 104E-18.

.3319 POSTCLOSURE OBSERVATION AND MAINTENANCE

Following completion of closure authorized in Rule .3318 of this Section, the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the agency in accordance with Rule .3320 of this Section. Responsibility for the disposal site shall be maintained by the licensee for five years. A shorter or longer time period for postclosure observation and maintenance may be established and approved as part of the site closure plan, based on site-specific conditions.

Statutory Authority G.S. 104E-7; 104E-10; 104E-10.1; 104E-18.

.3320 TRANSFER OF LICENSE

(a) Following closure and the period of postclosure observation and maintenance, the licensee may apply

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for an amendment to transfer the license to the custodial agency. The license shall be transferred when the agency finds:

- (1) that the closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;
- (2) that reasonable assurance has been provided by the licensee that the performance objectives of this Section are met;
- (3) that any funds and necessary records for care will be transferred to the Radiation Protection Fund and the custodial agency, respectively;
- (4) that sufficient funds have accumulated in the Radiation Protection Fund to support anticipated agency and custodial agency costs for all future observation, monitoring, maintenance and remedial actions;
- (5) that the postclosure monitoring program is operational for implementation by the custodial agency; and
- (6) that the state agency (custodial agency) which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Subparagraph (7) of Rule .3314 of this Section will be met.

Statutory Authority G.S. 104E-7; 104E-10; 104E-10.1; 104E-12; 104E-16; 104E-18.

.3321 TERMINATION OF LICENSE

(a) Following any period of institutional control needed to meet the requirements found necessary under Rule .3314 of this Section, the licensee (custodial agency) may apply for an amendment to terminate the license.

(b) This application shall be filed, and will be reviewed, in accordance with the provisions of Rules .3311 of this Section and (a) of this Rule.

(c) A license will be terminated

only when the agency finds:

- (1) that the institutional control requirements found necessary under Subparagraph (7) of Rule .3314 of this Section have been met; and
- (2) that any additional requirements resulting from new information developed during the institutional control period have been met, and that permanent monuments or markers warning against intrusion have been installed.

Statutory Authority G.S. 104E-7; 104E-10.

.3322 PERFORMANCE OBJECTIVES - GENERAL REQUIREMENT

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to humans do not exceed the limits established in the performance objectives in Rules .3323 through .3325 of this Section.

Statutory Authority G.S. 104E-7; 104E-10.

.3323 PROTECTION OF POPULATION FROM RELEASES OF RADIOACTIVITY

(a) The design goal of the engineered barrier and other requirements in this Section is confinement of the disposed waste and contained radioactivity for at least the designed life of the required engineered barriers, with reasonable assurance that any release of radioactivity or radiation will not exceed the limits stated in Subparagraph (b) of this Rule and will be as low as reasonably achievable as provided in Subparagraph (c) of this Rule.

(b) Land disposal facilities shall not cause external radiation levels or release concentrations of radioactive material to the general environment in groundwater, surface water, air, soil, plants, or animals that result in an annual equivalent dose to any member of the public, above background as determined in accordance with Rule .3331 of this Section, exceeding:

- (1) 25 millirems to the whole body;

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- (2) 75 millirems to the thyroid;
or
- (3) 25 millirems to any other organ.

(c) In accordance with the ALARA plan required by Rule .3306(12) of this Section, the licensee shall maintain releases of radioactivity in effluents to the general environment and resultant radiation dose to the public as low as reasonably achievable below the limits imposed in Paragraph (b) of this Rule.

Statutory Authority G.S. 104E-7; 104E-10.

.3324 PROTECTION OF INDIVIDUALS FROM INADVERTENT INTRUSION

Design, operation, and closure of the land disposal facility shall ensure protection of any individual inadvertently intruding into the disposal site and occupying the site or contacting the waste at any time after active institutional controls over the disposal site are removed.

Statutory Authority G.S. 104E-7; 104E-10.

.3325 PROTECTION OF INDIVIDUALS DURING OPERATIONS

(a) Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in Section .2500 of this Subchapter, except as provided in Rule .3323 of this Section.

(b) In accordance with the ALARA plan required by Rule .3306(12) of this Section, the licensee shall maintain occupational radiation doses as low as reasonably achievable below the occupational radiation dose limits established in Section .2500 of this Subchapter.

Statutory Authority G.S. 104E-7; 104E-10.

.3326 STABILITY OF THE DISPOSAL SITE AFTER CLOSURE

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate to the extent practicable the need for ongoing

active maintenance of the disposal site following closure so that only surveillance, monitoring, and minor custodial care are required.

Statutory Authority G.S. 104E-7; 104E-10.

.3327 TECHNICAL REQUIREMENTS FOR LAND DISPOSAL FACILITIES

The technical requirements for land disposal facilities are set forth in Rules .3328 through .3334 of this Section.

Statutory Authority G.S. 104E-7; 104E-10.

.3328 DISPOSAL SITE SUITABILITY REQUIREMENTS

(a) The disposal site shall be capable of being characterized, modeled, analyzed, and monitored.

(b) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of this Section.

(c) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of this Section.

(d) The disposal site shall be well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(e) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate disposal units.

(f) The disposal site shall provide sufficient depth to the water table that groundwater intrusion, perennial or otherwise, into the waste will not occur.

(g) Areas shall be avoided that are the recharge areas of sole source aquifers or drinking water supply watersheds unless it can be demonstrated with reasonable assurance that the disposal site will be designed, constructed, operated, and closed

without an unreasonable risk to an aquifer or drinking water supplies.

(h) Waste disposal shall not take place within 1000 feet of drinking water wells, except for on-site wells controlled by the licensee and used to supply water solely to the facility. This minimum distance may be increased in any lateral direction when required by site specific conditions. The lateral dimensions of the buffer zone required by Rule .3330 of this Section shall not be less than the distance required by this Rule.

(i) The hydrogeologic unit used for disposal shall not discharge groundwater to the surface within the disposal site.

(j) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, or vulcanism may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this Section, or may preclude defensible modeling and prediction of long-term impacts.

(k) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this Section, or may preclude defensible modeling of long-term impacts.

(l) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of this Section or significantly mask the environmental monitoring program.

Statutory Authority G.S. 104E-7; 104E-10.

.3329 SITE DESIGN FOR LAND DISPOSAL

(a) Shallow land burial, as defined in Subparagraph 25 of Rule .3302 of this Section, is prohibited. This prohibition shall not apply to land disposal facilities which incorporate the engineered barriers required by this Section.

(b) Site design features shall be directed toward long-term isolation and avoidance of the need for con-

tinuing active maintenance after site closure.

(c) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives of this Section will be met.

(d) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives of this Section will be met.

(e) Covers shall be designed to minimize water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(f) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance.

(g) The disposal site shall be designed to minimize the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

(h) The disposal units shall incorporate engineered barriers and shall be designed and constructed to meet the following objectives:

- (1) prevent the migration of water into the unit;
- (2) prevent migration of waste or waste contaminated water out of the unit;
- (3) provide for the detection of water or other fluids;
- (4) provide for the temporary collection and transfer for remedial action of water or other liquids for a time sufficient to allow for remedial action without contamination of ground water or surrounding soil;
- (5) provide for remedial measures without disturbing other disposal units;
- (6) limit the size consistent with site operations and waste class; and
- (7) facilitate retrieval.

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(i) The engineered barriers required in Paragraph (h) of this Rule shall be designed and constructed to meet the following criteria:

- (1) barriers shall provide reasonable assurance that they will enhance the disposal system's ability to isolate the radioactive waste through the institutional control period;
 - (2) barriers shall be constructed of materials with appropriate chemical properties and sufficient strength and thickness to maintain their functional integrity under normal and abnormal conditions of operation;
 - (3) barrier structural integrity shall be maintained under normal and abnormal conditions of operation;
 - (4) barriers shall prevent contact between the surrounding earth and the waste, except for earth that may be used as fill material within the disposal unit;
 - (5) barriers shall not detract from the ability of the disposal system to meet the performance objectives of this Section; and
 - (6) the barriers may take on different forms, depending upon the waste class involved.
- (j) The licensee shall develop, operate and maintain the site in a manner that will not diminish the hydrogeological performance of the site below the requirements contained in the Rules of this Section.

Statutory Authority G.S. 104E-7; 104E-10.

.3330 FACILITY OPERATION AND DISPOSAL SITE CLOSURE

(a) Wastes designated as Class A pursuant to Rule .2525 of this Subchapter shall be segregated from other wastes by placement in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of this Section. This segregation is not necessary for Class A wastes if they meet the stability requirements in Rule .2526(b) of this Subchapter.

(b) Wastes designated as Class C

pursuant to Rule .2525 of this Subchapter shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(c) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(d) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(e) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of Rule .2506 of this Subchapter at the time the license is transferred pursuant to Rule .3320 of this Section.

(f) The boundaries and locations of each disposal unit shall be accurately located and mapped by means of land survey. Disposal units shall be marked in such a way that the boundaries of each unit can be easily defined. Three permanent survey marker control points, referenced to the North American Datum of 1983 (NAD83) and the current North American Vertical Datum (NAVD), as defined and maintained by the National Geodetic Survey, shall be established on the site to facilitate surveys. The three established control stations shall be positioned both horizontally and vertically by surveys tied to the NAD 83 and NAVD as maintained in the North Carolina Geodetic Survey record files. All such surveys shall comply with standards and specifications as approved by North Carolina Geodetic Survey.

(g) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Rule .3331(c) of this Section and to permit mitigative measures if needed.

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(h) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as each disposal unit is filled and covered.

(i) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(j) The Radiation Protection Commission may by special order provide for the disposal of mixed waste. Any such order shall conform to all requirements of the federal Low-Level Radioactive Waste Policy Amendments Act of 1985, G.S. 104E as amended, G.S. 130 Article 9 as amended, and regulations issued pursuant thereto.

Statutory Authority G.S. 104E-7; 104E-10.

.3331 ENVIRONMENTAL MONITORING

(a) A preoperational monitoring program shall be conducted to provide basic environmental data on the disposal site characteristics and to determine the pre-existing background radiation levels. At the time a license application is submitted, a preoperational monitoring program shall have been conducted to provide basic environmental data on the disposal site characteristics. The data shall include information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data must cover at least a 12 month period.

(b) During the land disposal facility site construction and operation, the licensee shall maintain a monitoring program where:

(1) measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility, and to enable the evaluation of long-term effects and the need for mitigative measures; and

(2) the monitoring program shall be capable of providing early warning of releases of

radionuclides before they reach the disposal site boundary.

(c) After the disposal site is closed, the licensee responsible for postoperational surveillance of the disposal site shall maintain a monitoring program where:

(1) the monitoring program is based on the operating history and the closure and stabilization of the disposal site; and

(2) the monitoring program shall be capable of providing early warning of releases of radionuclides before they reach the disposal site boundary, and shall include sufficient numbers, types and locations of wells to permit detection of ground water radioactive contamination.

Statutory Authority G.S. 104E-7; 104E-10(b); 104E-10.1(2).

.3332 VARIANCE

(a) When practical difficulties or unnecessary hardship would result from carrying out the strict letter of this Section, the agency may grant a variance from the requirements of this Section. A request for a variance shall be made in writing by the applicant or licensee. The agency shall require the applicant or the licensee requesting a variance to provide such information as the agency determines to be necessary to a decision on the request for a variance.

(b) Upon receipt of a request for a variance, the agency will provide public notice of the request, including but not limited to written notice of at least 30 days, to all persons on the mailing lists maintained by the commission and the agency for such purpose.

(c) The agency will receive and consider written comment on the request, and shall hold one or more public hearings whenever it appears that there is sufficient public interest in a request to warrant one or more public hearings.

(d) The agency shall in no less than 45 days and no more than 90 days make written findings of fact with respect to all issues raised by a request for a variance. The agency may grant a variance in whole or in

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part only upon a finding that the variance does not:

- (1) diminish compliance with the performance objectives of this Section; or
- (2) endanger the public health or safety; or
- (3) unreasonably endanger the environment; or
- (4) violate the spirit of this Section; or
- (5) result in substantial injustice.

The agency shall impose such conditions or limitations on the variance as it determines to be necessary to protect the public health and safety, or to protect the environment. Any variance granted pursuant to this Rule will become a written condition of an existing or proposed license.

(e) Any person who is aggrieved by a decision of the agency on a request for a variance may appeal such decision to the commission.

(f) Notwithstanding any other provision of this Subchapter, no exemption, variance or other deviation from the requirements of this Section will be granted by the agency, except as may be granted pursuant to the requirements of this Rule. In particular, the provisions in Rule .2206 of this Subchapter do not apply to this Section.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-10(b).

.3333 WASTE CLASSIFICATION AND CHARACTERISTICS

(a) Waste shall be classified in accordance with provisions of Rule .2525 of this Subchapter.

(b) Waste shall meet the applicable characteristics prescribed in Rule .2526 of this Subchapter.

(c) Each container of waste shall be labelled in accordance with provisions of Rule .2527 of this Subchapter.

Statutory Authority G.S. 104E-7; 104E-10(b).

.3334 INSTITUTIONAL REQUIREMENTS

(a) Disposal of waste received from other persons may be permitted only on land owned in fee simple by

the State of North Carolina or the federal government.

(b) The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator.

(c) The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other requirements as determined by the agency; and administration of funds to cover the costs for these activities.

(d) The period of institutional controls will be determined by the agency, but shall be no less than 100 years following transfer of control of the disposal site to the custodial agency.

(e) Notwithstanding the period of institutional control which may be required by the agency pursuant to Paragraph (d) of this Rule, such institutional control may not be relied upon for the purpose of meeting site performance criteria for more than 100 years following transfer of control of the disposal site to the custodial agency.

Statutory Authority G.S. 104E-6.1; 104E-7; 104E-10.2; 104E-16; 104E-18.

.3335 APPLICANT QUALIFICATIONS AND ASSURANCES

The applicant shall show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project.

Statutory Authority G.S. 104E-7; 104E-10(b); 104E-10.1.

.3336 FUNDING OF CLOSURE: STABILIZATION: INSTITUTIONAL CONTROLS

(a) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure, stabilization and institutional controls, including:

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- (1) decontamination or dismantlement of land disposal facility structures; and
- (2) closure and stabilization of the disposal site so that following transfer of the disposal site to the custodial agency, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required.

(b) The amount of the assurances in Paragraph (a) of this Rule shall be established by the commission and shall be based on agency-approved cost estimates reflecting the agency-approved plan for disposal site closure and stabilization and agency estimates of the costs which may be associated with the period of institutional controls. In estimating such costs, the agency shall consider applicant-prepared cost estimates which shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(c) The licensee shall submit the financial or surety arrangements annually for review by the agency to assure that sufficient funds will be available for completion of the closure plan and for anticipated institutional care.

(d) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure, stabilization and institutional care. Factors affecting closure, stabilization and institutional care cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that has already been accomplished, and any other conditions affecting costs. The financial or surety arrangements shall be sufficient at all times to cover the costs of closure, stabilization and institutional care of the disposal units that are expected to be used before the next license renewal.

(e) The amount of the licensee's financial and surety arrangements as determined in Paragraph (d) of this Rule may be reduced annually by the actual amount of funds deposited by

the licensee in the Radiation Protection Fund pursuant to such fees as may be established by the agency under the provisions of G.S. 104E-19.

(f) The financial or surety arrangement shall be written for a specified period of time, shall run in favor of the Radiation Protection Fund, and shall be automatically renewed unless the person who issues the surety notifies the agency, the site owner, and the principal (the licensee) not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee must submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the agency within 30 days after notification of cancellation, the agency may collect on the original surety for deposit in the Radiation Protection Fund.

(g) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee does not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described in this Paragraph and in Paragraph (f) of this Rule shall be clearly stated on any surety instrument.

(h) Financial or surety arrangements generally acceptable to the commission and agency include: surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or such other types of arrangements as may be approved by the agency, consistent with provisions of G.S. 104E-18. Self-insurance, or any arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(i) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the agency, custody of the site and disposed waste has been accepted by the custodial

agency, and the license has been terminated by the agency.

(j) In order to avoid unnecessary duplication of expense, the agency will accept sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of federal or other state agencies for such decontamination, closure, and stabilization. The agency will accept these arrangements only if they are considered adequate to satisfy the requirements of Subparagraphs (a) to (i) of this Rule and that portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

Statutory Authority G.S. 104E-7; 104E-16; 104E-17; 104E-18; 104E-19(b).

**.3337 RECORDS: REPORTS: TESTS:
AND INSPECTIONS**

Requirement for records, reports, tests and inspections are described in Rules .3338 through .3341 of this Section.

Statutory Authority G.S. 104E-7; 104E-11; 104E-12.

**.3338 MAINTENANCE OF RECORDS:
REPORTS AND TRANSFERS**

(a) Each licensee shall maintain any records and make any reports in connection with the licensed activities, as may be required by the conditions of the license or by the rules, and orders of the agency.

(b) Records which are required by the rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the agency as specified in Rule .2517 of this Subchapter as a condition of license termination unless the agency otherwise authorizes their disposition.

(c) Records which shall be maintained pursuant to this Section may be the original or a reproduced copy or microfilm if the reproduced copy or microfilm is capable of producing copy that is clear and legi-

ble at the end of the required retention period.

(d) If there is a conflict between the agency's rules, license condition, or other written agency approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(e) Notwithstanding Paragraphs (a) through (d) of this Rule, copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred to the agency upon transfer of the license to the custodial agency or upon termination of the license.

(f) Following receipt and acceptance of a shipment of waste, the licensee shall record the date of receipt and disposal of the waste, the location in the disposal site, the condition of the waste packages as received, any discrepancies between materials listed on the manifest and those received, and any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and agency rules. The licensee shall briefly describe any repackaging operations of any of the waste packages included in the shipment, plus any other information required by the agency as a license condition.

(g) Each licensee authorized to dispose of waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the agency in order to update the information base for determining financial qualifications.

(h) Each licensee authorized to dispose of waste materials received from other persons pursuant to this Section shall submit annual reports to the agency in accordance with Subparagraphs (h)(1) through (h)(4) of this Rule.

(1) Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(2) If the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from

those expected in the materials previously reviewed as part of the licensing action, the report shall cover this specifically.

- (3) The reports shall include:
 - (A) specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;
 - (B) the results of the environmental monitoring program;
 - (C) a summary of licensee disposal unit survey and maintenance activities, including location of each discrete waste shipment or portion thereof;
 - (D) a summary, by waste class, of activities and quantities of radionuclides disposed of;
 - (E) any instances in which observed site characteristics were significantly different from those described in the application for a license; and
 - (F) any other information the agency may require.

(i) Any transfer of radioactive materials by the licensee is subject to the requirements in Rule .2443 of this Subchapter.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-12; 104E-15.

.3339 TESTS AT LAND DISPOSAL FACILITIES

Each licensee shall perform, or permit the agency to perform, any tests the agency deems appropriate or necessary for the administration of the Rules in this Section, including tests of:

- (1) wastes and facilities used for the receipt, storage, processing, handling, and disposal of wastes;
- (2) radiation detection and monitoring instruments; and
- (3) other equipment and devices used in connection with the receipt, possession, handling, processing, storage, or disposal of waste.

Statutory Authority G.S. 104E-7; 104E-10(b).

.3340 AGENCY INSPECTIONS OF

LAND DISPOSAL FACILITIES

(a) Each licensee shall afford to the agency at all reasonable times opportunity to inspect:

- (1) waste not yet disposed of;
- (2) the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored or disposed of; and
- (3) records kept by the licensee pursuant to the applicable Rules in this Subchapter.

(b) Authorized representatives of the agency may copy and take away copies of, for the agency's use, any record required to be kept pursuant to provisions of this Section.

Statutory Authority G.S. 104E-7; 104E-10(b); 104E-11; 104E-12.

.3341 INSPECTION

(a) The agency may require at any disposal site that the licensee provide appropriate office and storage space for a resident inspector who is employed by the agency.

(b) The agency may require the licensee to refuse acceptance of low-level radioactive waste from any generator, if the agency makes one or more of the following determinations:

- (1) the generator has shipped waste to the licensee's facility without filing the manifest required in Rule .2528 of this Subchapter;
- (2) the generator has improperly described waste in a manifest contrary to the requirements in Rule .2528 of this Subchapter;
- (3) the generator has shipped to the licensee's facility waste which is prohibited by any Rule in this Subchapter or by condition of the site operator's license;
- (4) the generator has shipped to the licensee's facility improperly labeled or packaged containers of waste; or
- (5) the generator has failed to comply with applicable Rules in this Subchapter.

(c) In the event that the agency prohibits the licensee from receiving waste from any generator pursuant to Paragraph (b) of this Rule, the agency shall notify the licensee and the generator both verbally and in writing, stating the nature and basis

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for the prohibition, the corrective actions required to terminate the prohibition and the rights of the affected persons regarding the prohibition.

Statutory Authority G.S. 104E-7; 104E-10(b); 104E-11; 104E-12.

.3342 NOTIFICATIONS AND REPORTS

(a) The licensee shall submit to the agency monthly reports of all containers or shipments of waste which arrive at the site and are found by licensee personnel to be in violation of any provision of the Rules in this Subchapter. The monthly reports shall include the name, mailing address, telephone number, radioactive material license number, and description and date of the violation; shall cover a period of one calendar month; and shall be submitted to the agency within 20 days after the end of the calendar month covered by the report.

(b) The licensee shall immediately notify the agency in the event that the licensee determines that the limits imposed in Subparagraph (b) of Rule .3323 of this Subchapter have been exceeded.

(c) The licensee shall notify the agency with 24 hours after the licensee determines that off-site migration of disposed radioactivity has occurred.

(d) The licensee shall notify the agency within 30 days after the licensee determines that on-site migration in ground water of disposed radioactivity has occurred along with an explanation of the remedial actions taken in accordance with applicable requirements in this Section.

(e) The licensee shall also notify the agency in accordance with applicable requirements in Section .2500 of this Subchapter.

Statutory Authority G.S. 104E-7; 104E-9(3); 104E-10(b).

Notice is hereby given in accordance with G.S. 150B-12 that The Division of Health Services intends to adopt, amend and repeal regulations cited as 10 NCAC 7A .0208; 7B .0211; .0330; .0335; 7F .0107; 8B .0801-.0802; 8F .0208; 10B .0626; .0732; .0801;

.0901; .0925; .0927; .1109; .1114; and .1116; .1119; .1205; 10C .0312-.0313; .0317; .0321-.0325; 10D .0903; 10F .0029; .0032-.0034; .0039; .0041; 12 .0239.

The proposed effective date of this action is December 1, 1987 and January 1, 1988.

The public hearing will be conducted at 1:30 p.m. on August 19, 1987 at Highway Building, Auditorium (First Floor), 1 South Wilmington Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3131. Written comments on these subjects may be sent to Mr. Barkley at the above address. Written and oral (for no more than ten minutes) comments on these subjects may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

CHAPTER 7 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 7A - ACUTE COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

.0208 HANDLING AND TRANSPORTATION OF BODIES

(a) It shall be the duty of the physician attending any fatal case of smallpox, plague, AIDS, hepatitis B, rabies, or Jakob-Creutzfeldt disease to ~~also~~ provide written notification to all individuals handling such body of the proper precautions to prevent infection resulting from handling of the body. These precautions are noted in (b) and (c) of this Rule.

(c) Persons handling bodies of persons dying with AIDS, hepatitis B, Jakob-Creutzfeldt disease, or rabies shall be ~~notified~~ provided written notification to observe blood and body fluid precautions.

Statutory Authority G.S. 130A-144.

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SUBCHAPTER 7B - HIGHWAY SAFETY

SECTION .0200 - BLOOD ALCOHOL TEST REGULATIONS

.0211 REVOCATION OF PERMIT

(c) Any blood analyst whose permit has been revoked may appeal such action. All requests for appeal shall be by written petition and shall be submitted to: Director, Division of Health Services, P. O. Box 2091, Raleigh, N. C. 27602. All appeals shall be conducted in accordance with G. S. 150A, 10 NCAC 4B, and with 10 NCAC 4B.

Statutory Authority G.S. 20-139.1 (b).

SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS

.0330 REVOCATION OF PERMIT

(a) If the director receives unfavorable information concerning the character or ability of any permittee, he shall direct an investigation to be made. If the director determines, after investigation, that the permittee would no longer be eligible to be granted an initial permit or renewal permit, he shall suspend or revoke the permit using the same procedures that are used for suspension or revocation of permits in G. S. 130A-23.

(b) The director shall send a notice of revocation to the permittee by registered mail, and the permit in the possession of the permittee shall be revoked at midnight of the day the notice of revocation was mailed and shall be immediately surrendered upon receipt of notice of revocation. Appeals concerning the interpretation and enforcement of the Rules in this Section shall be made in accordance with G. S. 150B and 10 NCAC 4B.

(c) Any permittee whose permit has been revoked may appeal such action. All requests for appeal shall be by written petition and shall be submitted to: Director, Division of Health Service, P. O. Box 2091, Raleigh, N. C. 27602. All appeals shall be conducted in accordance with G. S. 150A, 10 NCAC 4B, and with 10 NCAC 4B.

Statutory Authority G.S. 20-139.1 (b).

.0335 BREATH-TESTING

INSTRUMENTS: REPORTING OF SEQUENTIAL TESTS

(a) The standards for the approval of breath-testing instruments are as follows:

(3) Pending reassessment of the criteria for approval of breath-testing instruments that utilize infrared technology, there is a moratorium on the placing of new instruments utilizing that technology into service on or after January 1, 1986. Individual infrared instruments placed into service before January 1, 1986, may continue to be used in accordance with the succeeding Rules in this Section applicable to them. Unless this Paragraph is earlier amended or repealed, the moratorium lasts until January 1, 1988, 1989. The models of instruments subject to the moratorium are:

Statutory Authority G.S. 20-139.1 (b).

SUBCHAPTER 7F - VETERINARY PUBLIC HEALTH

SECTION .0100 - VETERINARY PUBLIC HEALTH PROGRAM

.0107 APPROVED RABIES VACCINES

The following rabies vaccines are approved for use in animals in this State:

(22) Dura-Rab 3 (ImmunoMed)

Statutory Authority G.S. 130A-185.

CHAPTER 8 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 8B - MATERNAL AND CHILD HEALTH

SECTION .0800 - KINDERGARTEN HEALTH ASSESSMENTS

.0801 HEALTH ASSESSMENTS

(a) Every child in this state entering kindergarten in the public schools shall receive a health assessment pursuant to G. S. 130A-440.

(b) The health assessment shall be reported on a health assessment transmittal form provided by the local education agency and shall include at least the following:

(1) identifying information for the child, including name, address, and parents' names;

PROPOSED RULES

- (2) a listing of any significant medical conditions, disabilities, or allergies determined by the medical history or the physical examination;
 - (3) screenings for vision and hearing;
 - (4) testing for anemia and tuberculosis, if the health care provider considers such tests to be appropriate;
 - (5) a listing of medications the child takes on a regular basis; and
 - (6) a listing of special health considerations or services needed for the child during school hours.
- (c) The health care provider may include the results of a developmental screening.

Statutory Authority G.S. 130A-440; 130A-443.

.0802 REPORTING

- (a) Local education agencies shall provide health assessment transmittal forms to:
- (1) parents or guardians of children enrolling in kindergarten; and
 - (2) local health care providers, upon request by the provider.
- (b) The health care provider shall submit health assessment results to the school principal on the health assessment transmittal form.
- (c) Access to health assessment transmittal forms shall be limited to principals, teachers, school nurses, public health nurses, and school psychologists. Other school personnel may have access to the transmittal forms on a case by case basis if they have written authorization from the school principal. These forms may also be released pursuant to court order or the written consent of the parent or guardian.

Statutory Authority G.S. 130A-441; 130A-443.

SUBCHAPTER 8F - SICKLE CELL SYNDROME: GENETIC COUNSELING: DEVELOPMENTAL DISABILITIES BRANCH

SECTION .0200 - SICKLE CELL CONTRACT FUNDS

.0208 ALLOCATION OF FUNDS

(b) ~~New monies will be distributed based on a statewide plan developed by the Program in accordance with the following:~~

- ~~(1) Population at risk;~~
- ~~(2) Service delivery gaps in given localities;~~
- ~~(3) Actual utilization of funds in previous fiscal years, special population groups, and other management considerations that relate to a provider's ability to effectively and efficiently use additional funds.~~

(b) New funds shall be distributed based on the following considerations:

- (1) One-half of the weight shall be given to the incidence of sickle cell disease in the contractor's service area as a percentage of the incidence of sickle cell disease in all contractors' service areas. The incidence of sickle cell disease in all contractors' service areas shall be considered to be one per two hundred ninety-four of the non-white population;
- (2) One-quarter of the weight shall be given to the total rural population in the contractor's service area as a percentage of the rural population in all contractors' service areas. Rural population shall be that determined by the most recent official U.S. census;
- (3) One-quarter of the weight shall be given to the square miles in the contractor's service area as a percentage of all square miles in all contractors' service areas.

Statutory Authority G.S. 130A-124.

CHAPTER 10 - HEALTH SERVICES: ENVIRONMENTAL HEALTH

SUBCHAPTER 10B - SHELLFISH SANITATION

SECTION .0600 - SANITATION OF THE OPERATION OF SCALLOP SHUCKING: PACKING: AND REPACKING PLANTS

.0626 APPEALS PROCEDURE

Appeals shall be conducted in accordance with G. S. 150 A B and

PROPOSED RULES

with 10 NCAC 1B. Appeals ~~shall be directed to the State Health Director, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091.~~

Statutory Authority G.S. 130A-230.

SECTION .0700 - HANDLING; PACKING; AND SHIPPING OF CRUSTACEA MEAT

.0732 APPEALS PROCEDURE

Appeals shall be conducted in accordance with G. S. 150 ~~A B~~ and with 10 NCAC 1B. Appeals ~~shall be directed to the State Health Director, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091.~~

Statutory Authority G.S. 130A-230.

SECTION .0800 - SANITATION OF SHELLFISH - GENERAL

.0801 DEFINITIONS

(25) "Wet storage" means the temporary storage of shellstock from ~~permitted or~~ approved sources, in approved natural sea water.

Statutory Authority G.S. 130A-230.

SECTION .0900 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

.0901 APPLICABILITY OF RULES

The Rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0802 and all other businesses and persons that buy, sell, transport, or ship shellfish.

Statutory Authority G.S. 130A-230.

.0925 TAGGING

(a) In order that information may be available to the division with reference to the origin of shellstock, containers holding shellstock shall be identified with a uniform tag or label. If shellstock is sold directly to the final consumer, the permitted dealer must display its name, address, and permit number in full view of the buying public, in lieu of individual shipping tags. If shellstock is to be resold or sold to a commercial establishment, each individual package

~~must~~ shall be labeled or tagged with the required information.

(d) All shellstock from a depuration ~~plant facility~~ must be identified as having been cleansed by a depuration plant facility identified attested by a name and permit number on the tag.

Statutory Authority G.S. 130A-230.

.0927 SHELLSTOCK STORAGE

Shellstock held in wet or dry storage must be kept so that they will not become adulterated. All shellstock held in dry storage during the months of April through October, inclusive, shall be kept under mechanical refrigeration at a temperature of 50° F (10° C) or below. Refrigeration rooms and trucks shall be equipped with operating thermometers. All refrigerated shellstock storage areas shall be equipped with an operating thermometer.

Statutory Authority G.S. 130A-230.

SECTION .1100 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND REPACKING PLANTS

.1109 SANITIZING EQUIPMENT

Washing and sanitizing facilities, including a three-compartment wash sink of adequate size to wash the largest utensils ~~and pots~~ used in the plant shall be provided in a section of the plant convenient to the work areas. The sink shall be kept in good repair. Permanent hot and cold water connections, with combination supply faucets, shall be installed so that all vats may receive hot and cold water. Either steam, hot water, or a sanitizing solution shall be used to sanitize utensils and equipment.

Statutory Authority G.S. 130A-230.

.1114 CONTAINERS

(c) Any container of shucked shellfish which has a capacity of more than 64 fluid ounces shall be dated as of the date ~~packed~~ shucked on both the lid and sidewall or bottom. Any container of shucked shellfish which has a capacity of 64 fluid ounces or less shall indicate a SELL BY date.

Statutory Authority G.S. 130A-230.

PROPOSED RULES

.1116 SHELLFISH FREEZING

(a) If shellfish are to be frozen, they shall be frozen within three days of shucking and packing and the pack shucked date shall be preceded by the letter (F).

Statutory Authority G.S. 130A-230.

.1119 REPACKING OF SHELLFISH

(c) Containers with a capacity of 64 fluid ounces or less in which shucked shellfish are repacked shall indicate a SELL BY date preceded by the letter R. Containers with a capacity above 64 fluid ounces in which shucked shellfish are repacked shall be dated to show the original packing shucking date and repacking date, which will be preceded by the letter (R).

Statutory Authority G.S. 130A-230.

SECTION .1200 - OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES

.1205 FACILITY OPERATIONS

(c) Culling. All untreated shellstock prior to, or upon arrival at the facility, shall be thoroughly inspected and culled. All dead shellfish, or shellfish in broken or cracked shells shall be disposed of in a manner approved by the division. The owner or supervisor operator shall be held responsible for suitable culling, and for the removal and disposal of dead shellfish or shellfish in broken or cracked shells after depuration.

Statutory Authority G.S. 130A-230.

SUBCHAPTER 10C - SOLID WASTE AND VECTOR CONTROL

SECTION .0300 - SANITATION OF BEDDING

.0312 DEFINITIONS

The following definitions shall apply throughout these Rules unless otherwise specified:

- (1) "Bedding" means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow and any other item used principally for sleeping. This definition includes only those items which have a thickness of more than one inch. This definition also includes dual purpose furniture

such as studio couches and sofa beds. The term "mattress" does not include water bed liner, bladders or cylinders but does include padding or cushioning material which has a thickness of more than one inch. "Chief Financial Officer" means the officer or employee with primary book-keeping responsibility for a business that manufactures or sanitizes bedding in this state or manufactures bedding to be sold in this state.

- (2) "Person" means an individual, corporation, company, partnership, or other legal entity.
- (3) "Previously Used Material" means any material of which previous use has been made, but manufacturing processes shall not be considered previous use.
- (4) "Renovate" means the reworking or remaking of used bedding or the making of bedding from previously used materials, except for the renovator's own personal use or the use of the renovator's immediate family.
- (5) "Sanitize" means treatment of secondhand bedding or previously used materials to be used in renovating for the destruction of pathogenic microorganisms and orthopods and the removal of dirt and filth.
- (6) "Secondhand Bedding" means any bedding or which prior use has been made.
- (7) "Sell" or "Sold" means sell, have to sell, give away in connection with a sale, delivery or consignment; or possess with intent to sell, deliver or consign in sale.

Statutory Authority G.S. 130A-273.

.0313 SANITIZING (REPEALED)

Statutory Authority G.S. 130A-273.

.0317 TAGGING OF SECONDHAND AND RENOVATED BEDDING (REPEALED)

Statutory Authority G.S. 130A-273.

.0321 LICENSE FEES AND APPLICATIONS

- (a) Stamp exemption permits shall be issued to manufacturers of

bedding meeting the requirements of G.S. 130A-269(c) or (d). Applications shall contain the information required by G.S. 130A-269(h), except as provided by Paragraph (c) of this Rule. Applications for a license shall be on a form provided by the division and shall include the following information:

- (1) the name of the business;
- (2) the physical address for the plant or operation;
- (3) the name, title, mailing address and telephone number for the contact person for the license; and
- (4) the type of bedding items the business manufactures.

(b) If the applicant's statement sets out the total number of bedding units produced during the preceding calendar year, it shall not be necessary for the applicant to set out what proportion of that total was manufactured inside or outside of North Carolina, in which case the cost of the stamp exemption permit will be determined as if the total production was manufactured in North Carolina. A certified public accountant must certify. The applicant shall submit a verification from the applicant's chief financial officer that he has examined the records of the applicant and that the information provided in accordance with G.S. 130A-269(h) correctly reflects the information contained in the records of the applicant. However, if the division has reason to believe that the information provided is incomplete, misleading or incorrect, the division may require the applicant to obtain a certification of the required information by an independent Certified Public Accountant licensed to practice in North Carolina.

(c) Applicants who do not meet the requirements of G.S. 130A-269(c) but desire to exercise the option of pre-paying for a stamp exemption permit in the initial year of operation are not required to provide the information required by G.S. 130A-269(h) for the initial year of application. These applicants must pay stamp exemption amounts, depending on the quarter of application, in the following manner: First Quarter applications, seven hundred and twenty

dollars (\$720.00); Second Quarter applications, five hundred and forty dollars (\$540.00); Third Quarter applications, three hundred and sixty dollars (\$360.00); or Fourth Quarter applications, one hundred and eighty dollars (\$180.00). License fees may be paid in full on March 1 of each year or in quarterly installments on March 1, June 1, September 1, and December 1 of each year. Applicants who have not operated for a full calendar year may owe additional fees or be due a refund for the first year's operation, depending on the business volume eligible for stamp exemption fee payment. Application forms for making the determination of fee payment owed or refunded shall be furnished by the Division of Health Services. When the requirements of G.S. 130A-269(c) can be met, the option described by G.S. 130A-269(d) will no longer be available to the applicant.

(d) Applicants who have gone out of business in the initial year of their operation and who have paid the stamp exemption permit license fee in accordance with G.S. 130A-269(d) may apply for a refund for the remainder of the calendar year upon providing ~~certified~~ verified proof of the bedding units sold or manufactured in North Carolina during the operating portion of the calendar year.

(e) All forms may be obtained from the North Carolina Division of Health Services, Vector Control Branch, P. O. Box 2091, Raleigh, NC 27602.

Statutory Authority G.S. 130A-269; 130A-273.

.0322 CANCELTION OF LICENSES

Stamp exemption permit numbers
A license shall be issued to persons manufacturing or sanitizing bedding in this state or manufacturing bedding to be sold in this state in accordance with G.S. 130A-269. When the person to whom the stamp exemption permit number license was issued goes out of business, the stamp exemption permit number license shall be canceled. Upon submission of proof that a refund is owed to the person going out of business, and a

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determination by the division that a refund is owed, a refund shall be made by the Division of Health Services. When the person's status has changed due to selling the business or acquisition by other means or by restructuring the former organization, a newly issued stamp exemption permit number will be used with the new registration number required by Rule .0319 of this Section.

Statutory Authority G.S. 130A-269; 130A-273.

.0323 DURABLE MATERIALS FOR TAGS

Identifying tags shall be of linen, muslin, or other durable cloth material which will not flake when abraded. Paper or plastic face tags shall not be allowed. ~~nor shall they be approved for use.~~ Tags shall be printed or stamped on one side only in fast black letters. Tags shall be so located that the information contained thereon is completely visible to the purchaser at all times and shall be securely sewed to the pillows, mattresses, sleeping bags, comforters, and other articles of bedding. The labeling requirements of another governmental unit may appear on the tag.

Statutory Authority G.S. 130A-273.

.0324 EFFECTIVE DATE OF LICENSES

The stamp exemption permits licenses issued pursuant to these Rules shall be valid from the first day of March of any calendar year through the last day of February of the following calendar year, except for partial year stamp exemption permits licenses issued in accordance with G.S. 130A-269(d). However, if the license fee or an installment of the license fee has not been paid by the due date, the license shall be invalid and the division may prohibit sale pursuant to 130A-271.

Statutory Authority G.S. 130A-269; 130A-271; 130A-273.

.0325 VIOLATIONS (REPEALED)

Statutory Authority G.S. 130A-273.

SUBCHAPTER 10D - WATER SUPPLIES

SECTION .0900 - SUBMISSION OF PLANS: SPECIFICATIONS: AND REPORTS

.0903 SUBMISSIONS REQUIRED BY ENGINEER AND WATER SUPPLIER

Detailed plans and specifications for community water system facilities systems shall be prepared by a professional engineer licensed to practice in the State of North Carolina. The plans shall bear in amprint of the registration seal of the engineer. Upon completion of the construction or modification of the community water system, the water supplier shall submit a statement signed by a registered professional engineer and affixed with his professional engineering seal stating that construction was completed in accordance with approved plans and specifications and revised only in accordance with the provisions of .0906 of this Section. The statement shall be based upon periodic observations during and upon completion of construction by the engineer or a representative of the engineer's office who is under the engineer's supervision.

Statutory Authority G.S. 130A-315; 130A-317; P. L. 93-523.

SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

.0029 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) The general provisions contained in 45 Fed. Reg. 33,119 to 33,121 (1980) [to be codified in 40 CFR 261.1 to 261.6 (Subpart A)] have been adopted by reference as amended by 45 Fed. Reg. 72,028, 72,037, 76,620, 76,623, 76,624, and 78,531 (1980); 46 Fed. Reg. 56,588, 56,589, 47,429, 44,972, and 44,973 (1981); 48 Fed. Reg. 2,532, 14,293, 14,294, and 30,115 (1983); 49 Fed. Reg. 23,287, and 44,980 (1984); and 50 Fed. Reg. 663, 664, 665, 1,999, 14,219, 28,743, 28,744, 49,202, 49,203, and 33,542 (1985); and 51 Fed. Reg. 10,174, 10,175, 25,472, and 28,682 (1986); and 52 Fed. Reg. 11,821 (1987).

(e) The "Lists of Hazardous Wastes" and the accompanying appendices (I through X) contained in

45 Fed. Reg. 33,122 to 33,137 (1980) [to be codified in 40 CFR 261.30 to 261.33 (Subpart D)] have been adopted by reference as amended by 45 Fed. Reg. 72,032 to 72,034, 74,890, 74,892, and 74,894 (1980); 46 Fed. Reg. 78,529, 78,537 to 78,544, 4,614 to 4,620 (1981); 49 Fed. Reg. 5,312, 19,923 (1984); and 50 Fed. Reg. 662, 665, 2,000, and 28,744 (1985). Supplemental material contained in 45 Fed. Reg. 47,833 and 47,834 (1980); 46 Fed. Reg. 35,247 to 35,249 (1981); and 48 Fed. Reg. 14,294 and 15,256 to 15,258 (1983) have also been adopted by reference as amended by 50 Fed. Reg. 1999, 2001, 2002, and 2003, 14,219, 42,942, and 42,943, and 53,319 (1985); and 51 Fed. Reg. 2,702, 6,541, 6,542, 5,330, 10,175, 19,322, 28,297 to 28,309, 28,310, 28,682, and 33,612, 37,728 and 37,729 (1986).

Statutory	Authority	G.S.
130A-294(c).		

**.0032 STANDARDS FOR OWNERS/
OPERATORS OF HWMF'S -
PART 264**

(i) "Financial Requirements" contained in 46 Fed. Reg. 2,851 to 2,866 and 7,678 (1981) [to be codified in 40 CFR 264.140 to 264.151 (Subpart H)] have been adopted by reference as amended by 47 Fed. Reg. 15,047 to 15,064 and 16,554 to 16,558, and 32,357 (1982) and 48 Fed. Reg. 30,115 (1983), and 51 Fed. Reg. 16,447 to 16,451, 25,472, (1986), except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.147(a), 40 CFR 264.147(b), 40 CFR 264.151(a)(1), Section 15, and 40 CFR 264.151(g), and 40 CFR 264.151(a), (b),(c),(d),(e),(f),(h),(i), and (j) are not adopted by reference.

(18) Section 264.147(b) is amended by adding a new paragraph (6) to read as follows:

(6) Use of multiple financial mechanisms. An owner or operator may demonstrate the required liability coverage by establishing more than one financial mechanism as specified in this section. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of

credit, and insurance. The mechanisms must be as specified in paragraphs (1), (3), (4), and (5) of this section, except that it is the combination of the mechanisms, rather than the single mechanism, which must provide financial assurance for liability coverage for an amount at least six million dollars (\$6,000,000). If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Branch may use any and all of the mechanisms to provide for non sudden accidental occurrences liability coverage for the facility.

(19) Section 264.147 is amended by adding a new paragraph (h) to read as follows:

(h) Corporate guarantee for liability coverage.

(2) A Corporate guarantee may be used to satisfy the requirements of this section if it is a legally valid and enforceable obligation in the State of North Carolina, only if the Attorney General(s) or insurance commissioner(s) of the state in which the guarantor is incorporated and the state(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to the branch that a corporate guarantee executed as described in this Section and Section 264.151(n) is a legally valid and enforceable obligation in that state.

(22) Section 264.151 is amended by adding a new paragraph (k) to read as follows:

(k)(1) A trust agreement for a trust fund, as specified in Sections 264.147(a)(3) or 264.147(b)(3) or 265.147(a)(3) or 265.147(b)(3) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Section 5. Payments Comprising the Fund. Payments made to the

PROPOSED RULES

Trustee for the Fund shall consist of cash or securities, ~~or other assets~~ acceptable to the Trustee.

(26) The following shall be substituted for the provisions of 40 CFR 264.151(g) which were not adopted by reference:

(g) A letter from the chief financial officer, as specified in Sections 264.147(f) or 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of Sections 264.143 or 264.145 and (f)(1)(i) of Section 264.147 are used or if the criteria of paragraphs (e)(1)(i) of Sections 265.143 or 265.145 and (f)(1)(i) of Section 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of Sections 264.143 or 264.145 and (f)(1)(ii) of Section 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of Sections 265.143 or 265.145 and (f)(1)(ii) of Section 265.147 are used.]

ALTERNATIVE I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) \$ _____
2. Amount of annual aggregate liability coverage to be demonstrated \$ _____
3. Sum of lines 1 and 2 \$ _____
4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) \$ _____
- *5. Tangible net worth \$ _____
- *6. Net worth \$ _____
- *7. Current assets \$ _____
- *8. Current liabilities \$ _____
9. Net working capital (line 7 minus line 8) \$ _____

*10. The sum of net income plus depreciation, depletion, and amortization \$ _____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ _____ YES NO

12. Is line 5 at least \$10 million? _____

13. Is line 5 at least 6 times line 3? _____

14. Is line 9 at least 6 times line 3? _____

*15. Are at least 90% of assets located in the U.S.? If not, complete line 16. _____

16. Is line 11 at least 6 times line 3? _____

17. Is line 4 divided by line 6 less than 2.0? _____

18. Is line 10 divided by line 4 greater than 0.1? _____

19. Is line 7 divided by line 6 greater than 1.5? _____

Statutory Authority G.S.
130A-294(c).

.0033 INTERIM STATUS STANDARDS FOR HWMF'S - PART 265

(h) "Financial Requirements" contained in 45 Fed. Reg. 33,243 and 33,244 (1980) [to be codified in 40 CFR 265.140 to 265.151 (Subpart H)] have been adopted by reference as amended by 46 Fed. Reg. 2,877 to 2,888 (1981); 47 Fed. Reg. 15,064 to 15,074 and 16,558 to 16,561 (1982); 48 Fed. Reg. 14,295 and 30,115 (1983); and 51 Fed. Reg. 16,455 to 16,458, 25,479, (1986), except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 265.145(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 265.147(a), and 40 CFR 265.147(b), are not adopted by reference.

(18) Section 265.147 is amended by adding a new paragraph (h) to read as follows:

(h) Corporate guarantee for liability coverage.

(2) A corporate guarantee may be used to satisfy the requirements of this Section if it is a legally valid and enforceable obligation in the State of North Carolina only if the

Attorney General(s) or insurance commissioner(s) of the State in which the guarantor is incorporated and the State(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to the Branch that a corporate guarantee executed as described in this section and Section 264.151(n) is a legally valid and enforceable obligation in that state.

(k) The provisions for "Surface Impoundments" contained in 45 Fed. Reg. 33,245 and 33,246 (1980) [to be codified in 40 CFR 265.220 to 265.230 (Subpart K)] have been adopted by reference as amended in 50 Fed. Reg. 16,048 and 28,749 (1985). ; and 52 Fed. Reg. 8,708 and 8,709 (1987).

Statutory	Authority	G.S.
130A-294(c).		

.0034 INTERIM STATUS STANDARDS FOR PERMITTING - PART 270

(d) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,243 to 14,245 and 30,114 (1983) to be added [to be codified in 40 CFR 270 (Subpart D, Changes to Permit)] have been adopted by reference as amended by 50 Fed. Reg. 28,752 (1985); and 51 Fed. Reg. 16,458, 16,459, and 40,653 (1986).

Statutory	Authority	G.S.
130A-294(c).		

.0039 RECYCLABLE MATERIALS - PART 266

(b) The following provisions for "Hazardous Waste Burned for Energy Recovery" contained in 50 Fed. Reg. 667 and 668 (1985) [to be codified in 40 CFR 266.30 to 266.36 (Subpart D)] have been adopted by reference as amended by 50 Fed. Reg. 14,220, 28,751, 33,543, 49,204, and 49,205 (1985); and 52 Fed. Reg. 11,821 (1987).

~~(c)~~ (c) The following provision for "Used Oil Burned for Energy Recovery" contained in 50 Fed. Reg. 49,205, 49,206, and 49,207 (1985) [to be codified in 40 CFR 266.40 to 266.44 (Subpart E)] have been

adopted by reference, as amended in 52 Fed. Reg. 11,822 (1987).

~~(c)~~ (d) The following Provision for Recyclable Materials Utilized for Precious Metal Recovery contained in 50 Fed. Reg. 667 (1985) [to be codified in 40 CFR 266.70 (Subpart F)] have been adopted by reference.

(d) (c) The following Provisions for Spent Lead-Acid Batteries being reclaimed contained in 50 Fed. Reg. 667 and 668 (1985) [to be codified in 40 CFR 266.80 (Subpart G)] have been adopted by reference as amended by 50 Fed. Reg. 33,543 (1985).

Statutory	Authority	G.S.
130A-294(c).		

.0041 REQUIREMENTS: HAZARDOUS WASTE PROGRAM - PART 271

The following provisions for the "sharing of information" [to be codified in 40 CFR ~~271.1 to 271.17~~] have been adopted by reference as amended by 50 Fed. Reg. 28,754 (1985) and 51 Fed. Reg. 10,176 and 25,486 + ~~28,685, 29,431, 33,720, 33,721, and 33,722~~ (1986).

Statutory	Authority	G.S.
130A-294(c).		

CHAPTER 12 - HEALTH: OFFICES OF LOCAL SERVICES

SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENTS

.0239 FOOD, LODGING, AND INSTITUTIONAL SANITATION

(a) A local health department shall provide food, lodging, and institutional sanitation services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

(1) The frequency of inspections of food, lodging, and institutional facilities with the following being the minimum:

Type of Establishment and	Frequency
Bed and breakfast homes -	1 year;
Child day-care facilities -	1 year;
Education food service -	3 year;
Institutions -	2 year;
Local confinement facilities -	1 year;
Lodging -	2 year 1 year

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~~Mass gatherings - 2/gathering~~
Meat markets - 4/year; Migrant housing - 2/year; Mobile food units - 4/year; Private boarding schools and colleges - 2/year; Pushcarts - 4/year; Residential care facilities - 1/year; Restaurants - 4/year; Restaurants, meat markets, summer camps which are closed for a period of 60 days or more - 1/3 months of operation (or part thereof); School lunchrooms - 3/year; Schools - 1/year; Summer camps - 1/year; Temporary restaurants, food stands, or drink stands - 1/two weeks; Vending machine locations - Representative number of locations/year.

Statutory Authority G.S. 130A-9.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Mental Health, Retardation and Substance Abuse Services intends to amend regulation cited as 10 NCAC 14C .1145.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 11:00 a.m. on August 17, 1987 at Room 864, Albemarle Building, 325 N. Salisbury Street, Raleigh, NC.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jackie Stalnaker, APA Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611, (919) 733-7971 by August 17, 1987. The hearing record will remain open for written comments for 30 days from July 16, 1987 through August 14, 1987. Written comments must be sent to the APA Coordinator at the address specified above by August 14, 1987.

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14C - GENERAL RULES

SECTION .1100 - STATE AND FEDERAL FUNDS ADMINISTERED

.1145 DEVELOPMENTAL DAY CARE GRANTS-IN-AID

(c) Children in whose behalf funds are administered to programs shall be:

- (1) ~~moderately, severely, or profoundly mentally retarded~~ or infants at high risk for mental retardation for whom a disability specific diagnostic label ~~of mental retardation~~ is inappropriate prior to three years of age, as certified by a licensed physician, and for whom a less restrictive program is not available;
- (2) between the ages of birth and 19; and
- (3) residents of North Carolina.

(d) Children who are moderately, severely or profoundly mentally retarded or infants at high risk for mental retardation shall be given first priority for available funds. Preschool children who are mildly retarded may be served if they meet the eligibility requirement specified in (c) (3) of this Rule and if prior approval of the appropriate regional office is obtained. When non-matching social services block grant or other federal funds are utilized, children who are ~~mildly mentally retarded or otherwise developmentally delayed or at risk for developmental delay disabled~~ may be served if they meet the eligibility requirements specified in (c) (2) and (3) of this Rule and if prior approval of the appropriate regional office is obtained.

(4) (e) To apply for developmental day care grant-in-aid funds an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the division.

(e) (f) Funds for developmental day care shall be allocated among the regions of the division by the division director.

(f) (g) Disbursement of developmental day care grant-in-aid funds shall be made after approval of the plan and budget by the regional director.

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*Statutory Authority G.S. 122C-112
(a) (6); 122C-131; 122C-147.*

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Medical Assistance intends to amend regulations cited as 10 NCAC 26B .0201(c); .0207(b); and 26D .0012.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 1:30 p.m. on August 14, 1987 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N. C. 27603.

Comment Procedures: Written comments concerning these amendments must be submitted by August 14, 1987 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing.

CHAPTER 26 - MEDICAL SERVICES

SUBCHAPTER 26B- MEDICAL SERVICES PROVIDED

SECTION .0200 - DENTAL SERVICES

.0201 DEFINITIONS

(c) "Routine services" means examinations, x-rays, prophylaxis, non-surgical tooth extractions, amalgam fillings and fluoride treatments. These services are subject to the two times during a consecutive 12-month period limitation, without prior approval. A dentist may provide ~~these~~ limited routine services to a new patient without reference to services that may have been performed previously by another dentist. However, bitewing, panorex and full series x-rays have specific time restrictions imposed that limit these services.

*Statutory Authority G.S.
108A-25(b); 108A-54; S.L. 1985, c.
479, s. 86; 42 CFR 440.100.*

.0207 GUIDELINES ON SERVICES

(b) The routine radiogram necessary to establish a diagnosis and treatment plan may be taken twice in a consecutive 12-month period be-

ginning July 1, of each year without prior approval. A full mouth series is allowed every ~~three~~ five years.

*Statutory Authority G.S.
108A-25(b); 108A-54; S. L. 1985, c.
479, s. 86.*

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT; DURATION; AND SCOPE OF ASSISTANCE

.0012 TIME LIMITATION

~~(b) Providers must file adjustments no later than 180 days after date of payment or adjustments will not be made.~~

~~(c)~~ (b) The limitation in this Rule may be waived by the Division of Medical Assistance when a delay in eligibility determination has made it impossible for the provider to file the claim within the 365 days provided for in (a) of this Rule.

~~(d)~~ (c) In cases where claims ~~or adjustments~~ were not filed within the time limitations specified in (a) ~~and~~ (b) of this Rule, and the provider shows failure to do so was beyond his control, he may make an administrative appeal to the director of the Division of Medical Assistance. The Director of Medical Assistance is the final authority for administrative appeals.

*Statutory Authority G.S.
108A-25(b); 42 CFR 447.45.*

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Medical Assistance intends to amend regulation cited as 10 NCAC 26H .0303.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 1:30 p.m. on August 14, 1987 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by August 14, 1987 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing.

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SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

.0303 SPECIAL PAYMENT

(g) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost vacation leave earned for that year and all previous years less vacation leave used or expended over the same period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on a reasonable estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 CFR Part 447, Subpart C.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the Private Protective Services Board intends to amend regulation cited as 12 NCAC 7D .0401(a).

The proposed effective date of this action is November 1, 1987.

The public hearing will be conducted at 12:00 p.m. on August 21, 1987 at McKimmon Center, Gorman Street at Western Boulevard, Raleigh, N. C.

Comment Procedures: Any person wishing to propose changes must do so in writing 10 days prior to the date of the public hearing to: Mr. Jim Kirk, N. C. Private Protective Services Board, P. O. Box 29500, Raleigh, N. C. 27626.

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICE BOARD

SECTION .0400 - PRIVATE INVESTIGATOR: COUNTERINTELLIGENCE

.0401 EXPERIENCE REQUIREMENTS FOR A PRIVATE INVESTIGATOR LICENSE

(a) In addition to the requirements of 12 N.C.A.C. 7D .0200, applicants for a private investigator license shall meet the requirements of G.S. Chapter 74C-8(d)(3) and successfully complete an oral or written examination deemed by the board to measure an individual's knowledge and competence as a private investigator.

Statutory Authority G.S. 74C-5(2).

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to adopt, amend, repeal regulations cited as 15 NCAC 2B .0217; 2H .0408; 2H .0409; 2H .1001 -.1004.

The proposed effective date of this action is January 1, 1988.

The public hearing will be conducted at 7:00 p.m. on August 17, 1987 at College of the Albemarle, Bld. B-Room B-202, U.S. Hwy. 17 North, Elizabeth City, NC. At 7:00 p.m. on August 18, 1987, Craven Co. Community Coll., C-Bldg. Room C-15, South Glenburnie at Coll. Ct., New Bern, NC. At 7:00 p.m. on August 19, 1987, N.C. Aquarium, Fort Fisher, U.S. Hwy. 421, Kure Beach, NC. At 1:30 p.m. on August 20, 1987, Archdale Bldg., Ground Fl. Hearing Rm., 512 N. Salisbury St., Raleigh, NC.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or

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within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited to 3 minutes at the discretion of the hearing officer. For further information or the submission of written comments, contact Bill Kreutzberger, DEM, P. O. Box 27687, Raleigh, NC 27611, (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS OF NORTH CAROLINA

.0217 STORMWATER CONTROL CRITERIA TO PROTECT WATER QUALITY STANDARDS (REPEALED)

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

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0400 - COASTAL WASTE TREATMENT DISPOSAL

.0408 DISPOSAL OF STORMWATER (REPEALED)

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

.0409 TRIAL IMPLEMENTATION PERIOD/COASTAL STORMWATER CONTROLS

The provisions of 15 NCAC 2H .0408 shall expire ~~December 31, 1987~~ or one year from the effective date, ~~whichever is later~~ December 31, 1988 unless this Rule (15 NCAC 2H .0409) is specifically amended or repealed by the commission.

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

SECTION .1000 - STORMWATER RUNOFF DISPOSAL

.1001 STORMWATER DISPOSAL POLICY

(a) The increase in stormwater runoff associated with land development activities can substantially increase inputs of numerous pollutants to waters of the state over that which occurs in natural, undeveloped watersheds. The increased pollutant loading from stormwater runoff may

degrade ambient water quality, adversely impact best usage or otherwise violate water quality standards. For these reasons, the goal of the commission is that the water quality impacts of development activities be minimized to the extent practicable and in accordance with the provisions of this Section. In establishing this goal, the commission recognizes that the U.S. Environmental Protection Agency will be establishing permit requirements and best management practices for stormwater point sources pursuant to the Federal Water Pollution Control Act as amended.

(b) The rules in this Section to control pollutants associated with stormwater runoff apply to development of land for residential, commercial, industrial, or institutional use but do not apply to land management activities associated with agriculture or silviculture.

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

.1002 DEFINITIONS

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in this Section are defined as follows:

(1) Development means any land disturbing activity which adds or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil thus altering the hydrological characteristics of the area;

(2) Drainage area or watershed means that area contributing runoff to a single point measured in a horizontal plane which is enclosed by a ridge line;

(3) Infiltration systems mean stormwater treatment systems designed to allow runoff to pass or move (infiltrate) into the soil surface;

(4) On-site stormwater system means the design and construction of systems necessary to

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- control stormwater within an individual development project;
- (5) Off-site stormwater system means the design and construction of systems necessary to control stormwater from more than one development which is owned and operated as a duly licensed utility or by a local government;
- (6) Built-upon area means that portion of an individual development project that is covered by impervious or partially impervious cover including buildings, pavement, recreation facilities, etc. but not including decking.
- (7) Redevelopment means any rebuilding activity following fires, hurricanes or other natural disaster or other public restoration projects designated by the commission;
- (8) Wet detention pond means a structure that provides for the storage and treatment of runoff and includes a permanent pool of water.
- (9) Coastal Counties include Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington;
- (10) Sedimentation/erosion control plan means any plan submitted to the Division of Land Resources or delegated authority in accordance with 15 NCAC 4B .0005.
- (11) CAMA major development permit required by the Coastal Resources Commission according to 15 NCAC 7J Sections .0100 and .0200.
- (12) Vegetative filter means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and provides for infiltration of runoff and filtering of pollutants. The direction of stormwater flow defines the width of the filter.
- (13) Stormwater collection system

means any pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff.

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

.1003 COASTAL STORMWATER DISPOSAL

(a) Applicability. Stormwater control measures as described in this Rule are required for any development activities in the coastal counties which require a CAMA major development permit or a sedimentation/erosion control plan after [the effective date of this Rule] unless:

- (1) the project site is one acre or less;
- (2) the project site drains to SA waters or unnamed tributaries to SA waters, has a built-upon area of 25 percent or less, there is no stormwater collection system and built-upon area is at least 30 feet from surface waters;
- (3) the project site drains to waters other than SA, has a built-upon area of 30 percent or less, there is no stormwater collection system and built-upon area is at least 30 feet from surface waters;
- (4) the runoff from the project site is controlled through an off-site stormwater system meeting provisions of this Rule and permitted in accordance with G.S. 143-215.1(d); or
- (5) The director certifies that the site is situated such that water quality standards and uses are not threatened regardless of the type and degree of development.

Projects with stormwater control measures in accordance with the provisions of this Rule shall be deemed permitted pursuant to G.S. 143-215.1(d) upon receipt of a permit from the Division of Coastal Management or plan approval from the Division of Land Resources (or delegated authority). In addition, NPDES permits for stormwater point sources may be required according to the provisions of 15 NCAC 2H .0126.

(b) Stormwater Control Options. Non-innovative stormwater control

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measures which can be approved according to this Rule include:

- (1) Stormwater infiltration systems including infiltration basins/ponds, swales, vegetative filters and porous pavement; and
- (2) Wet detention ponds.
- (c) Design Criteria for Projects Draining Directly to Class SA waters.
 - (1) Direct outlet channels or pipes to SA waters are prohibited unless permitted in accordance with 15 NCAC 2H .0126.
 - (2) Infiltration control systems must be designed to control the runoff from all impervious surfaces generated by one and one-half inches of rainfall. The size of the system must take into account the runoff from any pervious surfaces draining to the system.
 - (3) Runoff in excess of the design volume must flow overland through a vegetative filter with a minimum width of 50 feet measured from mean high water of SA waters;
- (d) Design Criteria For Projects Not Draining to SA Waters.
 - (1) Infiltration control systems must be designed to control the runoff from all impervious surfaces generated by one inch of rainfall. The size of the system must take into account the runoff from any pervious surfaces draining to the system.
 - (2) As a design alternative to a design based on rainfall volume, wet detention ponds may be designed for 85 percent removal of total suspended solids.
 - (3) Vegetative filters are required for the overflow and discharge of all stormwater wet detention ponds. These filters shall be at least 30 feet in length.
 - (4) Additional control measures may be required on a case-by-case basis to protect sensitive waters or specific water uses.
- (e) Infiltration System Requirements. Infiltration systems may be designed to provide infiltration of the entire design rainfall volume required for a site or a series of successive systems may be utilized. Infiltration may also be used to pretreat runoff prior to disposal in a wet detention

ponds. The following are general requirements:

- (1) Infiltration systems shall be a minimum of 30 feet from surface waters and 50 feet from Class SA waters;
- (2) Infiltration systems shall be a minimum distance of 100 feet from water supply wells;
- (3) The bottom of infiltration systems shall be a minimum of 2 feet above the seasonal high water table;
- (4) Infiltration systems must be designed such that runoff in excess of the design volume bypasses the system and does not flush pollutants through the system;
- (5) Infiltration systems must be designed to completely draw down to pre-storm levels within five days;
- (6) If runoff is directed to infiltration systems during construction of the project, the system must be restored to design specifications after the project is complete and the entire drainage area is stabilized.
- (f) Wet Detention Pond Requirements. These practices can be used as a primary treatment device or as a secondary device following an infiltration system. Wet detention ponds shall be designed for a specific pollutant removal according to modeling techniques approved by the director. Specific requirements for these systems are as follows:
 - (1) the design storage volume shall be above the permanent pool;
 - (2) The discharge rate from these systems shall be such that post-development peak discharge rate is no more than pre-development discharge rate for a 10-year, 24-hour storm with a 10-year, one-hour peak intensity; the outflow should be such that the pond is at the permanent pool level within five days;
 - (3) A mean depth of a minimum of three feet is required;
 - (4) The inlet structure must be designed to minimize turbulence using baffles or other appropriate design features;
 - (5) Pretreatment of the runoff

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by the use of infiltration swales is encouraged to minimize sedimentation and eutrophication of the detention pond.

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

- (1) A distribution device such as a swale shall be used to provide even distribution of runoff over the length of the vegetative filter;
- (2) The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow-through the buffer for a 10-year, 24-hour storm with a 10-year, 1-hour intensity.
- (3) Vegetation in the filter may be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics;

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

- (1) There is a reasonable expectation that the control measures will be successful;
- (2) The projects are not located near sensitive waters;
- (3) Monitoring requirements are included to verify the performance of the control measures; and
- (4) Alternatives are available if the control measures fail;

No more than five projects utilizing the same innovative control measure will be approved until the technology is proven over a time frame to be determined on a case-by-case basis.

(i) **Operation and maintenance plans.** An operation and maintenance plan or manual shall be provided for stormwater systems, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those

actions are to be taken, and who is responsible for those actions;

(j) **Violations of these Rules.** Failure to install systems according to plans and specifications approved by the division or failure to operate and maintain systems in accordance with approved operation and maintenance plans shall be considered a violation of a permit of the commission.

(k) **System Design.** Stormwater systems must be designed by a North Carolina registered professional engineer; upon completion of construction, the registered professional engineer must certify that the system was constructed in accordance with plans and specification reviewed by the division and complies with the requirements of this Rule.

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

.1004 STATEWIDE STORMWATER GUIDELINES

The division will periodically develop guidelines for the control of stormwater pollution from various development practices and to protect specific water uses; these guidelines will be provided to requesting individuals, institutions, local governments, or state/federal agencies on request for use in developing control strategies for mitigating stormwater pollution.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management intends to amend and repeal regulations cited as 15 NCAC 2D .0501; .0524; .0525; 21 .0202.

The proposed effective date of this action is January 1, 1988.

The public hearing will be conducted at 2:00 p.m. on August 17, 1987 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: All persons interested in these matters are invited

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to attend the public hearing. Persons desiring to comment on the proposals are requested to give written notice thereof on or before the hearing date. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. To be included, the statement must be received by the department within 30 days. Additional information concerning the hearing or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-3340.

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

.0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(c)

(4) The procedures for determining compliance with sulfur dioxide emission control standards for fuel burning sources may be either by determining sulfur content with fuel analysis or by stack sampling. If a source chooses to demonstrate compliance by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be in accordance with the following American Society of Testing and Materials (ASTM) methods:

(A) coal:

- (i) sampling--ASTM Method D 2234-82;
- (ii) preparation--ASTM Method D 2013-72;
- (iii) gross calorific value (BTU)--ASTM Method D 2015-85;
- (iv) moisture content--ASTM Method D 3173-85;
- (v) sulfur content--ASTM Method D 3177-84 or ASTM Method D 4239-85;

(B) oil:

- (i) sampling--A sample shall be collected at the pipeline inlet to the fuel burning unit

after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line;

(ii) heat of combustion (BTU)--ASTM Method D 240-85;

(iii) sulfur content--ASTM Method D 129-64 (reapproved 1978).

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the methods described in Parts (A) or (B) of this Subparagraph are used on a one-time or infrequent basis instead of a continual or repetitive basis, the sulfur content shall be determined from a composite of samples taken from the fuel being burned over a three-hour period. Combustion sources choosing to demonstrate compliance through stack sampling shall follow procedures described in Method 6 of Appendix A of 40 CFR Part 60.

Statutory Authority G.S. 143-215.3
(a) (1); 143-215.107 (a) (5); 143-215.68.

.0524 NEW SOURCE PERFORMANCE STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

(8) storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR 60.1 to 60.39 and 60.110 to 60.119);

(30) storage vessels for petroleum liquids, post May 18, 1978 for which construction, recon-

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struction, or modification commenced after May 18, 1978 and prior to July 23, 1984 [40 CFR 60.1 to 60.39 and 40 CFR 60.110(a) to 60.119(a)];

(56) Industrial- Commercial-Institutional Steam Generating Units (40 CFR 60.1 to 60.39 and 60.140a to 60.149a);

(57) Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 [40 CFR 60.1 to 60.39 and 40 CFR 60.110(b) to 60.119(b)].

(e) The version of the new source performance standard listed in Paragraph (a) of this Regulation is that which appeared in the Code of Federal Regulations as of ~~February 14, 1987~~, June 15, 1987.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(e) The version of the national emission standards for hazardous air pollutants in Paragraph (a) of this Regulation is that which appeared in the Code of Federal Regulations as of ~~November 1, 1986~~, June 15, 1987.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

SUBCHAPTER 21 - HEARINGS

SECTION .0200 - RULE MAKING HEARINGS: NOTICE: PROCEDURES

.0202 NOTICE (REPEALED)

Statutory Authority G.S. 87.87; 143-214.1 (e); 143-215.13 (c); 150B-12.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Marine Fisheries Commission intends to amend regulations cited as 15 NCAC 3B .0305; .0901.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 7:30 p.m. on August 24, 1987 - Manteo at Marine Resource Center; August 25, 1987 - Edenton at John A. Holms High School Auditorium; August 26, 1987 - Belhaven at John A. Wilkinson High School Auditorium; August 27, 1987 - Beaufort at East Carteret High School Auditorium; August 31, 1987 - Holly Ridge at Dixon High School Cafeteria.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than September 10, 1987.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3B - FISHERIES REGULATIONS FOR COASTAL WATERS

SECTION .0300 - NET REGULATIONS: GENERAL

.0305 TRAWL NETS

- (4) in Albemarle Sound;
(a) ~~west of the Intracoastal Waterway (Alligator River to North River);~~
(b) ~~east of the Intracoastal Waterway (Alligator River to North River) from December 1 through March 31;~~

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-286.

SECTION .0900 - CLAMS

.0901 SIZE LIMIT: DAILY (HARVEST) LIMIT: AND METHOD OF TAKING CLAMS

- (c) Permit requirements and the season for taking clams with mechanical methods are as follows:
(2)
(A) specify number of days, and
(B) ~~specify~~ rotate areas,
(C) specify time period, and
(D) specify quantity and/or size.
(3) Clams may be taken by

mechanical methods from the following areas during open season:

(A) In Newport River,

beginning at a point on the west side of Core Creek at $34^{\circ} 46' 58''$ N - $76^{\circ} 41' 16''$ W; thence 097° (M) 210 yards to a point in Core Creek at $34^{\circ} 46' 58''$ N - $76^{\circ} 41' 09''$ W; thence 159° (M) 1,160 yards to a point at $34^{\circ} 46' 26''$ N - $76^{\circ} 40' 49''$ W; thence 228° (M) 350 yards to a point on the spoil island at $34^{\circ} 46' 17''$ N - $76^{\circ} 40' 51''$ W; thence following the western shoreline of the island 900 yards to a point at $34^{\circ} 45' 54''$ N - $76^{\circ} 40' 36''$ W; thence 137° (M) 1,580 yards to a point off Russell Creek at $34^{\circ} 45' 25''$ N - $76^{\circ} 39' 50''$ W; thence 185° (M) 1,800 yards to a point near Gable Creek at $34^{\circ} 44' 27''$ N - $76^{\circ} 39' 50''$ W; thence 253° (M) 1,575 yards to Marker "35" in Gallants Channel at $34^{\circ} 44' 10''$ N - $76^{\circ} 40' 43''$ W; thence 218° (M) 1,625 yards to a point on the eastern shore of the Morehead-Beaufort Causeway at $34^{\circ} 43' 30''$ N - $76^{\circ} 41' 14''$ W; thence 310° (M) 1,100 yards to a point at the southeast corner of Newport River Marshes at $34^{\circ} 43' 43''$ N - $76^{\circ} 41' 43''$ W; thence 055° (M) 1,800 yards to Marker "34" at $34^{\circ} 44' 24''$ N - $76^{\circ} 40' 56''$ W; thence 014° (M) 1,480 yards to a point $34^{\circ} 45' 05''$ N - $76^{\circ} 40' 50''$ W; thence 251° (M) 2,460 yards to a point at the mouth of Crab Point Thorofare at $34^{\circ} 44' 33''$ N - $76^{\circ} 42' 09''$ W; thence 208° (M) 600 yards to a point $34^{\circ} 44' 16''$ N - $76^{\circ} 42' 13''$ W; thence 290° (M) 340 yards to a point $34^{\circ} 44' 16''$ N - $76^{\circ} 42' 33''$ W; thence 235° (M) 1,170 yards to Crab Point at $34^{\circ} 44' 50''$ N - $76^{\circ} 42' 10''$ W; thence 078° (M) 510 yards to a point at $34^{\circ} 44' 54''$ N - $76^{\circ} 41' 55''$ W; thence 035° (M) 700 yards to a point at $34^{\circ} 45' 13''$ N - $76^{\circ} 41' 43''$ W; thence 265°

(M) 1,140 yards to a point at $34^{\circ} 45' 04''$ N - $76^{\circ} 42' 27''$ W; thence 316° (M) 1,300 yards to a point $34^{\circ} 45' 30''$ N - $76^{\circ} 43' 06''$ W; thence 080° (M) 3,200 yards to the range tower at $34^{\circ} 46' 01''$ N - $76^{\circ} 41' 20''$ W; thence 007° (M) 1,860 yards to the point of beginning.

(B) In North River, the area of North River, beginning at a point near the Oyster House at $34^{\circ} 46' 34''$ N - $76^{\circ} 36' 50''$ W; thence 077° (M) 1,425 yards to a point at $34^{\circ} 46' 48''$ N - $76^{\circ} 36' 04''$ W; thence 152° (M) 1,350 yards to a point at $34^{\circ} 46' 13''$ N - $76^{\circ} 35' 37''$ W; thence 120° (M) 1,060 yards to a point at the mouth of Ward Creek at $34^{\circ} 46' 05''$ N - $76^{\circ} 35' 01''$ W; thence 188° (M) 950 yards to a point at $34^{\circ} 45' 38''$ N - $76^{\circ} 35' 01''$ W; thence 244° (M) 1,020 yards to a point $34^{\circ} 45' 19''$ N - $76^{\circ} 35' 32''$ W; thence 175° (M) 5,060 yards to a point $34^{\circ} 42' 53''$ N - $76^{\circ} 34' 55''$ W; thence 276° (M) 650 yards to a point near Harkers Point on Harkers Island at $34^{\circ} 42' 53''$ N - $76^{\circ} 35' 18''$ W; thence 223° (M) 325 yards to Marker "55" at $34^{\circ} 42' 45''$ N - $76^{\circ} 35' 25''$ W; thence 279° (M) 425 yards to a point at $34^{\circ} 42' 45''$ N - $76^{\circ} 35' 41''$ W; thence 359° (M) 1,610 yards to a point at $34^{\circ} 43' 37''$ N - $76^{\circ} 35' 50''$ W; thence 309° (M) 1,600 yards to a point $34^{\circ} 44' 02''$ N - $76^{\circ} 36' 37''$ W; thence 231° (M) 715 yards to a point at $34^{\circ} 43' 44''$ N - $76^{\circ} 36' 57''$ W; thence 276° (M) 590 yards to Steep Point at $34^{\circ} 43' 44''$ N - $76^{\circ} 37' 20''$ W; thence 025° (M) 1,000 yards to a point at $34^{\circ} 44' 15''$ N - $76^{\circ} 37' 08''$ W; thence 062° (M) to a point at $34^{\circ} 44' 31''$ N - $76^{\circ} 36' 43''$ W; thence 292° (M) 620 yards to a point at $34^{\circ} 44' 33''$ N - $76^{\circ} 37' 05''$ W; thence 012° (M) 4,275 yards to the point of beginning.

(C) In Core Sound, all waters

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of Core Sound from Bells Point at $34^{\circ} 43' 44''$ N - $76^{\circ} 30' 00''$ W; thence 112° (M) 1,875 yards to Marker "37" at $34^{\circ} 43' 30''$ N - $76^{\circ} 28' 57''$ W; thence 050° (M) 5.6 nautical miles along Core Banks to a point $34^{\circ} 47' 49''$ N - $76^{\circ} 24' 25''$ W; thence 139° (M) 975 yards to a point near the Swash at $34^{\circ} 47' 37''$ N - $76^{\circ} 23' 57''$ W; thence 058° (M) 4,500 yards past the Clubhouse to a point at $34^{\circ} 49' 06''$ N - $76^{\circ} 21' 54''$ W; thence 252° (M) 4,200 yards to a point at $34^{\circ} 48' 07''$ N - $76^{\circ} 24' 08''$ W; thence 052° (M) 3,575 yards to a point at $34^{\circ} 49' 29''$ N - $76^{\circ} 22' 42''$ W; thence 097° (M) 1,500 yards to a point at $34^{\circ} 49' 29''$ N - $76^{\circ} 21' 47''$ W; thence following the shoreline 6,700 yards up to and across Drum Inlet to a point at $34^{\circ} 51' 37''$ N - $76^{\circ} 18' 37''$ W; thence 007° (M) 1,280 yards to a point at $34^{\circ} 52' 14''$ N - $76^{\circ} 18' 37''$ W; thence 051° (M) 3,700 yards to Dump Island at $34^{\circ} 53' 47''$ N - $76^{\circ} 17' 06''$ W; thence 113° (M) 1,000 yards to a point at $34^{\circ} 53' 35''$ N - $76^{\circ} 16' 33''$ W; thence 050° (M) 5.3 nautical miles to a point at $34^{\circ} 57' 36''$ N - $76^{\circ} 12' 21''$ W; thence 001° (M) 3,000 yards to Marker "5A" near Wainwright Island at $34^{\circ} 59' 03''$ N - $76^{\circ} 12' 34''$ W; thence 264° (M) 5,500 yards to Hog Island Point at $34^{\circ} 58' 30''$ N - $76^{\circ} 15' 54''$ W; thence 229° (M) 2,200 yards across to Cedar Island Point at $34^{\circ} 57' 42''$ N - $76^{\circ} 16' 33''$ W; thence following the shoreline southward across the mouth of Lewis Creek, around Long Point, Rumley Bay and Lookout Point to a point on the north shore of Thorofare Bay at $34^{\circ} 55' 48''$ N - $76^{\circ} 18' 49''$ W; thence 186° (M) 2,500 yards to Hall Point at $34^{\circ} 54' 27''$ N - $76^{\circ} 18' 49''$ W; thence southwest along the shore to Steep Point at $34^{\circ} 52' 24''$ N - $76^{\circ} 20' 49''$ W; thence 259°

(M) 2,850 yards to a point in Stryon Bay at $34^{\circ} 51' 58''$ N - $76^{\circ} 22' 31''$ W; thence 216° (M) 1,275 yards to Mill Point at $34^{\circ} 51' 27''$ N - $76^{\circ} 22' 49''$ W; thence west to Drum Point at $34^{\circ} 51' 27''$ N - $76^{\circ} 23' 42''$ W; thence 261° (M) 1,100 yards to Marker "1" in Nelson Bay at $34^{\circ} 51' 18''$ N - $76^{\circ} 24' 20''$ W; thence 206° (M) to Piney Point at $34^{\circ} 49' 36''$ N - $76^{\circ} 25' 06''$ W; thence 263° (M) 2,300 yards to a point in Brett Bay at $34^{\circ} 49' 20''$ N - $76^{\circ} 25' 44''$ W; thence 234° (M) 2,300 yards to Marker "1" in Oyster Creek at $34^{\circ} 48' 42''$ N - $76^{\circ} 26' 49''$ W; thence 215° (M) 6,300 yards to a point east of Spit Bay at $34^{\circ} 45' 47''$ N - $76^{\circ} 28' 31''$ W; thence 264° (M) 2,350 yards to the site of the Old Chimney at Jarrett Bay at $34^{\circ} 45' 32''$ N - $76^{\circ} 30' 00''$ W; thence 214° (M) 1,550 yards to a point at $34^{\circ} 44' 52''$ N - $76^{\circ} 30' 18''$ W; thence 180° (M) 2,250 yards to the point of beginning at Bells Point.

Johnson Creek, that area of Johnson Creek east of a line across the creek from a point at $34^{\circ} 45' 02''$ N - $76^{\circ} 26' 24''$ W; thence 049° (M) 600 yards to a point at $34^{\circ} 45' 15''$ N - $76^{\circ} 26' 06''$ W.

Great Island Bay, that area in Great Island Bay from a point on the shore at $34^{\circ} 45' 32''$ N - $76^{\circ} 25' 19''$ W; thence 021° (M) 1,350 yards to a point in the bay at $34^{\circ} 46' 07''$ N - $76^{\circ} 25' 15''$ W; thence 123° (M) 1,100 yards to a point on shore at $34^{\circ} 45' 56''$ N - $76^{\circ} 24' 34''$ W.

(D) Salter Path, that area of Bogue Sound from a point on the shore at Salter Path near Rock Point $34^{\circ} 41' 32''$ N - $77^{\circ} 53' 32''$ W, running in a northerly direction 010° (M) 480 yards to a point in Bogue Sound at $34^{\circ} 41' 55''$ N - $77^{\circ} 53' 34''$ W; thence 265° (M) 5,725 yards to a point on Wood Island at $34^{\circ} 41' 13''$ N - $77^{\circ} 56' 58''$ W; thence 270°

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(M) 2,725 yards to a point on Long Island at $34^{\circ} 40' 59''$ N - $77^{\circ} 58' 38''$ W; thence following the southern shoreline of Long Island to a point at $34^{\circ} 40' 36''$ N - $77^{\circ} 59' 14''$ W; thence 164° (M) 800 yards to a point on shore at $34^{\circ} 40' 33''$ N - $77^{\circ} 59' 12''$ W; thence following the shoreline east to the point of beginning.

(E) White Oak River, the area north of the N.C. Highway 24 Bridge beginning at a point on Jones Island $34^{\circ} 41' 44''$ N - $77^{\circ} 06' 24''$ W running 236° (M) 1,075 yards to a point at $34^{\circ} 41' 26''$ N - $77^{\circ} 06' 49''$ W; thence 298° (M) 575 yards to a point at $34^{\circ} 41' 29''$ N - $77^{\circ} 07' 06''$ W; thence 035° (M) 1,275 yards to a point at $34^{\circ} 42' 01''$ N - $77^{\circ} 06' 48''$ W; thence 113° (M) 550 yards to a point on Jones Island at $34^{\circ} 41' 51''$ N - $77^{\circ} 06' 28''$ W; thence along the south shoreline of Jones Island to the point of beginning.

(F) New River.

(i) that area downstream from the N.C. Highway 172 Bridge bounded on the north by a line beginning at Pollocks Point $34^{\circ} 34' 46''$ N - $77^{\circ} 23' 57''$ W; running east 094° (M) to a point on the Corps of Engineers dolphins $34^{\circ} 34' 47''$ N - $77^{\circ} 23' 38''$ W; running 111° (M) to Jarretts Point $34^{\circ} 34' 38''$ N - $77^{\circ} 22' 55''$ W; running 118° (M) to Wilkins Bluff $34^{\circ} 34' 12''$ N - $77^{\circ} 21' 39''$ W; running 226° (M) to a point on the north side of the marked navigation channel $34^{\circ} 33' 57''$ N - $77^{\circ} 21' 53''$ W across from Marker No. 17; running along the north side of the channel to the Intracoastal Waterway; and bounded on the south by a line beginning at the N.C. Highway 172 Bridge $34^{\circ} 34' 38''$ N - $77^{\circ} 23' 57''$ W; running 088° (M) to Ferry Point $34^{\circ} 34' 00''$ N - $77^{\circ} 23' 49''$ W; running 131° (M) to a point in

Fulcher's Landing Bay $34^{\circ} 33' 50''$ N - $77^{\circ} 22' 23''$ W; thence running 099° (M) to Marker No. 17.

(ii) Lower New River, the main channel and 100 feet on either side from Marker "17" to New River Inlet.

(iii) Intracoastal Waterway

South, all those areas from Marker "49" approximately one nautical mile south of Swansboro in Onslow County to Marker "93" south of Sloop Point in Pender County as described below:

All public bottoms in the Intracoastal Waterway Channel and 100 feet on either side from Marker "49" to Marker "65" at Craig Point; then all bottom in the marked maintained Intracoastal Waterway Channel from Marker "65" at Craig Point to Marker "49" at Morris Landing. All public bottom 100 feet on either side of the Intracoastal Waterway Channel from Marker No. 49 at Morris Landing to Marker No. BC at Banks Channel. All public bottom 100 feet on the west side of the Intracoastal Waterway Channel from Marker No. BC at Banks Channel to Marker No. 93 south of Sloop Point.

(3) (4) For temporary openings made upon the recommendation of Shellfish Sanitation, for maintenance dredging operations, for the taking of Rangia clams, or for relaying of polluted clams to private leases, deeds, or grants as permitted by 15 NCAC 3B .0906, season and areas as set by 15 NCAC 3B .0901 may not apply.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-286.

Notice is hereby given in accordance with G.S. 150B-12 that the Coastal Management intends to amend and adopt regulations cited as 15 NCAC

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7B .0203; 7H .0209; .0306; .0308; .0310; .1102; .1104; .1105; .1501; .1502; .1504; .1505; .1801; .1802; .1803; .1804; .1805; 7M .0301-.0304.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 10:00 a.m. on August 18, 1987 at Marine Fisheries Building, 3411 Arendell Street, Morehead City, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7B - LAND USE PLANNING GUIDELINES

SECTION .0200 - LAND USE PLAN

.0203 POLICY STATEMENTS

(a)

(3)

(B)

(viii) tourism ~~and beach and waterfront access~~ ;

(ix) coastal and estuarine water beach access (which could include urban waterfront access). Policies on type and location should be based on an inventory of all publicly-owned properties, to include street ends, appropriate for access development, and privately owned parcels ~~and~~ where access occurs customarily. State standards for beach access locations as expressed in 7M .0303 shall also be considered in site location. These access areas should be indicated on

maps in the Land Use Plan and shall provide for the diverse needs of the permanent and peak season populations as well as day visitors.

Statutory Authority G.S. 113A-107 (a).

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0209 ESTUARINE SHORELINES

(e)

(8) Established common-law and statutory public rights of access to public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon existing or proposed public accessways nor shall it limit the intended use of the accessways.

Statutory Authority G.S. 113A-107 (b); 113A-108 (a); 113A-113 (b).

SECTION .0300 - OCEAN HAZARD AREAS

.0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a)

(5) Established common-law and statutory public rights of access to public trust lands and waters in ocean hazard areas not be eliminated or restricted. Development shall not encroach upon existing or proposed public accessways nor shall it limit the intended use of the accessways.

Statutory Authority G.S. 113A-107; 113A-113 (b) (6).

.0308 SPECIFIC USE STANDARDS

(c)

(4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway should be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways should be no greater than 10 feet in width and should be constructed of wooden sections fastened to

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gether over the length of the affected dune area.

Statutory Authority G.S. 113A-107 (a); 113A-107 (b); 113A-113 (b) (6) a; 113A-113 (b) (6) b; 113A-113 (b) (6) d.

.0310 USE STANDARDS FOR INLET HAZARD AREAS

- (a)
- (4) Established common-law and statutory public rights of access to public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon existing or proposed public accessways nor shall it limit the intended use of the accessways.
- (7) Public dedication of roads shall be encouraged to promote permanent public access opportunities to inlet areas. Public land acquisition at inlets is also encouraged to provide traditional beach and fishing access opportunities.

Statutory Authority G.S. 113A-107; 113A-113 (b).

SECTION .1100 - GENERAL PERMIT FOR CONSTRUCTION OF BULKHEADS AND THE PLACEMENT OF RIPRAP FOR SHORE LINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS

.1102 APPROVAL PROCEDURE

(a) The applicant must contact the Office Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Office Division of Coastal Management representative so that the proposed bulkhead alignment can be appropriately marked. Written authorization to proceed with the proposed development will may be issued during this visit. Construction of the bulkhead or riprap structure must begin within 90 days of this visit or the general authorization expires and it will be necessary to re-examine the

alignment to determine if the general authorization can be reissued.

Statutory Authority G.S. 113A-107 (a); 113A-107 (b); 113A-113 (b); 113A-118 (1).

.1104 GENERAL CONDITIONS

(d) This general permit may be either modified, suspended or revoked in whole or in part according to the provisions of G.S. 113A-107 if the department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the department ~~believes~~ determines that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.

Statutory Authority G.S. 113A-107 (a); 113A-107 (b); 113A-113 (b); 113A-118 (1).

.1105 SPECIFIC CONDITIONS

(b) Along natural shorelines e.g. rivers, creeks, bays, sounds, etc., Bulkheads bulkheads or riprap material must be positioned so as not to exceed more than an average distance of 2 feet waterward of the mean high water mark, or the normal water level contour, whichever is applicable. In no case shall the bulkhead or riprap be positioned more than 5 feet waterward of the mean high water or normal water level contour at any point along its alignment.

(c) Along shorelines within upland basins, canals, and ditches, bulkheads or riprap material must be positioned so as not to exceed more than an average distance of 5 feet waterward of the mean high water mark or the normal water level contour, whichever is applicable. In no case shall the bulkhead or riprap be positioned more than 10 feet waterward of the mean high water or normal water level contour at any point along its alignment. For the purpose of these Regulations, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline and development must occur as described in 7H .1105(b).

(e) (d)

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- (d) (e)
- (e) (f)
- (f) (g)
- (g) (h)
- (h) (i)
- (i) (j)

Statutory Authority G.S. 113A-107 (a); 113A-107 (b); 113A-113 (b); 113A-118 (1).

SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING CANALS; CHANNELS; BASINS; OR DITCHES IN ESTUARINE WATERS; PUBLIC TRUST WATERS; AND ESTUARINE SHORELINE AEC'S

.1501 PURPOSE

This permit will allow the maintenance excavation of existing canals, channels, basins, and ditches in estuarine and public trust waters when the following general and specific conditions can be met. This permit will allow excavation within existing canals, channels, basins and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins into adjacent highground that will be used for private, non-commercial activities. This general permit is being developed according to the procedures outlined in Subchapter 7J .1100, and will apply to the estuarine waters and public trust waters areas of environmental concern.

Statutory Authority G.S. 113A-107 (a), (b); 113A-113 (b); 113A-118 (1); 113-229 (cl).

.1502 APPROVAL PROCEDURE

(a) The applicant must contact the Office Division of Coastal Management and complete an application form requesting approval for development. Applicants shall provide their name and address, the site loca

(c) No work shall begin until an onsite meeting is held with the applicant and an Office Division of Coastal Management representative to inspect and mark the proposed area of excavation and spoil disposal. Written authorization to proceed with the proposed development can be issued during this site visit. Maintenance All excavation must be

completed within 90 days of the date of permit issuance, or the general authorization expires.

Statutory Authority G.S. 113A-107 (a), (b); 113A-113 (b); 113A-118 (1); 113-229 (cl).

.1504 GENERAL CONDITIONS

(f) This general permit authorizes maintenance excavation in canals, channels, basins and ditches within primary nursery areas as designated by the Division of Marine Fisheries except as proscribed by other provisions of this permit. Individual project requests will be evaluated on a case-by-case basis and coordinated with appropriate Division of Marine Fisheries personnel. Individual projects will not be allowed during periods of highest biological productivity.

(g) New basins within or with connections to primary nursery areas are not allowed.

(h) No new basins will be allowed that result in closure of shellfish waters according to the closure policy of the Division of Health Services.

(i) (j)

(g) (j)

Statutory Authority G.S. 113A-107 (a), (b); 113A-113 (b); 113A-118 (1); 113-229 (cl).

.1505 SPECIFIC CONDITIONS

Proposed maintenance excavation must meet each of the following specific conditions to be eligible for authorization by this general permit.

(1) New basins will be allowed only when they are located entirely in highground and join existing man-made canals or basins.

(2) New basins will be no larger than 50 feet in either length or width and no deeper than the waters they join.

(3) New basins must be for the private non-commercial use of the land owner.

(4) (4)

(2) (5)

(3) (6)

(4) (7)

(5) (8)

(6) (9)

No excavation may occur may occur during times designated by the N.C. Office Divi-

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sion of Coastal Management for protection of fish, shellfish or wildlife resources.

- (7) (10) No maintenance excavation may take place within primary nursery areas or prime shellfish areas as designated by the N.C. Division of Marine Fisheries.

- (8) ~~The location and design of existing basin, channel, canal or ditch must meet all current AEC guidelines.~~

- (9) (11) Maintenance Proposed excavation must not promote or provide the opportunity for a change in existing land use at the time of project review.

Statutory Authority G.S. 113A-107 (a), (b); 113A-113 (b); 113A-118 (1); 113-229 (cl).

SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING LANDWARD OF THE MEAN HIGH WATER MARK IN THE OCEAN HAZARD AEC

.1801 PURPOSE

This permit will allow beach bulldozing needed to reconstruct or repair frontal and/or primary dune systems. For the purpose of this general permit, beach bulldozing is defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to repair damage to frontal and/or primary dunes caused by a major storm event. This general permit is being developed according to the procedures outlined in Subchapter 7J .1100 and will apply only to the Ocean Erodible AEC. This general permit shall not apply to the Inlet Hazard AEC.

Statutory Authority G.S. 113-229 (cl); 113A-107 (a) (b); 113A-113 (b); 113A-118 (1).

.1802 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management or local permit officer (LPO) and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant must provide confirmation that a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate LPO or Division of Coastal Management representative so that the existing first line of stable natural vegetation can be appropriately marked and recorded on the application. Written authorization to proceed with the proposed development may be issued during this visit. All bulldozing must be completed within 30 days of the date of permit issuance or the general authorization expires.

Statutory Authority G. S. 113-229 (cl); 113A-107 (a) (b); 113A-113 (b); 113A-118 (1).

.1803 PERMIT FEE

No fee will be assessed for this permit.

Statutory Authority G.S. 113-229 (cl); 113A-107 (a) (b); 113A-113 (b); 113A-118 (1).

.1804 GENERAL CONDITIONS

(a) Any future setback determinations which may be required shall be made using the first line of stable natural vegetation established prior to the bulldozing activity.

(b) Individuals shall allow authorized representatives of the Department of Natural Resources and Community Development to make periodic inspections at any time deemed necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) This general permit may be either modified, suspended, or revoked in whole or in part according to the procedures in G. S. 113A-107 if the department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the department believes that authorization may be warranted but that the proposed activity might significantly affect the

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quality of the human environment or unnecessarily endanger adjoining properties.

(d) This general permit will not be applicable to proposed construction when the department determines after any necessary investigation that the proposed activity would adversely affect areas which possess historical, cultural, scenic, conservation or recreational values. If a shipwreck is unearthed, all work shall stop and both the Division of Archives and history and Coastal Management shall be contacted immediately.

(e) The department may on a case by case basis determine that the general permit shall not be applicable to a specific construction proposal. In those cases, individual permit application and review of the proposed project will be required according to 15 NCAC 7H.

(f) This general permit does not convey any rights, either in real estate or material and does not authorize any injury to property or invasion of rights of others.

(g) This permit does not eliminate the need to obtain any other required state, local or federal authorization.

(h) Development carried out under this permit must be consistent with all local requirements, AEC guidelines, and local Land Use Plans current at the time of authorization.

Statutory Authority G.S. 113-229 (c1); 113A-107 (a) (b); 113A-113 (b); 113A-118 (1).

.1805 SPECIFIC CONDITIONS

(a) The area in which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and should follow the pre-emergency slopes as closely as possible. The movement of material by a bulldozer, front-end loader, backhoe, scraper or any type of earth moving or construction equipment shall not exceed 1 foot in depth measured from the pre-activity surface elevation.

(b) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining landowner(s).

(c) Movement of material from seaward of the mean high water line is not authorized.

(d) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources.

(e) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The fill areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.

(f) In order to minimize adverse impacts to nesting sea turtles, no work shall occur within the period of May 1 through November 15 of any year.

(g) No more than one contiguous acre of oceanfront property can be excavated and/or filled without a certified sedimentation and erosion control plan or approval from the Division of Land Quality or the appropriate local government.

Statutory Authority G.S. 113-229 (c1); 113A-107 (a) (b); 113A-113 (b); 113A-118 (1).

SUBCHAPTER 7M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0300 - SHOREFRONT ACCESS POLICIES

.0301 DECLARATION OF GENERAL POLICY

It is the policy of the State of North Carolina to foster, protect, improve and ensure optimum access to recreational opportunities at ocean and estuarine water beach areas consistent with public rights, rights of private property owners and the need to protect natural resources, especially sand dunes and marsh vegetation. The state's ocean and estuarine water beaches are a resource of statewide significance held in trust for the use and enjoyment of all the citizens. The public has traditionally and customarily freely used and had access to these resources and the state has a responsibility to provide continued reasonable access to its beaches and estuarine waters. The State of North Carolina, therefore, has created a Coastal and Estuarine Water Beach Access Program for the purpose of

acquiring, improving and maintaining recreational property at frequently located intervals along the oceanfront and estuarine shoreline.

Many privately owned properties in close proximity to the Atlantic Ocean and to estuarine shorelines have been and will be adversely affected by coastal hazards, making them unsuitable for permanent residences. A public purpose can be served by the acquisition and/or improvement of such properties for beach access use by the general public provided that such properties are appropriately maintained for this and future generations. The state should acquire the lands which are most vulnerable to severe erosion only when these lands may be used for some valid public purpose, such as beach access and use. The state should seek opportunities for the acquisition of inexpensive properties. Where feasible, donations and bargain acquisitions should be encouraged.

Statutory Authority G.S. 113A-134.1; 113A-134.3.

.0302 DEFINITIONS

(a) "Ocean Beach Access" is defined to include the acquisition and/or improvement of properties situated along the Atlantic Ocean for parking and public passage to the oceanfront. Beach access facilities may include, but are not limited to, parking areas, restrooms, showers, picnic areas, dressing/shower rooms, concession stands, gazebos, litter receptacles, water fountains, dune crossovers, security lighting, emergency and pay telephones, interpretive and public beach access signs, and other appropriate facilities.

(b) "Estuarine Water Beach Access" is defined to include the acquisition and/or improvement of properties located in the twenty county area under CAMA jurisdiction that are situated along estuarine waters as defined by the North Carolina Wildlife Resources Commission and the Division of Marine Fisheries for parking, boating and pedestrian access to estuarine waters. Estuarine water beach access facilities may include, but are not limited to, parking areas, restrooms, showers,

picnic areas, boat ramps, fishing piers, boardwalks, dressing/shower rooms, concession stands, litter receptacles, security lighting, emergency and pay telephones, interpretive and public beach access signs, gazebos, water fountains, and other appropriate facilities.

(c) "Inlet Beach Access" is defined to include the acquisition and/or improvement of buildable and unbuildable properties situated along the confluence of estuarine and ocean waters for parking and public passage to the beach area. Inlet beach access facilities may include but are not limited to parking areas, restrooms, litter receptacles, security lighting, emergency and pay telephones, and public beach access signs. Facilities should be sited to minimize potential destruction by movement of the inlet.

~~(c)~~ (d)

(d) (e) Local accessways are defined to include those points which offer minimal facilities if any at all. Generally, these accessways ~~will~~ are a minimum of 10 feet in width and provide only ~~have~~ a dune crossover or pier, if needed, and litter receptacles and public beach access signs and are for the use of pedestrians within a few hundred yards of the site.

(e) (f) Neighborhood accessways are defined as those areas offering parking, usually for five to twenty-five ~~ten~~ vehicles, a dune crossover or pier, litter receptacles and public beach access signs. Such accessways are typically 40 to 60 feet in width and are primarily for the use of individuals within the immediate subdivision or vicinity of the site. If more than 15 parking spaces are provided, sanitation facilities should be installed. Portable sanitation facilities are the minimum acceptable; septic systems and vault privies, where appropriate, are preferred.

~~(f)~~ (g) Regional accessways are of such size and offer such facilities that they serve individuals from throughout an island or community including day visitors. These sites are handicapped accessible and normally provide parking for 25 to 80 ~~60~~ vehicles, restrooms, a dune crossover, pier, boat ramp, foot showers, litter receptacles and public beach access signs. It is recommended that at least one-

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half acre of open space in addition to all required setback areas be provided for buffering, day use, nature study or similar purposes.

(g) (h) Multi-regional accessways, usually administered by the state, are in the category of state parks, and offer the full complement of improvement associated with such facilities. although the Coastal and Estuarine Water Beach Access Program will provide funds to the extent possible to improve or coordinate beach access as these sites, multi-regional accessways are seen, in most cases, as being beyond the scope and intent of the state coastal and estuarine water beach access program. Multi-regional accessways are generally larger than regional accessways but smaller than state parks. Such facilities should be undertaken and constructed with the involvement and support of state and local government agencies. Multi-regional accessways provide parking for a minimum of 80 and a maximum of 200 cars, large restrooms with indoor showers and changing rooms, concession stands, and are accessible to the handicapped. It is recommended that a minimum of two acres of open space in addition to all required setback areas be provided for buffering, day use, nature study or similar purposes.

(h) (i)
(i) (j)

Statutory Authority G. S. 113A-134.3.

.0303 POLICY STATEMENTS

(b) Public beach nourishment projects funded by the state and federal government as discussed in 7M .0202(f)(3) will not receive initial or additional funds unless provisions are have been made or are being made for adequate public beach access within the vicinity of the project based on applicable Division of Coastal Management standards. This must include The public nourishment plan should ensure protection of public access rights, adequate identification of accessways with CRC public access signs, and construction of recommended numbers of parking spaces, dune crossovers and restroom facilities.

(e) The state should continue in its efforts to supplement and improve highway, bridge and ferry access to and within the 20 county coastal area consistent with the approved local land use plans. Further, the state should wherever practical work to add public fishing catwalks in all plans for new construction and remodeling bridges and should incorporate catwalks in all plans for new construction and for remodeling bridges. It is the policy of the state to seek repeal of ordinances preventing fishing from bridges except where public safety would be compromised. Where bridges are to be replaced, the acquisition of public access at the old bridge site should be obtained. All Department of Transportation and local government efforts regarding right-of-way alterations within the 20 coastal counties should be coordinated with the Coastal Resources Commission to preserve and enhance public access opportunities and to afford the opportunity to acquire necessary public accessways and parking at the same time as additional road right-of-way is being acquired.

(h) An overall goal of the Coastal and Estuarine Water Beach Access program is to develop at least one regional accessway for each town or county having oceanfront shoreline or one per ten miles whichever is greater, and one regional accessway for each town or county having estuarine water shoreline or one per ten miles, whichever is greater.

(h) Local governments are encouraged to participate in the access program to the maximum extent possible so that a shared state-local partnership will maximize the benefits to the community and to all citizens. The ocean and estuarine water beaches are recognized as a resource of state and local significance; all local governments are encouraged to actively participate in the access program to provide access facilities to accommodate state and local needs. Local governments are encouraged to acquire and improve properties for public beach access on an ongoing basis to keep pace with community development. It is recommended that the total number of beach access

parking spaces correspond to approximately three percent of the community's peak season population. In communities with both ocean and estuarine shorelines, these parking spaces should be apportioned between ocean and estuarine accessways based on demand for the two types of access. Local government's target number of access parking spaces may be higher or lower than the recommended three percent based on a critical analysis of the community's peak season population and pattern of residential development as expressed in the local government's beach access plan. This analysis should take into consideration a reasonable estimate of the number of day visitors from the surrounding area and the percentage of the community's seasonal population that will require parking on or near the shoreline.

(j) (i) Beach access projects shall, to the maximum extent feasible, be consistent with the established priorities of approved local land use plans, beach access plans and outdoor recreation plans, and will be designed to be free of architectural barriers which may limit their use by the handicapped. Where grant funds are used to acquire land or improve access opportunities, local governments may not charge a user fee or fee for off-street parking if unless such proceeds are used exclusively for beach access maintenance and improvements.

(k) (j) Local governments shall have lead responsibility for the provision of local and neighborhood access with full support and assistance from the state. Provision of local and neighborhood access should be based on identified needs as stated in approved local land use plans, beach access plans or outdoor recreation plans. The state shall have lead responsibility for the provision of regional and multi-regional access areas. Provision of such regional access areas should be based on recommended siting criteria set out in these regulations or based on identified needs as stated in approved local land use plans, beach access plans, and outdoor recreation plans. or as opportunities present themselves.

(l) Although the commission recognizes the value of multi-regional accessways, it recognizes that the large costs associated with such projects will exceed the scope of the existing beach access funds. However, the beach access program shall be fully coordinated with such projects, to the extent feasible, support access projects within new or existing federal, state, or local properties.

(m) (k)

(n) (l)

(m) Local governments are encouraged to develop ocean access areas according to the following locational guidelines so as to provide convenient access opportunities along the entire length of the shoreline within a given local government jurisdiction:

Local: located in the middle of the average length block within the community (average block length 1000 feet);

Neighborhood: located at either end of the average length block within the community (average block length 1000 feet);

Regional: located at a minimum frequency of one per local government jurisdiction or one per four miles of shoreline, whichever results in the greater number of facilities; and

Multi-regional: located at a minimum frequency of one per barrier island or one per ten miles of shoreline, whichever results in the greater number of facilities.

The total number of access areas, their size and type should be based on local government analysis of peak season population demands as set out in 7M .0303(h). Location guidelines set out in this paragraph represent the recommended spacing of access areas along the shoreline; additional accessways should be installed as needed or desired.

(n) It is recommended that inlet access areas be established to assure and sustain public use of the inlet area for fishing and general beach recreation. Publicly dedicated roads are recommended to be maintained to inlet areas where property should be acquired for a minimum of one regional accessway. Because inlet

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areas are typically migratory and highly transient, it is recommended that larger tracts of land be acquired than would be needed for the facility itself.

(o) Local governments are encouraged to develop estuarine access areas according to the following locational guidelines so as to provide convenient access opportunities along the entire length of the shoreline within a given local government jurisdiction according to the following minimum standards:

Local: located along urbanized waterfronts parallel to the waterfront for a minimum width of 10 feet; pedestrian access perpendicular to the waterfront should be located a maximum distance of once every block.

Neighborhood: neighborhood access areas should be located a maximum distance of one every 1,000 feet along developed shorelines. In residential subdivisions it would be desirable to have a minimum area 100 feet long adjacent to the shore by 50 feet in depth in public ownership for each 50 residential dwelling units in a given subdivision.

Regional: regional access areas should be located on barrier islands at a minimum frequency of one per local government jurisdiction or one per four miles of shoreline, whichever results in the provision of the greater number of facilities. On the mainland, regional accessways should be located at a minimum frequency of one per town or county.

Multi-regional: at least one multi-regional access area should be located in each coastal county.

The total number of access areas, their size and type should be based on local government analysis of peak season population demand as set out in 7M .0303(h). Location standards set out in this paragraph represent the recommended spacing of access areas along the shoreline; additional accessways should be constructed as needed or desired.

(p) In awarding coastal and estuarine water beach access grants, the department will fund the following types of projects:

- (1) Unbuildable lot acquisition;
- (2) Regional ocean and inlet access (acquisition and development);
- (3) Neighborhood ocean access (acquisition and development);
- (4) Regional estuarine access (acquisition and development);
- (5) Neighborhood estuarine access (acquisition and development);
- (6) Local ocean access (acquisition and development);
- (7) Local estuarine access (acquisition and development);
- (8) Multi-regional ocean access (acquisition and development);
- (9) Multi-regional estuarine access (acquisition and development); and
- (10) Urban waterfront access (Federal grant funds only).

Funding priorities among these types of projects may vary from year to year based on perceived need and level of fund availability. Funding priorities shall be established annually prior to accepting grant applications.

(q) When reviewing grant application requests for the construction of public access areas, various site constraints will be considered before recommending the applications for funding. These factors include but are not limited to suitability of the site for the type of access proposed, liability concerns when publicly-funded access projects are provided along bulkheaded or riprapped shorelines, the availability of sandy shorelines for estuarine access, public health and safety concerns with respect to adjacent water quality, adequate area to properly accommodate the minimum number of recommended parking spaces, pedestrian and vehicular conflicts, etc.

(r) In making grant awards, the department will give funding priority to those projects that meet one or more of the following criteria:

1. The project is submitted by a local government applicant that has not previously received beach access grant funds;
2. The project involves acquisition and/or development of an unbuildable lot or lots;
3. The project involves

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development of a type of access facility in an area that has none or too few available to meet the peak season population demand;

4. The site is particularly suitable for the type of facility proposed;
5. The project is well-designed and promotes safe facility use for all visitors;
6. The project is consistent with development standards as set out in Subchapter 7M; or
7. The project site is one that has been traditionally used by the public for access to the shoreline.

(s) Urban waterfront revitalization and access is not a primary focus of the state-funded beach access program. When federal grant funds are available for the construction of urban waterfront access projects, however, it may be appropriate to award federal funds to eligible grant applicants. Under no circumstances, however, should state beach access funds be allocated to urban waterfront access projects.

(t) Any existing or proposed vehicle accessway located at an ocean access site acquired or improved, in whole or in part, with access grant funds must be improved to comply with 15 NCAC 7H .0308(c)(4) so that primary and frontal dunes will be protected and conflicts between pedestrians and vehicles will be minimized. Beach access grant funds shall not be used to construct vehicle accessways.

(u) Land acquisition for future public access opportunities in the coastal area is a major priority for local and state governments. Planning for access should include the identification of appropriate parcels in land use plans and other policy documents. Added weight will be given to applications that have beach access as a high local policy priority. Where necessary, local and state governments should use condemnation powers to acquire land in a pattern which promotes public access locational standards.

(v) The acquisition of unbuildable lots is a high priority of the beach access program. Acquisition of such properties provide not only opportu-

nities for public beach access and use but also limit the encroachment of private property on the public beach.

Statutory Authority G. S. 113A-134.3.

.0304 LOCAL PARTICIPATION REQUIREMENTS: BEACH ACCESS PROGRAM

(a)

(3) adoption of appropriate subdivision ordinances requiring the dedication, timely improvement, and identification (by posting of CRC public access signs) of, at a minimum, local and neighborhood accessways according to Division of Coastal Management location standards thereby assuring physical and visual access for the general public to the shorefront along existing and future public streets and in subdivisions where no public streets are constructed;

(4) maintenance responsibility for accessways under local jurisdiction, establishment, posting and implementation of user, supervisory and maintenance standards for accessways under local jurisdiction;

(10) development of local funding sources for beach access projects which may include but are not limited to developer impact fees, hotel-motel tax revenues, etc.

(11) recommended adoption of appropriate subdivision ordinances requiring public dedication of road rights-of-way parallel and perpendicular to ocean beaches and estuarine shorelines and at inlets; and requiring the public dedication of local and neighborhood accessways for use of the residents in the subdivision consistent with state enabling legislation.

Statutory Authority G.S. 113A-134.3.

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulation cited as 15 NCAC 10F .0339 (a).

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The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 10:00 a.m. on August 19, 1987 at Room 386, Archdale Bldg., 512 North Salisbury Street, Raleigh, NC.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from August 3, 1987, to 5:00 p.m. on September 4, 1987. Such written comments must be delivered or mailed to the Wildlife Resources Commission, Archdale Bldg., 512 N. Salisbury St., Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule applies only to those portions of Lake James lying within McDowell County and marked within boundaries approved by the Executive Director, or his representative as follows:

- (1) that area adjacent to the shoreline of the McDowell Wildlife Club property;
- (2) that area adjacent to the shoreline of the Marion Moose Club property;
- (3) that area known as Morgan Cove;
- (4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;
- (5) that area within 50 yards of the shoreline at Burnett's Landing.

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

Statutory Authority G.S. 75A-3; 75A-15.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Certified Public Accountant Examiners intends to adopt and amend regulations cited as 21 NCAC 8B .0508; 8F .0107; .0110; .0305; 8H .0004.

The proposed effective date of this action is December 1, 1987.

The public hearing will be conducted at 9:00 a.m. on August 19, 1987 at N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.

Comment Procedures: Any person interested in these rules may present written or oral comments relevant to the action proposed at the public rule-making hearing. Anyone planning to present comments at the hearing should notify the Executive Director at the Board offices by Monday, August 17, 1987. Written statements not presented at the public hearing should be delivered to the board offices not later than 4:00 p.m. on Thursday, September 17, 1987.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8B - RULE-MAKING PROCEDURES

SECTION .0500 - DECLARATORY RULINGS

.0508 ORAL REQUESTS FOR OPINIONS AND INTERPRETATIONS

Oral requests to board or staff members for opinions and interpretations of these rules are discouraged. Whenever given, they are non-binding and applicants or licensees who thereafter act in reliance, do so at their own risk.

Statutory Authority G.S. 93-12(3); 93-12(9); 150B-17.

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

.0107 COMMUNICATION OF RESULTS OF EXAMINATIONS

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(c) Examination grades shall be mailed on the uniform national release date agreed to by the National Association of State Boards of Accountancy and the American Institute of Certified Public Accountants. Examinees may receive their grades personally at the offices of the board on the release date by notifying the executive director not later than five days prior to the release date.

(d) Information prepared by the board's staff about the results of the examination and intended for public information shall be made available no earlier than the day after the uniform national release date.

Statutory Authority G.S. 93-12(2); 93-12(3).

.0110 PROCTORING OTHER STATES' CANDIDATES

(a) As a courtesy to other state accountancy boards, this board shall proctor, on behalf of the other boards, candidates in North Carolina. The following procedures shall be followed by persons desiring to be proctored in this state.

(b) An application shall be delivered to the board office not later than April 1 for the May Exam and October 1 for the November Exam.

(c) An application shall contain evidence from the home state accountancy board that it has approved the candidate's examination application and the proctoring request.

(d) The approval of the proctoring request shall be at the discretion of the board and is not promised to any applicant. Factors considered in the decision shall include, but not be limited to, space availability, reasons for the proctoring request, date the application was received, reasons for any previous proctoring requests, and any special circumstances requested by the home state accountancy board or applicant.

Statutory Authority G.S. 93-12.

SECTION .0300 - EDUCATIONAL REQUIREMENTS FOR EXAMINATION

.0305 CONCENTRATION IN ACCOUNTING

(f) Accountancy courses shall include such courses as principles

courses at the elementary, intermediate and advanced levels; managerial accounting; cost accounting; fund accounting; auditing; and taxation. There are many college courses offered that would be helpful in the practice of accountancy, but are not included in the 24 semester hour requirements. Such courses not counted would include courses such as business finance, business law, business management, computer science, economics and writing skills.

Statutory Authority G.S. 93-12(5).

SUBCHAPTER 8H - RECIPROCITY

.0004 NOTIFICATION OF ENFORCEMENT ACTION

Any applicant for or holder of a temporary or reciprocal certificate issued by this board shall advise the executive director in writing within 15 days when an original or any other reciprocal certificate is cancelled, revoked, suspended or censured by any other state licensing or judicial authority.

Statutory Authority G.S. 93-12(9).

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Community Colleges intends to amend regulations cited as 23 NCAC 2C .0105 and 2E.0201.

The proposed effective date of this action is January 1, 1988.

The public hearing will be conducted at 1:00 p.m. on August 18, 1987 at Caswell Building, Room 459, 200 West Jones Street, Raleigh, NC 27603-1337.

Comment Procedures: A ten-minute time limit per person may be imposed for oral presentations. The number of persons making oral presentations may be limited in order to stay within the time available. Individuals who plan to make oral presentations must submit their remarks in writing to the hearing officer. This procedure will assist the hearing officer in organizing and reporting information to the

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SBCC. Written statements not to be presented at the hearing should be directed to Dr. C. Neill McLeod, Hearing Officer, Department of Community Colleges, 200 West Jones Street, Raleigh, NC 27603-1337 by August 8, 1987.

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2C - INSTITUTIONS: ORGANIZATION AND OPERATIONS

SECTION .0100 - TRUSTEES AND INSTITUTIONS

.0105 ESTABLISHING AND CONVERTING INSTITUTIONS

(a) General Policy. In authorizing the establishment of a new institution in a county in which no institution of the Community College System is currently located, an institution will be approved initially as either a technical institute or a community college.

(b) New Institutions. An application for a new area to be served must come from the county or city board(s) of education or the county commissioners in the proposed administrative area. The application shall be sent to the state board which may direct the department to cooperate with the applicants in making a survey to determine the following:

- (1) Do the educational needs of the area justify the educational services proposed?
- (2) Can the existing public and private post-secondary institutions in the area meet the needs demonstrated?
- (3) If unmet educational needs exist that could be met by the proposed institution, will the projected student enrollment justify the proposed institution? As a standard, the projected enrollment should be a minimum of 400 full-time equivalent students in curriculum programs within three years after establishment.
- (4) Can adequate local current and capital expense funds be supplied? As a standard, the level of local current operating fund support should be equal to the existing median support for the institutions in the community college system.

- (5) Will the local public school tax support be affected adversely by the local support required for the proposed institution?
- (6) Do the boards of commissioners and boards of education in the area support the application?
- (7) Are the facilities proposed to house the new institution adequate?
- (8) Does the application fit the policy of reasonable geographic distribution in order to meet statewide needs? As a standard, no new institution shall be established within 25 miles of an existing institution within the community college system, except where urban population density or natural barriers become overriding considerations.
- (9) Will adequate state funds become available to support the proposed new institution?
- (10) Can the immediate needs of an area best be served by an extension unit operating under contract with an existing institution?
- (11) A statement of anticipated desegregation impact will be required.
- (12) When the survey is completed, the department will report to the state board and make its recommendations. A local delegation may appear if desired. The state board shall make its recommendation for the establishment of a new institution to the Assembly, including a request for additional funds if needed.

(c) Addition of a College Transfer Program

(1) Procedure

- (A) The trustees determine that there is sufficient unmet educational needs for the transfer program in the commuting area to justify a thorough study, and formally request assistance from the department in making the survey.
- (B) The survey is made as directed by the trustees, with staff members of the department serving as consultants.
- (C) After the survey is

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- completed, the trustees decide whether to make a formal request to the state board.
- (D) If a formal request is made the state board shall consider the request and the survey report supporting the request, and determine what action it should take. A local delegation may appear at this time to support the request.
- (E) If the request and the survey report support adequately the conversion to a community college, the state board may require a favorable vote of the people of the administrative area pursuant to G.S. 115D-36 prior to making its recommendations.
- (F) If the vote of the administrative area is favorable, the request along with the results of the vote shall be submitted to the state board for consideration.
- (G) If the state board makes a favorable recommendation, the request along with a copy of the survey report, the results of the vote of the administrative area if required, and a statement setting forth the additional state funds required for the addition of the college transfer program shall be forwarded to the officials of the General Assembly.
- (2) Standards. The standards that apply are related to the unmet educational needs in the commuting area for the transfer program, the effect the addition of this program might be expected to have on the existing programs in the institution, the adequacy of anticipated state and local financial support required for the program, and the effect that supplying this financial support might have on local public school financial support and on state support for other existing institutions. The following are the specific standards that should be met:
- (A) The anticipated full-time equivalent (FTE) student enrollment in the transfer program is sufficient to earn on the state formula budget an adequate number of instructional units to support the transfer program. For effective teaching, there should be a minimum of six instructional units available the first year and an additional four units the second and subsequent years. The state board shall require as a condition to its favorable recommendation of the addition of a college transfer program to an existing technical institute a certification by the department that, based upon an examination of the study by the institution, an enrollment of a minimum of 132 FTE college transfer students may reasonably be expected the first year, and a minimum of 220 FTE college transfer students may reasonably be expected the second and subsequent years.
- (B) The trustees and the staff of the institution are committed to continued strong emphasis on the programs already offered, so that the addition of the transfer program will in no way reduce the effectiveness of present programs. The trustees and administrative staff of the institution shall be required to provide the leadership necessary to assure that enrollment in existing vocational and technical programs will not be diminished.
- (C) The present or proposed buildings, parking areas, equipment and library holdings will adequately support the proposed college transfer program in addition to the programs presently offered.
- (D) The board(s) of county commissioners in the administrative area of the institution agree(s) by formal resolution that the proposed college transfer program is desirable, and that the additional local funds required can be supplied without hurting the local sup-

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port required for the public schools.

(E) The board(s) of education in the administrative area of the institution agree(s) by formal resolution that the proposed college transfer program is desirable, and that the additional local funds required can be supplied without hurting the local support required for the public schools.

(F) Statements of anticipated desegregation impact are included in the feasibility study for the proposed college transfer program.

(G) State funds are available to support the addition of the transfer program.

(H) The state board shall not make a favorable recommendation until local fund availability is assured.

(3) Survey. The survey shall justify to the satisfaction of the approving authorities that the above standards are met.

Statutory Authority G.S. 115D-4; 115D-5; 115D-31 through 115D-36.

SUBCHAPTER 2E - EDUCATIONAL PROGRAMS

SECTION .0200 - CURRICULUM PROGRAMS

.0201 ESTABLISHING CURRICULA OR TERMINATING CURRICULA

(a) Application; New Vocational or Technical Curriculum

(1) Under the provisions of G.

S. 115D, the State President of the department will submit for State Board approval institutional applications for vocational and technical curricula to be offered by institutions. In order to provide for an orderly and equitable distribution of such curricula on the basis of demonstrated need and to further strengthen the total system of vocational and technical education programs conducted through the department, the advance approval of the State Board of all curricula is required.

(2) Proposal for New Curriculum.

Institutions will initiate proposals for a new curriculum by collecting pertinent information and submitting resulting data on appropriate application forms. This application form must be signed by the institution's president and chairman of the board of trustees and forwarded to the department.

(b) Termination of Vocational or Technical Curriculum

(1) Each institution planning to terminate an existing full-time vocational or technical curriculum shall notify the department of this decision.

(2) Notice of Termination. To aid the department in maintaining accurate records of curricula offered by each institution, the institutions shall inform the department of curriculum termination by submitting the information on the appropriate form. A curriculum not offered for two years by an institution shall be reported as terminated.

(c) Approval of General Education Curriculum Programs. The State Board authorizes the State President to approve general education curriculum programs for institutions in the System.

(1) The cluster of general education courses should include one or more of the following disciplinary areas:

(A) English and Literature

(B) Fine Arts and Philosophy

(C) Social Sciences (A course in local history may be included.)

(D) Science and Mathematics (Courses in local flora and fauna, history of mathematics, and modern mathematics may be included.)

(2) Associate Degree: The successful completion of 96 quarter hours of general education and interest-type courses will culminate in an Associate Degree in General Education. The associate degree program should include courses from each of the disciplinary areas listed in Subparagraph (1) of this Rule.

(3) Certificate: The Successful

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completion of 30-45 quarter hours of general education and interest-type courses will be recognized by a Certificate in General Education. The certificate program should include courses from two or more of the disciplinary areas listed in Subparagraph (1) of this Rule.

- (4) Beyond the basic core of general education course work, the students may elect specialty courses on the basis of their own interests. The program should be designed to meet the local educational needs and should also be one that appeals to an entirely new and untapped clientele.

- (5) Total credit hours required for the Associate Degree in General Education shall be 96 quarter credit hour.

(d) Approval of College Transfer Program

(1) Requirements

- (A) The approval for an institution to offer a college transfer program shall be consistent with the primary mission of the institution to provide adult vocational and technical education and basic academic education and should complement the insti-

tution's ability to pursue that mission.

- (B) The approval of a new college transfer program shall be based on a legitimate, well documented evaluation of the need, demand, cost and benefits of the program, as well as an assessment of the institution's capacity to offer a quality program and the potential impact of the college transfer program on other institutions in the region and other programs within the institution.

- (C) Institutions authorized to offer the college transfer program shall be designated "community colleges."

(2) Process

- (A) Procedures and guidelines for the development and consideration of a feasibility study for the addition of a college transfer program shall be developed by the State president and approved by the State Board. These may include provisions for the requirement of public hearings and/or a local referendum on the proposal.

Statutory Authority G.S. 115D-5; 115D-20(6).

When the text of any adopted rule differs from the text of that rule as proposed, upon request from the adopting agency, the text of the adopted rule will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 - DEPARTMENT OF CORRECTIONS

CHAPTER 2 - DIVISIONS OF PRISONS

SUBCHAPTER 2E - TREATMENT

SECTION .1400 - MANDATORY EDUCATION PROGRAM

.1401 MANDATORY EDUCATION PROGRAM

The purpose of the Mandatory Education Program is to ensure that all capable inmates committed to the Department of Correction are provided with the opportunity to improve their basic literacy skills while incarcerated, in an effort to improve their prospects of becoming law-abiding and self-supporting upon their release from prison.

History Note: Statutory Authority G.S. 148-11; 148-22.1; Eff. August 1, 1987.

.1402 CRITERIA FOR MANDATORY PARTICIPATION

(a) The unit superintendents and institutions heads are authorized to require all inmates without a high school diploma or general educational certification who function below the sixth-grade achievement level to participate in an adult basic education/general education development (ABE/GED) program. Mandatory inmate participation in educational programs is restricted to

full-time and part-time ABE/GED programs.

(b) Sessions for mandatory inmate participation are not to exceed 90 days, and no inmate will be required to participate in more than one session. However, if an inmate is transferred before completing a mandatory school program, such inmate may be required to complete any remainder of the session. Inmates completing the mandatory session may voluntarily remain in the program after 90 days or may request an alternate assignment.

(c) Any inmate having a high school diploma who is tested with the Wide-Range Achievement Test (WRAT) as functioning below the sixth-grade achievement level may also be required to participate in a 90 day ABE/GED program.

History Note: Statutory Authority G.S. 148-11; 148-22.1; Eff. August 1, 1987.

.1403 IDENTIFICATION OF INMATES WITH EDUCATIONAL DEFICIENCIES

The diagnostic centers shall be responsible for identifying inmates with educational deficiencies as specified in Rule 2E .1402. The Wide-Range Achievement Test (WRAT) shall be the primary test instrument for determining achievement levels.

History Note: Statutory Authority G. S. 148.11; 148-22.1; Eff. August 1, 1987.

.1404 ASSIGNMENT OF INMATES TO ABE/GED PROGRAMS

The appropriate unit or institution classification committee shall be responsible for recommending the assignment of inmates to the mandatory education program. The unit superintendent/institution head shall be the final approving authority for such assignments.

History Note: Statutory Authority G.S. 148-11; 148-22.1; Eff. August 1, 1987.

.1405 INMATE PERFORMANCE

(a) All inmates assigned to the mandatory education program are expected to work to their fullest po-

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tential and are to follow the instructions of the teacher.

(b) Any inmate found to be unable to perform school assignments due to mental incapacity or other valid reasons, as based upon the professional judgment of the teacher or other assessments, may be removed from the program.

(c) Academic records shall be maintained on all inmates in the program. Such records are available for review by the inmate and other interested parties.

*History Note: Statutory Authority
G.S. 148-11; 148-22.1;*

Eff. August 1, 1987.

.1406 DISCIPLINARY ACTION

(a) Any inmate assigned to the mandatory education program who refuses to attend class shall be subject to disciplinary action for disobeying a lawful order.

(b) In the classroom, any inmate who becomes a disruptive force by failing to follow the instructions of the teacher shall be subject to disciplinary action for disobeying a lawful order.

*History Note: Statutory Authority
G.S. 148-11; 148-22.1;
Eff. August 1, 1987.*

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EDITION XII, NO. 4

EFFECTIVE: July 1, 1987

<i>AGENCY</i>			<i>ACTION TAKEN</i>
DEPARTMENT OF ADMINISTRATION			
1	NCAC	1A .0101-.0103	Repealed
		.0201-.0207	Repealed
		.0304	Amended
		.0305	Repealed
		1B .0101-.0106	Repealed
		.0107-.0108	Adopted
		.0201-.0206	Repealed
		.0207-.0210	Adopted
		.0301-.0305	Repealed
		.0306-.0308	Adopted
		.0401-.0403	Repealed
		.0405-.0409	Adopted
		.0501-.0504	Repealed
		.0505-.0508	Adopted
		.0601-.0605	Adopted
		.0701	Adopted
		.0810	Adopted
		4G .0101-.0102	Amended
		.0201-.0204	Amended
		.0207-.0208	Amended
		.0210-.0211	Amended
		.0216	Repealed
		.0217-.0218	Amended
		.0220	Amended
		.0303-.0304	Amended
		.0401	Amended
		.0403	Amended
		.0404	Repealed
		.0406	Repealed
		.0407-.0408	Amended
		.0508-.0509	Amended
		.0512	Amended
		.0514	Amended
		.0516	Amended
		.0517	Repealed
		4H .0101-.0102	Repealed
		.0103-.0104	Amended
		.0202-.0205	Repealed
		.0206	Amended
		.0208	Repealed
		5A .0001-.0002	Amended
		.0003	Repealed
		.0005	Repealed
		.0009	Amended
		5B .0206	Amended
		.0310-.0311	Amended
		.0402	Amended
		.0404	Amended
		.1402-.1403	Amended
		.1506	Amended

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	.1509-.1510	Amended
	.1512-.1513	Amended
	.1601	Amended
	.1603	Amended
	.1903	Amended
5D	.0204	Amended
	.0206-.0207	Amended
	.0401	Amended
	.0501	Amended
	.0504-.0505	Amended
19	.0101-.0102	Repealed
	.0104-.0105	Repealed
	.0201-.0202	Repealed
	.0301-.0302	Repealed
21E	.0001-.0002	Repealed
22	.0201	Amended
27	.0101-.0102	Repealed
	.0201-.0202	Repealed
35	.0302	Amended
36	.0001	Adopted

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5	NCAC	2A .0202	Amended
		2D .0601	Amended
		2F .0605	Adopted

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9	NCAC	2	Executive Order Number 47 Eff. April 28, 1987 Executive Order Number 48 Eff. May 14, 1987 Executive Order Number 49 Eff. May 20, 1987
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DEPARTMENT OF HUMAN RESOURCES

10	NCAC	1B .0202	Amended
		8C .1106	Amended
		.1202	Repealed
		.1203	Amended
		.1210	Repealed
		.1302	Amended
		.1309-.1310	Amended
		.1312	Repealed
19C		.0505	Amended
		.0702	Amended
19H		.0102	Amended
		.0105	Amended

DEPARTMENT OF JUSTICE

12	NCAC	7D .0103	Repealed
		.0104-.0106	Amended
		.0109	Amended
		.0201	Amended
		.0203	Amended
		.0402	Amended
		.0404	Amended
		.0503	Amended
		.0701	Amended
		.0706	Amended

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		.0801-.0807	Amended
		.0809	Amended
		.0902	Amended
9A		.0104-.0105	Repealed
10		.0802	Amended
		.0803-.0807	Adopted
		.0901	Amended
		.0902-.0903	Adopted
		.1102-.1104	Adopted
11		.0103-.0104	Amended
		.0201-.0202	Amended
		.0204	Amended
		.0206	Amended
		.0301	Amended
		.0306	Amended

DEPARTMENT OF LABOR

13	NCAC	7C .0103	Amended
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DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

15	NCAC	2B .0311	Amended
		2D .0103	Amended
		.0501	Amended
		.0505	Amended
		.0524-.0525	Amended
		.0528	Amended
		.0533	Amended
	2H	.0607	Amended
	7H	.0602	Amended
	7K	.0203	Amended
10B		.0105	Amended
		.0201-.0212	Amended
		.0214-.0215	Amended
10C		.0205	Amended
		.0305	Amended
		.0407	Amended
10D		.0002-.0003	Amended
10H		.0101	Amended
		.0109	Amended
		.0901	Amended
		.0907	Amended
16C		.0105	Amended
		.0108	Amended

DEPARTMENT OF STATE TREASURER

20	NCAC	1A .0003-.0007	Repealed
		1F .0104	Amended
		1G .0202	Amended
		.0402	Amended
8		.0103	Amended
		.0105	Amended

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21	NCAC	2 .0108	Amended
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21	NCAC	8A .0101	Amended
		8B .0101	Amended
		.0103	Repealed
		.0105	Amended

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8D	.0202	Amended
8F	.0103	Amended
	.0304	Amended
8G	.0101-.0102	Amended
	.0112	Amended
	.0201-.0203	Amended
	.0208-.0211	Amended
	.0401	Amended
8H	.0001	Amended
	.0003	Amended
8I	.0005	Amended
8J	.0001	Amended
8K	.0201	Amended

BOARD OF CONTRACTORS

21	NCAC 12	.0205	Amended
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HOUSING FINANCE AGENCY

24	NCAC 1D	.0102	Amended
	1J	.0102	Amended

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