

The **NORTH CAROLINA REGISTER**

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ISSUE DATE: August 14, 1992

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month 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 notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty 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 one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any 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 the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions of G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review. The agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the next business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule, not more than 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

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% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

The NCAC is available in two formats.

- (1) Single pages may be obtained 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) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions include supplements to the initial publication are available.

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

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.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Schedule
 (August 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
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11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

G.S. 120-30.9H, 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

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

RD:MAP:FHD:sab
DJ 166-012-3
92-2477

July 20, 1992

Richard J. Rose, Esq.
Poyner & Spruill
P.O. Box 353
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to the annexation [No. 192 (1992)] and the designation of the annexed area to District 6 in the City of Rocky Mount, Edgecombe and Nash Counties, 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 May 22, 1992.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunn
Assistant Attorney General
Civil Right Division

By:

Steven H. Rosenbaum
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JRD:LLT:NT:tlb
DJ 166-012-3
91-3194

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

October 22, 1991

Robert C. Cogswell, Jr., Esq.
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the increase in compensation for specified elected officials for the City of Fayetteville in Cumberland 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 August 23, 1991.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunn
Assistant Attorney General
Civil Right Division

By:

Gerald W. Jones
Chief, Voting Section

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 50B-21.2 that the Department of Economic and Community Development/Division of Community Assistance intends to adopt rules cited as 4 NCAC 9S .0101-.0106, .0201-.0202, .0301-.0302, .0401-.0404, .0501-.0503, .0601-.0603, .0701-.0704, .1001-.1009, and .1101-.1110.

The proposed effective date of this action is November 1, 1992.

The public hearing will be conducted at 2:00 pm on September 15, 1992 at 1307 Glenwood Avenue, Suite 250, Raleigh, NC 27605.

Reason for Proposed Action: This proposed action is necessary to enable the Division of Community Assistance to facilitate the implementation of the HOME Program.

Comment Procedures: Written comments may be sent to Bob Chandler, Division of Community Assistance, 1307 Glenwood Avenue, Suite 250, Raleigh, NC 27605. Oral presentations may be made at the public hearing. Persons having questions should call Gail Brock at (919) 733-2850.

Editor's Note: Rules .0102, .0105, .0601-.0602 have been filed as temporary adoptions effective on July 17, 1992 for a period of 180 days or until the permanent rule is effective, whichever is sooner.

CHAPTER 19 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 19S - HOME REGULATIONS

SECTION .0100 - GENERAL PROVISIONS

.0101 OVERVIEW AND PURPOSE

(a) **Overview:** Created under the National Affordable Housing Act of 1990, the Home Investment in Affordable Housing (HOME) Program is designed to expand the supply of decent, safe, and sanitary housing (especially rental housing) for

low-income Americans by strengthening the ability of states and local governments to design and implement affordable housing strategies.

(b) **Purpose:** The HOME program provides funds to States and local governments for acquisition, rehabilitation, new construction of affordable housing and tenant based rental assistance. The program is designed to effect a partnership between the unit of local government and the developer of the affordable housing. A special set-aside of the HOME funds is required to be available to qualifying non-profit community housing development organizations. Funds are targeted to low and very low income persons and assisted units must remain affordable in accordance with specific regulatory requirements.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0102 DEFINITIONS

The definitions in 24 CFR 92.2 are hereby incorporated by reference except as specifically provided for and written in this Rule:

- (1) "Act" means National Affordable Housing Act.
- (2) "Applicant" means an agency that has or will submit an application to the Department requesting HOME program funds.
- (3) "Department" means the Department of Economic and Community Development.
- (4) "Home Regulations" means the HOME Investment in Affordable Housing Program Regulations found at 24 CFR Part 92., as amended.
- (5) "New construction" means housing units as defined in Rule .0203(c) of this Subchapter.
- (6) "Recipient" means an agency that has been awarded an authorization of HOME funds by the State.
- (7) "Secretary" means the Secretary of the Department of Economic and Community Development.
- (8) "State" means the State of North Carolina.
- (9) "State recipient" means a unit of general local government designated by the State to receive HOME funds.
- (10) "Non-profit housing organizations" means private, non-profit housing organization that is tax-exempt under section 501(c) of the Internal Revenue Code.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0103 WAIVER

The Secretary may waive any requirements of this Subchapter not required by law whenever it is determined that undue hardship to recipients or beneficiaries will result from applying the requirement and where a determination of good cause has been made. Each waiver must be in writing and must be supported by documentation of the pertinent facts.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0104 ELIGIBLE APPLICANTS

Eligible applicants are all units of general local government, non-profit housing development organizations, and non-profit community housing development organizations as defined under section 92.2 of the HOME regulations.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0105 AMENDMENTS ADOPTED BY REFERENCE

All referenced federal documents in this Subchapter are hereby adopted by reference to include any later amendments pursuant to G.S. 150B-14(c).

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0106 ACTS AND REGULATIONS ADOPTED BY REFERENCE

In addition to the provisions of this Subchapter all applicants and recipients of HOME funds must comply with all applicable provisions of the current Federal HOME Investment Partnerships Program Regulations as published in the Federal Register at 24 CFR Part 92., as amended and Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended. Copies of these sections of federal law and regulation are available for public inspection from the Department.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .0200 - ELIGIBLE AND PROHIBITED ACTIVITIES

.0201 ELIGIBLE ACTIVITIES AND COSTS

This Subchapter adopts by reference as eligible activities and costs those activities and costs described in the National Affordable Housing Act as amended under Section 212(a) and (b), and 24 CFR 92.205-206 incorporated in Rule .0106 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0202 PROHIBITED COSTS

All activities not defined as eligible in Rule .0201 shall be considered ineligible for assistance under this Subchapter unless written approval has been provided by the Department. Specific ineligible uses are listed in the National Affordable Housing Act as amended under Section 212(c), and in 24 CFR 92.214.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .0300 - THRESHOLD FOR DIRECT HUD PARTICIPATION

.0301 PARTICIPATION THRESHOLD AMOUNT

During the initial HOME program year, if a unit of general local government has a formula allocation under 24 CFR 92.50 that is equal to or greater than five hundred thousand dollars (\$500,000) and less than seven hundred and fifty thousand dollars (\$750,000) then the State will authorize HUD to transfer an amount of State HOME funds such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and seven hundred and fifty thousand dollars (\$750,000). The State may require that the unit of general local government financially participate in providing the amount of funds necessary to ensure that the unit becomes a HUD participating jurisdiction.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0302 PARTICIPATING FEE

(a) Applicants that request HOME funds from the State may be required to pay directly to the Department an application fee in order to receive HOME funds. The amount of the application fee shall be based upon the total amount of HOME

unds requested. Fees are calculated such that an applicant must pay a minimum of three hundred and fifty dollars (\$350.00) or one tenth of one percent (.001) of the project request, whichever is greater. Applicants under the Community Housing Development Organization programs are required to pay one tenth of one percent (.001) of the project request.

(b) Applicants that are unsuccessful will be refunded one half of the HOME program participation fee.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .0400 - HOME PROGRAM FUNDING DISTRIBUTION

.0401 DISTRIBUTION OF FUNDS

(a) The Department shall designate specific dates for submission of HOME program applications under each category.

(b) In cases where the Department makes a procedural error in the application selection process that, when corrected, would result in awarding a score sufficient to warrant a HOME award, the Department may compensate that applicant with an award of funds in the next funding cycle.

(c) Applicants can apply for funding under the program categories of Housing Projects Category, HOME Consortia Category or, the Community Housing Development Organization Category.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0402 SIZE AND USE OF HOME AWARDS MADE TO RECIPIENTS

(a) There is no minimum amount which applicants may request or be awarded. Awards made to any one recipient shall not exceed the following amount in each category: Housing Project Category Unlimited

(1) Consortia Category - One Million Dollars (\$1,000,000);

(2) Community Housing Development Organization Category Unlimited.

(b) Awards to specific recipients will be provided in amounts commensurate with the size of the applicant's program. In determining appropriate amounts, the Department may consider an applicant's need, proposed activities, and ability to carry out the proposed activities.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0403 PROGRAM CATEGORY ALLOCATION

(a) HOME funds received by the State each year and available for award after reservations of funds under this Subchapter have been allocated, will be reserved for each program category as follows: at least fifteen percent of the funds will be reserved for awards under the Community Housing Development Organization program. Up to fifty percent of the funds will be available for the Consortia Category. The remaining funds will be distributed to applicants that have applied for funds under the Housing Projects Category.

(b) If applicants fail to request the full amount of the set-aside in any category or if the Department is unable (for any reason including lack of applicant administrative capacity) to distribute the full amount of the set-aside then the remaining funds may be distributed to projects in one or more of the other categories.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0404 GENERAL APPLICATION REQUIREMENTS

(a) Applicants are required to submit applications in a manner prescribed by the Department in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application; thus applications must contain sufficient information for the Department to rate them against the selection criteria. In addition, information from any source may be considered which regards the eligibility of the applicant or application, the legality or feasibility of proposed activities, the applicant's compliance with application procedures specified in this Subchapter, or the accuracy of the information presented in the application. All applicants are required to address their projects to one of the grant categories listed in Rule .0402 of this Section.

(b) Applications must demonstrate that projects proposed for assistance with HOME funds will meet the project requirements specified in 24 CFR 92.250-258.

(c) Applications must be received by the Departmental administrative offices in Raleigh before 5:00 p.m. on the submission date or sent by mail and postmarked on the submission date.

(d) The applicant shall certify to the Department

that it will comply with all applicable Federal and State laws, Regulations, Rules and Executive Orders.

(e) Applicants must comply with program guidelines issued by the Department for the purpose of administering the HOME program.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .0500 - COMMUNITY HOUSING DEVELOPMENT ORGANIZATION CATEGORY

.0501 DEFINITION

The Community Housing Development Organization (CHDO) Program funds are available to eligible private non-profit organizations that meet both the definition of a nonprofit organization and the definition of a Community Housing Development Organization as both are defined in Section 92.2 of the HOME Regulations (24 CFR Part 92.).

- (1) All eligible activities may be carried out by CHDOs to accomplish the purposes under this Subchapter.
- (2) CHDO program funds will be distributed on a competitive basis and projects will be evaluated against other CHDO project proposals.
- (3) The allocation of funds is made available to this category as established in Rule .0403 of this Subchapter will be available for a period of 18 months (or other time period established by HUD) after the allocation of funds is made to the State from HUD in accordance with federal regulations at 24 CFR Part 92.300(a).

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0502 ELIGIBILITY REQUIREMENTS

Applications for CHDO program funds must show that:

- (1) CHDO funds will be invested only in housing to be developed, sponsored, or owned by the Community Housing Development Organization.
- (2) The CHDO applicant meets the requirements of Rule .0501 of this Section.
- (3) The CHDO has received written approval from the Department that the organization meets the Community

Housing Development Organization (CHDO) definition under 24 CFR Part 92.2.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0503 SELECTION CRITERIA

Programs and individual projects will be evaluated and rated based upon but not limited to the following:

- (1) Project feasibility.
- (2) Project appropriateness.
- (3) Need for the project funds.
- (4) Capacity to carry out the project.
- (5) Project viability.
- (6) Project affordability.
- (7) Project benefit.
- (8) Market conditions.
- (9) Project technical assistance/education.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .0600 - HOME CONSORTIA CATEGORY

.0601 DEFINITION

A consortium of geographically contiguous units of general local government, non-profit housing development organizations or state agencies may submit an application to the Department requesting HOME funds to carry out activities consistent with the purpose of this Subchapter and the HOME Program Regulations at 24 CFR Part 92.

- (1) Consortia applicants must submit to the Department on the prescribed forms a HOME Program Consortia funding request. Applications for Consortia funding will be requested and received on an annual basis.
- (2) Eligible activities are those activities that are otherwise eligible under this Subchapter and at 24 CFR Part 92.205.
- (3) Applicants must provide to the Department evidence that all parties to the consortium have executed a legally binding cooperation agreement among its members authorizing one member unit of general local government to act in a representative capacity for all members for purposes of this Subchapter and providing that the representative member assumes overall responsibility for ensuring that the consortiums HOME

program is carried out in compliance with all applicable state and federal regulations including requirements concerning a Comprehensive Housing Affordability Strategy.

- (a) The agreement must not contain a provision for veto or other restriction that would allow any party to the agreement to obstruct the implementation of the approved Comprehensive Housing Affordability Strategy.
- (b) The agreement must be accompanied by authorizing resolutions from the governing body of each member or other acceptable evidence that the chief executive officer is authorized to sign the agreement. The agreement must be signed by the chief executive officer of each member.
- (c) The agreement must contain, or be accompanied by, a statement from the lead entity's counsel that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the consortium to undertake or assist in undertaking housing activities for the HOME program.
- (d) The term of the agreement must cover the period necessary to carry out all activities that will be funded by HOME funds and that the entities which join the consortium are required to remain in the consortium for the entire period. The agreement cannot contain a provision for termination or withdrawal by any party to the agreement.
- (e) If any new entities join the consortium, the consortium must notify the Department within 30 days.
- (f) If the consortium includes a CDBG Entitlement City as the lead entity, the consortium will be considered to have sufficient administrative capability to carry out the HOME program. If this is not the case the consortium must demonstrate relevant experience in successfully administering programs similar to the HOME program to the satisfaction of the Department.
- (g) Consortia members may include agencies and organizations which are not units of general local government;

only a unit of general local government is eligible to represent the consortia as required in Subparagraph (3) of this Rule.

- (4) Applicants must have the capacity to administer the HOME program. The Department may examine the following areas to determine capacity:
 - (a) Audit and monitoring findings on previous HOME programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
 - (b) The rate of expenditure of funds and accomplishments in previously funded CDBG programs. Applicants that show a lack of capacity will not be rated or funded.
- (5) All applicants must submit certifications as prescribed by the Department.
- (6) State recipients must enter into a legally binding agreement between the Department and the State recipient which sets forth the full administrative responsibilities that the State recipient will have in carrying out its HOME program.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0602 ELIGIBILITY REQUIREMENT

Applications for funds under this category must show that:

- (1) Applications must address and be in compliance with all program requirements and project requirements under Subchapter E and F of 24 C.F.R. 92.
- (2) The legally designated lead entity for the Consortium must meet the definition of a State Recipient as defined at 24 CFR Part 92.2.
- (3) The lead entity must have the legal authority to carry out all activities proposed in the application for funding.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0603 SELECTION CRITERIA

Programs and individual projects will be evaluated and rated based upon but not limited to the following:

- (1) Project feasibility.
- (2) Project appropriateness.
- (3) Need for the project funds.
- (4) Capacity to carry out the project.
- (5) Project viability.
- (6) Project affordability.
- (7) Project benefit.
- (8) Market conditions.
- (9) Project Technical Assistance/Education.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .0700 - HOUSING PROJECT CATEGORY

.0701 DEFINITION

The Housing Development Project category is designed to direct HOME funds to assist housing projects being carried out by units of general local government and private non-profit housing development organizations. All eligible HOME program activities may be undertaken under this category.

- (1) Applications for funding must be designed to address specific projects that could begin within six months of the project award date and could reasonably be completed within a 24 month period or less.
- (2) Housing Development Project funds shall be distributed to eligible applicants on a competitive basis.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0702 ELIGIBILITY REQUIREMENTS

Applications for funds under this category must show that:

- (1) Applications must address and be in compliance with all program requirements and project requirements under Subchapter E and F of 24 CFR Part 92.
- (2) Applicants shall have the capacity to administer the HOME Program.
- (3) All applications shall include firm commitments of funds from sources other than the HOME program and shall include documentation that these funds are currently available for the proposed project.
- (4) No application will be funded without firm financial commitments.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0703 SELECTION CRITERIA

Programs and individual projects will be evaluated and rated based upon but not limited to the following:

- (1) Project feasibility.
- (2) Project appropriateness.
- (3) Need for the project funds.
- (4) Capacity to carry out the project.
- (5) Project viability.
- (6) Project affordability.
- (7) Project benefit.
- (8) Market conditions.
- (9) Project technical assistance/education.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.0704 PRELIMINARY AWARDS

The Department shall announce preliminary grant awards after review and evaluation of HOME project category applications. A grant agreement shall not be issued by the Department to a recipient until a firm legally binding commitment with the developer has been executed and approved by the Department. The legally binding commitment shall incorporate project specific implementation reflecting key project elements.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .0800 - RESERVED

SECTION .0900 - RESERVED

SECTION .1000 - COMPLIANCE REQUIREMENTS

.1001 EQUAL OPPORTUNITY AND FAIR HOUSING

No person shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this Subchapter. Recipients shall meet the requirements specified in 24 CFR 92.350, incorporated in Rule .0106 of this Subchapter. These requirements prohibit discrimination based on age or handicap; promote opportunities for training and employment for low-income persons in the jurisdiction or area in which the project is

located; promote contracting for work with business concerns located in or owned by persons residing in the same area as the project; encourage use of minority and women's business enterprises; and affirmatively further fair housing.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

1002 AFFIRMATIVE MARKETING

Recipients must adopt the affirmative marketing procedures and requirements for HOME-assisted housing containing five or more housing units, specified in 24 CFR 92.351 as requirements for participating jurisdictions.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

1003 ENVIRONMENTAL REVIEW

(a) Applicants and recipients shall comply with the policies of the National Environmental Policy Act of 1969 (NEPA) and all other applicable provisions of Federal and State law which further the purposes of such act (as specified in 24 CFR Part 58).

- (1) Applicants and recipients shall assume the responsibilities for environmental review, decision-making, and other actions which would otherwise apply to the Secretary, under NEPA in accordance with section 104(f)(4) of Title I of the Housing and Community Development Act of 1974, as amended and the implementing regulations at 24 CFR Part 58.
- (2) Applicants and recipients shall submit adequate information prescribed by the Department on the environmental impact of each project so that the Department can determine project compliance with the requirements of the North Carolina Environmental Policy Act of 1971 (SEPA) (G.S. 113A-1). A determination by the Department that the project complies with the requirements of SEPA will be made before the Department will release funds to the recipient.
- (3) It is the responsibility of the recipient to obtain all air pollution and water pollution permits for a HOME program pursuant to State laws and rules applicable to the provisions of this Subchapter.

(b) All records and data shall be maintained pursuant to Rule .1109 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1004 DISPLACEMENT, RELOCATION, AND ACQUISITION

(a) Recipients shall follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition policies Act of 1970 (URA) (P.L. 91-646) and HUD implementing regulations at 24 CFR Part 24 and 24 CFR Part 92. The following definitions shall apply:

- (1) "HUD" means the Department.
- (2) "Federal agency" means the Department.
- (3) "State agency" means the recipient of HOME funds as defined in this Subchapter.

(b) Recipients must ensure that is has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a HOME-assisted project.

(c) Recipients must follow the policies of 24 CFR Part 92, for temporary relocation.

(d) Recipients may provide relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity that is not subject to the Uniform Act. Recipients also may provide relocation payments and other assistance at levels above those established under the Uniform Act. All such relocation assistance not required by the Uniform Act must be determined by the recipient to be appropriate to its HOME program. The recipient shall adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1005 LABOR STANDARDS

(a) Recipients must comply with the Davis-Bacon Act (40 U.S.C. 276a-276a-5) and the Contract Work Hours and Safety Standards Act (42 CFR 327-333) and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards in Housing and Community Development Programs), as applicable, for any contract for the construction

(rehabilitation or new construction) of affordable housing with 12 or more units assisted with HOME funds.

(b) A volunteer who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform volunteer services and who is not otherwise employed at any time in the construction work is exempt from the prevailing wage provision of the Davis-Bacon Act.

(c) Members of an eligible family who provide "sweat equity" labor in exchange for acquisition of a property for homeownership or provide such labor in lieu of, or as a supplement to, rent payments are exempt from the prevailing wage provisions of the Davis-Bacon Act.

(d) All contracts required to comply with Paragraph (a) of this Rule must contain labor standards provisions.

(e) As required by 24 CFR 24, a recipient must require participants in lower tier covered transactions to include the certification that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction in any proposal submitted in connection with the lower tier transactions. A recipient may rely on the certification, unless it knows the certification is erroneous.

(f) Recipients shall maintain records regarding compliance with the laws and regulations cited in this Rule in accordance with Rule .1109 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1006 LEAD-BASED PAINT

(a) Recipients must comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and 24 CFR Part 35 including provisions of the above:

- (1) prohibiting the use of lead-based paint;
- (2) requiring elimination of lead-based paint hazards; and
- (3) requiring notification of the hazards of lead-based poisoning to purchasers and tenants of housing constructed prior to 1978 which was acquired or rehabilitated with HOME assistance.

(b) Recipients are responsible for testing and abatement activities.

(c) All construction contracts as described in this Rule shall contain a provision prohibiting the use of lead-based paint.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1007 CONFLICT OF INTEREST

(a) Recipients must comply with the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110 in the procurement of property and services, if applicable.

(b) Recipients must comply with Section 92.356 of 24 CFR Part 92, in all cases not governed by Paragraph (a) of this Rule.

(c) No person described in Paragraph (d) of this Rule who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity; or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have a family or business ties, during their tenure or for one year thereafter.

(d) The conflict of interest provisions of Paragraph (c) of this Rule apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient receiving HOME funds.

(e) Exceptions to the provisions of Paragraph (c) of this Rule will be granted on a case-by-case basis by HUD in accordance with 24 CFR 92.356(d) and (e) by submitting a request for determination of the Department.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1008 NATIONAL FLOOD INSURANCE PROGRAM

(a) No HOME funds shall be used for acquisition, new construction, or rehabilitation purposes as defined under section 3(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) in any area that has been identified as an area having special flood hazards, unless the recipient in such an area is participating in the National Flood Insurance Program or less than a year has passed since FEMA notification regarding such hazards.

(b) Recipients must comply with the Regulations implementing the Flood Disaster Protection Act of 1973 (44 CFR 60.3), unless the recipient is participating in the National Flood Insurance Program.

(c) The use of HOME funds governed by this

Subchapter for acquisition, new construction, or rehabilitation shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234).

(d) Records of participation in the National Flood Insurance Program shall be maintained by the recipient pursuant to Rule .1109 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

009 CLEARINGHOUSE REVIEW

(a) Applications for funding under this Subchapter may be submitted by the Department to the appropriate state clearinghouse agencies. The state agencies shall have 30 days from the receipt of the application to review the application and give comments to the Department and the applicant.

(b) Comments containing any findings of inconsistency with state or local plans, significant adverse urban impact, noncompliance with environmental laws, failure to provide equal opportunity or other comments that require a response may result in disapproval or conditional approval of the application by the Department. Applicants must consider all findings and submit to the Department a written statement indicating what action they plan to take as a result of these findings.

(c) Program amendments which must receive departmental approval pursuant to Rule .1114 of this Subchapter, may be submitted to clearinghouse review in accordance with Paragraph (a) of this rule.

(d) All clearinghouse comments and responses shall be kept in accordance with Rule .1109 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

SECTION .1100 - GRANT ADMINISTRATION

.1101 GRANT AGREEMENT

(a) Upon approval of the application by the Department, a written grant agreement will be executed between the recipient and the Department. These Rules, subsequent guidelines prepared by the Department, the approved application, and any subsequent amendments to the approved application shall become a part of the

grant agreement.

(b) The grant agreement in its original form and all modifications thereto shall be maintained by the recipient pursuant to Rule .1109 of this Section.

(c) The Department may condition the grant agreement until the recipient demonstrates compliance with all applicable laws and regulations.

(d) Neither HOME nor non-HOME funds involved in a project may be obligated nor may any conditioned project activities begin until the Department releases in writing any and all applicable conditions on the project. Recipients may incur certain costs prior to release of conditions with prior Departmental approval.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1102 METHOD OF ADMINISTRATION

(a) Recipients may delegate to statutorily authorized subrecipients the responsibility of undertaking or carrying out any specified HOME projects. All entities so designated under this Paragraph by recipients to undertake or carry out HOME projects pursuant to this Subchapter shall be considered subrecipients.

(b) Recipients may contract with any person, association, or corporation in undertaking specified community development activities. All contracts, shall be made in conformance with the procurement standards set forth in Rule .0908 of this Subchapter. Rule .0908 of this Subchapter does not apply to recipients in the selection of subrecipients.

(c) Prior to disbursing funds to any subrecipient or contractor, the recipient must enter into a written agreement with the entity. The agreement must contain provisions required by 24 CFR 92.504(c), incorporated by reference in Rule .0106 of this Subchapter.

(d) Recipients and subrecipients which are units of local government must comply with the requirements of OMB Circular A-87 and 24 CFR 85.6, .12, .20, .22, .26, .35, .36, .44, .51, and .52. Recipients and subrecipients which are private non-profit organizations must comply with the requirements of OMB Circular A-122 and OMB Circular A-110, Attachment B; F; H, paragraph 2; and O.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1103 AUDIT

(a) Audits must be conducted in accordance with OMB Circular A-128 as implemented by 24 CFR Part 44 and OMB Circular A-133, as applicable.

- (1) The recipient shall provide for an audit of its HOME funds on an annual basis in accordance with the annual independent audit procedures set forth in G.S. 159-34.
- (2) A recipient receiving less than twenty five thousand dollars (\$25,000) during a fiscal year may elect to have the funds audited with funds received in the following fiscal year.
- (3) The Audit of HOME funds may be performed in conjunction with the regular annual independent audit of the recipient and shall contain an examination of all financial aspects of the HOME program as well as a review of the procedures and documentation supporting the recipient's compliance with applicable statutes and regulations.
- (4) HOME funds can not be used to pay for the HOME portion of the audit.
- (5) The recipient shall submit a copy of the Annual Audit Report to the Department, including all information required by federal and state regulations.
- (6) The Department may require separate closeout audits to be prepared by the recipient.
- (7) Work papers and reports shall be maintained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the Department of the need to extend the retention period. The audit workpapers shall be made available upon request to the Department and the General Accounting office or its designees.
- (8) If during the course of the audit, the auditor becomes aware of irregularities in the recipient organization the auditor shall promptly notify the Department and recipient management officials about the level of involvement. Irregularities include such matters as conflict of interest, falsification of records or reports, and misappropriation of funds or other assets.

(b) All records, data, audit reports and files shall be maintained in accordance with Rule .1109

of this Section.

(c) The provisions of this Rule do not limit the authority of the Department to make audits of recipients' organizations.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1104 CLOSEOUT

(a) A recipient may close out HOME funds for an individual Federal fiscal year when the following criteria have been met:

- (1) All funds to be closed out have been drawn down and expended for completed project costs or funds not drawn down and expended are to be deobligated by the Department;
- (2) The matching funds requirements in Section 92.218 have been met unless waived for the fiscal year by the U.S. Congress;
- (3) Project Completion Reports for all projects using funds to be closed out have been submitted and entered into the department's financial system in order for the Department to prepare the Closeout Report;
- (4) The recipient has been reviewed and audited and the Department has determined that all requirements except for affordability, have been met or all monitoring and audit findings have been resolved.
 - (A) The recipient's most recent audit report must be received by the Department. Even though the audit does not cover all funds to be closed out, closeout may proceed provided the recipient agrees in its Closeout Report that unaudited funds will be subject to the recipient's next single audit and that the recipient may be required to repay the Department any disallowed costs based on the results of the audit.
 - (B) The on-site monitoring of the recipient by the Department must include verification of the Department's financial system data reflected in the Closeout Report and reconciliation of any discrepancies existing between the Department's financial system and the recipient's records.

(b) The Closeout Report contains the final data

n funds and must be signed by the recipient and the Department's designated official. In addition the report must contain:

- (1) A provision regarding unaudited funds, required by Part(a)(4)(i) of this Rule.
- (2) A provision requiring the recipient to continue to meet the requirement applicable to housing projects for the period of affordability specified in 24 CFR Part 92.252 or 92.254; to keep records demonstrating that the requirements have been met and to repay HOME funds, as required by 24 CFR 92.503, if the housing fails to remain affordable for the required period.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

1105 RECORDKEEPING

(a) The Secretary of the Department of Economic and Community Development, the Secretary of the Department of Housing and Urban Development, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of recipients or their subgrantees and contractors pertaining to funds provided under this Subchapter for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(b) All HOME Program records that are public under G.S. 132 shall be made accessible to interested individuals and groups during normal working hours.

(c) Financial records, supporting documentation and all other reports and records required under this Subchapter, and all other reports pertinent to the HOME Program shall be retained by the recipient for a period of three years from the date of the closeout of the program, except as follows:

- (1) Records must be retained until completion of the action and resolution of all issues arising from any litigation, claim, negotiation, audit or other action, or until the end of the regular period, whichever is later.
- (2) Records regarding project and other federal requirements applicable to housing assisted with HOME funds must be retained for three years after the required period of affordability specified in 24 CFR 92.252 or 92.254, as applicable.
- (3) Records covering displacements and

acquisition must be retained for at least three years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled.

(d) Recipient must establish and maintain sufficient records to enable the Department to determine whether the recipient has met the requirements of 24 CFR 92.508 and all other applicable laws and regulations. All accounting records shall be supported by source documentation and shall be in compliance with this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1106 PERFORMANCE REPORTS

(a) Each recipient must submit management reports on its HOME Program in such format and at such time as the Department may prescribe.

(b) A recipient must submit an annual performance report on its HOME activities to the Department at such time as the Department may prescribe. Single copies of the report must be provided to the public upon request at no charge.

(c) The Annual Performance Report must contain such information and be in such form as the Department may prescribe, and must include at least the following:

- (1) An analysis of the recipient's efforts to maximize participation by the private sector;
- (2) An assessment of the effectiveness of the affirmative marketing actions prescribed in Rule .1002 of this Subchapter;
- (3) An assessment of the effectiveness of the recipient's minority outreach program, including an analysis of participation by minorities and women and entities owned by minorities and women in its HOME program and, where appropriate, a statement of additional actions planned to improve performance in the use of minority and women-owned businesses;
- (4) Data on the total number of households (families and individuals) and business and nonprofit organizations displaced as a result of investments of HOME funds, including the cost of relocation payments and the number and cost of real property acquisitions; and

- (5) Data on the amount of repayments, interest, and other return on investment of HOME funds and the use of the funds, including number assisted and characteristics of tenants and owners.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1107 PERFORMANCE REVIEWS

(a) A recipient's performance will be reviewed at least annually in accordance with 24 CFR Part 92.550(a). The Department will rely primarily on information obtained from the recipient, and, as appropriate, the recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the recipient's financial system. The Department may also consider relevant information pertaining to a recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation.

(b) A recipient's performance will be comprehensively reviewed periodically, as prescribed by the Department, to determine whether the recipient:

- (1) has committed and expended HOME funds as required by 24 CFR Part 92.500; and
- (2) has met the requirement of 24 CFR Part 92, particularly eligible activities, income targeting, affordability, and matching requirements.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1108 CORRECTIVE AND REMEDIAL ACTIONS

(a) The Department will use the procedures of 24 CFR Part 92.551 in conducting the performance review as provided in Rule .1111 of this Section and in taking corrective and remedial actions.

(b) If the Department determines that a recipient has not met a requirement of this Subchapter, the recipient will be given notice of this determination and an opportunity to demonstrate, within a prescribed period of time (not to exceed 30 days) and on the basis of substantial facts and data that it has done so.

(c) If a recipient fails to demonstrate to the Department's satisfaction that it has met the requirement, The Department will take corrective or remedial action in accordance with this Rule or

Rule .1113 of this Section.

(d) The Department will take corrective or remedial actions designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence in accordance with 24 CFR 92.551(c).

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1109 ADMINISTRATIVE HEARINGS AND SANCTIONS

(a) The Department may impose sanctions specified in 24 CFR Part 92.552(a)(1) and (2)(i) on a recipient that fails to comply with any provision of this Subchapter.

(b) Recipients may contest Departmental actions with respect to this Subchapter under the Contested Case Hearing Procedures set forth in G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

(c) The Department may also commence contested case hearing procedures against recipients pursuant to G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. Part 92.

.1110 PROGRAM AMENDMENTS

(a) A recipient may amend its HOME program by submitting a request to the Department for approval in such format as the Department may prescribe.

(b) Prior approval by the Department is required when:

- (1) The recipient proposes to change the approved budget amount for any activity by more than 10 percent of the total grant amount.
- (2) The recipient proposes to add or delete any activity or activities, change project locations, or change the scope of the program or class of beneficiaries of previously approved activities; and
- (3) The cumulative effect of a number of smaller changes involving approved activities exceeds 10 percent of the total grant amount.

(c) All records of program amendments shall be kept on file in accordance with Rule .1109 of this Section.

Authority G.S. 143B-10; 143B-431; 24 C.F.R.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility services (DHR) intends to amend rules cited as 10 NCAC 3R .3020 and .3030.

The proposed effective date of this action is November 1, 1992.

The public hearing will be conducted at 2:00 p.m. on September 9, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: To correct typographical errors in these two 1992 State Medical Facilities Plan (SMFP) rules which were filed as temporary rules effective May 31, 1992, and the permanent version of the same two rules for which a Public Hearing has been scheduled 9/9/92.

Comment Procedures: Written comments should be submitted as soon as possible but no later than 9-14-92 to Jackie R. Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530, Telephone (919) 733-2342.

Editor's Note: These rules have been filed as temporary amendments effective on July 23, 1992 for a period of 180 days or until the permanent rules become effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .3000 - STATE MEDICAL FACILITIES PLAN

3020 CERTIFICATE OF NEED REVIEW SCHEDULE

The agency has established the following schedule for review of categories and subcategories of facilities and services in 1992:

- (1) Category B. Subcategory Long-Term Nursing Facilities.

County	HSA	CON Beginning Review Date
Alleghany	I	February 1, 1992
Cleveland	I	February 1, 1992
Polk	I	February 1, 1992
Burke	I	August 1, 1992
Jackson	I	August 1, 1992
Alamance	II	February 1, 1992
Caswell	II	February 1, 1992

Rockingham	II	February 1, 1992
Davie	II	August 1, 1992
Yadkin	II	August 1, 1992
Mecklenburg	III	March 1, 1992
Stanly	III	September 1, 1992
Chatham	IV	March 1, 1992
Person	IV	March 1, 1992
Wake	IV	September 1, 1992
Warren	IV	September 1, 1992
Cumberland	V	April 1, 1992
Moore	V	April 1, 1992
Robeson	V	April 1, 1992
Scotland	V	April 1, 1992
Bladen	V	October 1, 1992
New Hanover	V	October 1, 1992
Beaufort	VI	April 1, 1992
Nash	VI	April 1, 1992
Northampton	VI	April 1, 1992
Craven	VI	October 1, 1992
Hertford	VI	October 1, 1992
Pamlico	VI	October 1, 1992
Wilson	VI	October 1, 1992

- (2) Category C. Subcategory Intermediate Care Facilities for Mentally Retarded.

County	HSA	CON Beginning Review Date
Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain	I	December 1, 1992
Transylvania, Henderson	I	December 1, 1992
Caldwell, Burke, Alexander, McDowell	I	December 1, 1992
Rutherford, Polk	I	June 1, 1992
Cleveland	I	June 1, 1992
Mecklenburg	III	May 1, 1992
Surry, Yadkin	II	June 1, 1992

Forsyth, Stokes	II	June 1, 1992
Alamance, Caswell	II	November 1, 1992
Orange, Person, Chatham	IV	May 1, 1992
Vance, Granville, Franklin, Warren	IV	November 1, 1992
Davidson	II	November 1, 1992
Cumberland	V	December 1, 1992
Johnston	IV	May 1, 1992
Wake	IV	November 1, 1992
Randolph	II	November 1, 1992
New Hanover, Brunswick, Pender	V	December 1, 1992
Onslow	VI	June 1, 1992
Wilson, Greene	VI	June 1, 1992
Edgecombe, Nash	VI	June 1, 1992
Hertford, Bertie, Gates, Northampton	VI	December 1, 1992
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	December 1, 1992

3) Category D. Subcategory End Stage Renal Disease Treatment Facilities.

Counties	HSA	CON Beginning Review Date
Cherokee, Clay, Graham, Jackson, Macon, Swain	I	April 1, 1992
Buncombe, Haywood, Madison, Mitchell, Yancey	I	October 1, 1992
Henderson, Polk, Transylvania	I	October 1, 1992
Ashe, Avery, Caldwell, Watauga, Wilkes	I	April 1, 1992
Burke, McDowell	I	October 1, 1992
Rutherford	I	April 1, 1992
Alexander, Catawba	I	October 1, 1992
Alleghany, Stokes, Surry	II	October 1, 1992
Davidson	II	October 1, 1992
Caswell, Rockingham	II	October 1, 1992
Randolph	II	April 1, 1992
Alamance	II	April 1, 1992

Counties	HSA	CON Beginning Review Date
Cherokee, Clay, Graham, Jackson, Macon, Swain	I	April 1, 1992
Gaston	III	May 1, 1992
Lincoln	III	May 1, 1992
Rowan	III	October 1, 1992
Cabarrus	III	October 1, 1992
Montgomery, Stanly	III	October 1, 1992
Chatham, Lee	IV	October 1, 1992
Person	IV	May 1, 1992
Wake	IV	October 1, 1992
Johnston	IV	October 1, 1992
Franklin, Vance, Warren	IV	May 1, 1992
Anson	V	August 1, 1992
Cumberland, Hoke	V	April 1, 1992
Harnett	V	April 1, 1992
Sampson	V	April 1, 1992
Bladen	V	August 1, 1992
Robeson	V	August 1, 1992
Pender	V	August 1, 1992
Brunswick	V	August 1, 1992
Duplin	VI	April 1, 1992
Wayne	VI	April 1, 1992
Edgecombe, Nash	VI	April 1, 1992
Gates, Halifax, Hertford, Northampton	VI	August 1, 1992
Bertie, Washington	VI	August 1, 1992
Martin	VI	April 1, 1992
Greene, Pitt	VI	August 1, 1992
Beaufort	VI	August 1, 1992
Carteret, Craven, Jones, Pamlico	VI	August 1, 1992
Onslow	VI	August 1, 1992

(4) Category 1. Subcategory Home Health Agencies.

County	HSA	CON Beginning Review Date
Mecklenburg	III	February 1, 1992
Randolph	II	April 1, 1992
Wilkes	I	April 1, 1992

- (5) All categories for which review dates are not specified in Subparagraph (1), (2), (3), (4) of this Rule.

REVIEW PERIOD	HSA I	HSA II	HSA III	HSA IV	HSA V	HSA VI
January 1	--	--	--	--	--	--
February 1	B, G	B, G	A, G, <u>E</u> , <u>L</u> , <u>D</u> , <u>F</u>	A, G, <u>E</u> , <u>L</u> , <u>D</u> , <u>F</u>	A, G, <u>E</u> , <u>L</u> , <u>D</u> , <u>F</u>	A, G, <u>E</u> , <u>L</u> , <u>D</u> , <u>F</u>
March 1	--	--	B, G	B, G	--	--
April 1	A, D, G, <u>E</u> , <u>L</u> , <u>F</u>	A, D, G, <u>E</u> , <u>L</u> , <u>F</u>	--	--	B, G, <u>D</u>	B, G, <u>D</u>
May 1	--	--	C, G, <u>E</u> , <u>D</u> , <u>E</u>	C, G, <u>E</u> , <u>D</u> , <u>E</u>	--	--
June 1	A, C, G, <u>E</u> , <u>E</u>	A, C, G, <u>E</u> , <u>E</u>	--	--	A, C, G, <u>E</u> , <u>E</u>	A, C, G, <u>E</u> , <u>E</u>
July 1	--	--	A, G, <u>L</u> , <u>D</u>	A, G, <u>L</u> , <u>D</u>	--	--
August 1	B, G	B, G	--	--	D, G, <u>E</u> , <u>L</u> , <u>F</u>	D, G, <u>E</u> , <u>L</u> , <u>F</u>
September 1	--	--	B, G, <u>E</u> , <u>F</u>	B, G, <u>E</u> , <u>F</u>	--	--
October 1	D, G, <u>E</u> , <u>H</u> , <u>L</u> , <u>F</u>	D, G, <u>E</u> , <u>H</u> , <u>L</u> , <u>F</u>	<u>H</u> , <u>D</u>	<u>H</u> , <u>D</u>	B, G, <u>H</u>	B, G, <u>H</u>
November 1	--	A, C, G, <u>E</u> , <u>E</u>	A, C, G, <u>E</u> , <u>E</u>	A, C, G, <u>E</u> , <u>E</u>	--	--
December 1	A, C, G, <u>E</u> , <u>E</u>	--	--	--	A, C, G, <u>E</u> , <u>E</u>	A, C, G, <u>E</u> , <u>E</u>

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3030 FACILITY AND SERVICE ALLOCATIONS

Facility and services allocations are shown in Items (1) - (8) of this Rule. The allocations are subject to reductions based on certificates of need awarded since November 15, 1991.

- (1) Category A. Acute Health Service Facilities.

Morehead Memorial Hospital Service System	HSA II	16 beds
Halifax Memorial Hospital Service System	HSA VI	17 beds
UNC Hospital Service System	HSA IV	15 beds (University

students)

(2) Category B. Long-Term Nursing Facility Beds.

County	HSA	Number of Nursing Beds Allocated
Alleghany	I	20
Cleveland	I	60
Polk	I	40
Burke	I	60
Jackson	I	20
Alamance	II	60
Caswell	II	20
Rockingham	II	80
Davie	II	90
Yadkin	II	60
Mecklenburg	III	100
Stanly	III	60
Chatham	IV	2060
Person	IV	20
Wake	IV	70
Warren	IV	20
Cumberland	V	90
Moore	V	60
Robeson	V	4
Scotland	V	20
Bladen	V	40
New Hanover	V	100
Beaufort	VI	40
Nash	VI	60
Northampton	VI	20
Craven	VI	60
Hertford	VI	20
Pamlico	VI	20
Wilson	VI	60

- (3) Category C.
 (a) Psychiatric Facility Beds.

Counties	HSA	B E D S Adult Child/Adolescent	
Transylvania, Henderson Caldwell, Burke, Alexander, McDowell	I	--	12
Gaston, Lincoln	III	11	--
Rowan, Iredell, Davie	III	19	--
Stanly, Cabarrus, Union	III	26	10
Surry, Yadkin	II	23	--
Rockingham	II	16	--
Vance, Granville, Franklin, Warren	IV	13	--
Davidson	II	10	--
Lee, Harnett	V	15	--
Wake	IV	34	--
Craven, Jones, Pamlico, Carteret	VI	14	--
Lenoir	VI	10	--
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	17	--

- (b) Intermediate Care Facilities for Mentally Retarded Beds.

Counties	HSA	Allocation
Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain	I	12
Transylvania, Henderson	I	12
Caldwell, Burke, Alexander, McDowell	I	6
Rutherford, Polk	I	6
Cleveland	I	18
Mecklenburg	H III	48
Surry, Yadkin	II	12
Forsyth, Stokes	II	48 12
Alamance, Caswell	II	18

Orange, Person, Chatham	IV	12
Vance, Granville, Franklin, Warren	H <u>IV</u>	6
Davidson	II	6
Cumberland	V	18
Johnston	IV	42 6
Wake	H <u>IV</u>	42 42
Randolph	V II	6 <u>12</u>
New Hanover, Brunswick, Pender	V	6
Onslow	VI	18
Wilson, Greene	VI	6
Edgecombe, Nash	VI	6
Hertford, Bertie, Gates, Northampton	VI	6
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	6

- (c) Substance Abuse and Chemical Dependency Facility Beds. No allocation.
 (4) Category D. End Stage Renal Disease Treatment Facilities.

Counties	HSA	Station Allocations If All Pending Are Approved
Cherokee, Clay, Graham, Jackson, Macon, Swain	I	4
Buncombe, Haywood, Madison, Mitchell, Yancy	I	13
Henderson, Polk, Transylvania	I	3
Ashe, Avery, Caldwell, Watauga, Wilkes	I	6
Burke, McDowell	I	2
Rutherford	I	7
Alexander, Catawba	I	4
Alleghany, Stokes, Surry	II	0
Davidson	II	2
Caswell, Rockingham	II	7
Randolph	II	3
Alamance	II	6
Gaston	III	6

Lincoln	III	7
Rowan	III	4
Cabarrus	III	5
Montgomery, Stanly	III	5
Chatham, Lee	IV	6
Person	IV	8
Wake	IV	12
Johnston	IV	7
Franklin, Vance, Warren	IV	10
Anson	V	3
Cumberland, Hoke	V	17
Harnett	V	3
Sampson	V	4
Bladen	V	7
Robeson	V	1
Pender	V	0
Brunswick	V	10
Duplin	VI	3
Wayne	VI	4
Edgecombe, Nash	VI	14
Gates, Halifax, Hertford, Northampton	VI	19
Bertie, Washington	VI	0
Martin	VI	8
Greene, Pitt	VI	3
Beaufort	VI	0
Carteret, Craven, Jones, Pamlico	VI	13
Onslow	VI	6

(5) Category E. Inpatient Rehabilitation Facility Beds.

<u>HSA</u>	<u>Beds</u>
I	20
II	4
III	20
IV	15
V	22
VI	35

PROPOSED RULES

- (6) Category F. Ambulatory Surgery Facilities.
Any area's need is determined by applying the following formula:

$$\frac{1990 \text{ Amb. Surg. Cases in the Proposed Amb. Surg. Area}}{\text{Area Population (1000's)}} \text{ or } 50.9 \times \frac{1994 \text{ Pop. of Area to be Served}}{(1000's)} = \text{Proposed Amb. Surg. Cases in Proposed Service Area}$$

$$\frac{\text{Projected Ambulatory Surgical Cases in Proposed Service Area}}{600 \text{ (cases per room per year)}} \div .80 = \text{Ambulatory Surgery Rooms Needed in Proposed Service Area}$$

This methodology is not applicable to CON ambulatory surgical applications which conform to 10 NCAC 3R .2115(c)(2) relative to access to medically underserved persons.

- (7) Category H.
(a) Brain Injury Demonstration - Long-Term Nursing Facility Beds.

- (i) ~~(a)~~ HSA I and III 20 bed
(ii) ~~(b)~~ HSA II, IV and V, 20 bed
(less Bladen, Brunswick, ~~Chowan~~, Columbus,
New Hanover, Pender and Sampson counties.)
(iii) ~~(c)~~ HSA VI 20 bed
(plus Bladen, Brunswick, ~~Chowan~~, Columbus,
New Hanover, Pender and Sampson counties.)

~~(8) Category B~~

- (b) Demonstration Project, Medically Complex Children - Long-Term Nursing Beds. 10 bed
All HSAs

~~(9) Category G~~

- (c) Thomas S. class - Intermediate Care Facility beds for Mentally Retarded. 71 bed
All HSAs

- (8) ~~(40)~~ Category I. New Home Health Agencies.

County	HSA	Number of Agencies Allocated
Mecklenburg	III	1
Randolph	II	2
Wilkes	I	1

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26B .0109 and adopt rule(s) cited as 10 NCAC 26H .0509.

The proposed effective date of this action is November 2, 1992.

The public hearing will be conducted at 1:30 p.m. on September 3, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead

Drive, Room 132, Raleigh, N.C. 27603.

Reasons for Proposed Actions:

10 NCAC 26B .0109 - To clarify rules, regulations, limitations and services to be consistent with agency policy.

10 NCAC 26H .0509 - To clarify the reimbursement principles for hearing aids, accessories and batteries.

Comment Procedures: Written comments concerning these Rules must be submitted by September 3, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0109 HEARING AID SERVICES

Only hearing aids and accessories provided to recipients under age 21 shall be covered. Prior approval shall be required for a hearing aid and for any repairs made after the warranty has expired. and accessories, earmolds, repairs, loaner and rental aids.

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.110.

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0500 - REIMBURSEMENT FOR SERVICES

.0509 REIMBURSEMENT PRINCIPLES, HEARING AIDS/ACCESSORIES/ BATTERIES

(a) Hearing aids and accessories, earmolds, repairs, loaner and rental aids are reimbursed at invoice cost. Invoices must accompany claims for aids and accessories, earmolds, repairs, loaner and rental aids. Fitting and dispensing services are reimbursed at a fixed reimbursement fee.

(b) Batteries are reimbursed at current retail costs; an invoice is not required and a dispensing fee for batteries is not allowed. Reimbursement for batteries is made for only six claims per year per recipient.

Statutory Authority G.S. 108A-25(b); 108A-54.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Sheriffs' Education and Training Standards Commission intends to amend rule (s) cited as 12 NCAC 10B .0103, .0106, .0203, .0204, .0205, .0206, .0301, .0303, .0304, .0305, .0307, .0401, .0404, .0406, .0408, .0409, .0505, .0507, .0603, .0605, .2101, .2102, .2103, .2104, .2105; adopt rule(s) cited as .0911 and .0912.

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 9:00 AM on September 18, 1992 at the Holiday Inn, Wilkesboro, North Carolina.

Reason for Proposed Action:

12 NCAC 10B .0103, .0106, .0203, .0204, .0205, .0206, .0301, .0303, .0304, .0305, .0307, .0401, .0404, .0406, .0408, .0409, .0505, .0507, .0603, .0605, .2101, .2102, .2103, .2104, .2105 - To make various technical changes for purposes of updating and clarifying existing rules.

12 NCAC 10B .0911 and .0912 - To add rules to allow for the suspension, revocation, or denial of jail instructor certification and to specify sanctions for such action.

Comment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the public rule-making hearing. Written statements can be submitted beginning August 14th through September 18th and should be directed to the Sheriffs' Standards Division. The proposed rules are available for public inspection and copies may be obtained at the following address: Dept. of Justice, Sheriffs' Standards Div., PO Box 629, Raleigh, NC 27602-0629.

CHAPTER 10 - N.C. SHERIFFS'
EDUCATION AND TRAINING STANDARDS
COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS'
EDUCATION AND TRAINING STANDARDS
COMMISSION

SECTION .0100 - COMMISSION
ORGANIZATION AND PROCEDURES

.0103 DEFINITIONS

In addition to the definitions set forth in G.S. 17E-2, the following definitions apply throughout this Chapter, unless the context clearly requires otherwise:

- (1) "Appointment" as it applies to a deputy sheriff means the date the deputy's oath of office is administered, and as it applies to a jailer means either the date the jailer's oath of office was administered, if applicable, or the jailer's actual date of employment as reported on the Report of Appointment (Form F-4A) by the employing agency, whichever is earlier.
- (2) ~~(4)~~ "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict of finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) ~~(2)~~ "Department Head" means the chief administrator of any criminal justice agency. Department head includes the sheriff or a designee formally appointed in writing by the Department head.
- (4) ~~(3)~~ "Director" means the Director of the Sheriffs' Standards Division of the North Carolina Department of Justice.
- (5) ~~(4)~~ "Division" means the Sheriffs' Standards Division.
- (6) ~~(5)~~ "High School" means a school accredited as a high school by:
 - (a) the Department or Board of Education of the state in which the high school is located; or
 - (b) the recognized regional accrediting body; or
 - (c) the state university of the state in which the high school is located.

- (7) ~~(6)~~ "Enrolled" means that an individual is currently actively participating in a on-going formal presentation of a commission-accredited basic training course which has not been concluded or the day probationary certification expires.
- (8) "Essential Job Functions" means those tasks deemed by the agency head to be necessary for the proper performance of a justice officer.
- (9) ~~(7)~~ "Lateral Transfer" means certification of a justice officer when the justice officer applicant for certification has previously held general or grandfathered certification and has been separated by an agency or transferred to another agency and provided the justice officer applicant has been separated from a justice officer certified position for no more than one year.
- (10) ~~(8)~~ "Misdemeanor" means those criminal offenses not classified by the North Carolina General Statutes, the United States Code, the common law, or the courts as felonies. Misdemeanor offenses are classified by the Commission as follows:
 - (a) "Class A Misdemeanor" means an act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred or its political subdivision includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "class A misdemeanor" criminal offenses are motor vehicle or traffic offenses designated as misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving (G.S. 20-138.1) which is expressly included herein as a class A misdemeanor, if the defendant was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S.

20-179(j)], or level five [G.S. 20-179(k)];

(b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws and statutes of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "class B misdemeanor" criminal offenses are motor vehicles or traffic offenses designated as being misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions with the following exceptions. Class B misdemeanor does expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-166 (duty to stop in event of accident). This definition further includes a violation of G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense and shall also include a violation of G.S. 20-28(b) (driving while license permanently revoked or suspended).

(11) ~~(9)~~ "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.

(12) ~~(10)~~ "Dual Certification" means that a justice officer holds probationary, general, or grandfather certification as both a deputy sheriff and a jailer with the same employing agency.

(13) "Jailer" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, which include but are not limited to the control, care, and supervision of any inmates incarcerated in a county jail or other confinement facility under the direct supervision and management of the sheriff.

(14) "Deputy Sheriff" means any person who has been duly appointed and sworn by the sheriff and who is authorized to

exercise the powers of arrest in accordance with the laws of North Carolina.

(15) "Commission" as it pertains to criminal offenses shall mean a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of Chapter 150B of the North Carolina General Statutes, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.

Statutory Authority G.S. 17E-7.

.0106 PROCEDURES FOR PETITIONS FOR RULE-MAKING

In addition to the procedures set out in G.S. ~~150B-16~~ 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposed rule.

Statutory Authority G.S. 150B-20.

SECTION .0200 - ENFORCEMENT RULES

.0203 SANCTIONS FOR VIOLATIONS BY INDIVIDUALS

~~(a)~~ When any person certified by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not re-occur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by

the individual;

- (5) revoking or denying the individual's certification.

~~(b) A person who has had his certification suspended or revoked may not exercise the authority of a justice officer during the period of suspension or revocation.~~

~~(c) A person who has been denied certification may not be employed or appointed as a justice officer or exercise the authority of a justice officer.~~

Statutory Authority G.S. 17E-4.

.0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a felony unless pardoned by the Governor; or

- (2) a crime for which the authorized punishment could have been imprisonment for more than two years; ~~or~~

- ~~(3) an act or any series of acts which violates the laws of the State of North Carolina and which, in the opinion of the Sheriff, will affect his/her ability to act or carry out the office and duties of a justice officer.~~

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a time period specified by the Commission; or

- (2) fails to meet or maintain any of the minimum employment or certification standards required by 12 NCAC 10B .0300; or

- (3) fails to satisfactorily complete the minimum in-service training requirements as presented in 12 NCAC 10B .2000 and .2100; or

- (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(b)(4) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A

.0103(6); or

- (5) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or board standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

- (2) has knowingly and designedly by any means of false pretense, deception, fraud, or defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or

- (3) has aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission by means of deceit, fraud, or misrepresentation. This Rule shall also apply to obtaining or attempting to obtain in-service firearm requalification as required by Section 12 NCAC 10B .2000 and .2100.

(d) The Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(8)(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(8)(10)(b) as a Class B misdemeanor within the five-year

period prior to the date of ~~application for certification~~ appointment; or

- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(8)(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or
- (4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(8)(10)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(8)(10)(a) as a Class A misdemeanor except the applicant may be certified if the last conviction or commission occurred more than two years prior to the date of ~~application for certification~~ appointment.

(e) A person who has had his certification suspended or revoked may not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) A person who has been denied certification may not be employed or appointed as a justice officer or exercise the authority or perform the duties of a justice officer.

Statutory Authority G.S. 17E-7.

0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
 - (a) commission or conviction of a felony; or
 - (b) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
 - (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Subparagraph (2) of this Rule.
- (2) not less than five years where the cause of sanction is:
 - (a) commission or conviction of a crime other than those listed in Subparagraph (1) of this Rule; ~~however, the Commission may either reduce or~~

~~suspend the period of sanction under this Subparagraph or substitute a period of probation in lieu of revocation following an administrative hearing or~~

- (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
- (c) knowingly and designedly by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
- (d) aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission by means of deceit, fraud or misrepresentation. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by Sections 12 NCAC 10B .2000 and .2100 of this Subchapter; or
- (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7); or
- (f) removal from office under the provisions of G.S. 128-16; or
- (g) a positive result on a drug screen, or a refusal to submit to drug testing both pursuant to 12 NCAC 10B .0301 and 12 NCAC 10B .0406, or in connection with an application for certification as a criminal justice officer as defined in 12 NCAC 9A .0103(6).
- (h) The Commission may either reduce or suspend the periods of sanction under this Subparagraph or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension, in the

discretion of the Commission.

- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
 - (a) failure to meet or satisfy relevant basic training requirements; or
 - (b) failure to meet or maintain the minimum standards of employment or certification; or
 - ~~(c) discharge from a criminal justice agency for impairment of physical or mental capabilities; or~~
 - (c) ~~(d)~~ failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .2100.

Statutory Authority G.S. 17E-4; 17E-7.

.0206 SUMMARY SUSPENSIONS: OR DENIALS

(a) The Commission may summarily suspend or deny the certification of a justice officer or instructor when, in the opinion of the Commission, the public health, safety, or welfare requires this emergency action of summary suspension or denial. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Director, ~~may~~ shall utilize summary suspension or denial following a full investigation of the matter when:

- (1) the applicant for certification or the certified justice officer has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification; or
- (2) the justice officer has failed to comply with the training requirements of 12 NCAC 10B .0500 and .0600; or
- (3) the certified justice officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 10B .2100.

(b) A person who has had his or her certification summarily suspended or denied may not exercise the authority or perform the duties of a justice officer during the period of suspension or denial.

Statutory Authority G.S. 17E-8; 17E-9; 150B-3(c).

SECTION .0300 - MINIMUM STANDARDS FOR EMPLOYMENT AND

CERTIFICATION AS A JUSTICE OFFICER

.0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every Justice Officer employed or certified as a Deputy Sheriff or Jailer in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination by a licensed physician;
- (6) have produced a negative result on a drug screen administered according to the following specifications:

- (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory test as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
- (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and
- (C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates, and amphetamines or their metabolites; and
- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted materials~~ referenced materials as authorized by G.S. 150B-14(e). Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost at the time of adoption of this Rule; and
- (E) the test conducted shall be not more

than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and

- (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Subsection (c) of this Rule;
- (G) every agency head shall be responsible for making adequate arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician.
- (7) notify the Standards Division in writing of all criminal offenses with which the officer is charged, pleads no contest to, pleads guilty to or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable is 60 days or less. The notifications required must specify the nature of the offense, the court in which the case was handled and the date of ~~the conviction~~ disposition. The notifications must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's ~~conviction~~ charge(s), shall also notify the Division of ~~all criminal convictions~~ within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the

officer or the executive officer, is sufficient notice for compliance with this Subparagraph;

- (8) be of good moral character;
- (9) have a thorough background investigation conducted by the employing agency, to include a personal interview prior to employment;
- (10) not have committed or been convicted of a crime or crimes as specified in Rule 12 NCAC 10B .0307. ~~of this Section.~~

(b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

Statutory Authority G.S. 17E-7.

.0303 FINGERPRINT RECORDS CHECK

(a) Each applicant for certification shall be fingerprinted twice using forms specified by the Division. Both fingerprint cards shall be forwarded to the State Bureau of Investigation (SBI) who will in turn, forward one card to the Federal Bureau of Investigation (FBI). A criminal history records check against State and Federal files will be conducted by both agencies based on those prints. Upon receipt from the SBI, the Division shall forward either the original fingerprint card bearing the results of the criminal history records check, or a computerized print-out bearing the results of the criminal history records check, to the employing agency who shall retain the card or the computerized print-out in the applicant's personnel file.

~~(b) Each applicant shall provide to the employing agency a certified copy of a check of the applicant's criminal history record from the Clerk of Court in each county where the applicant has resided within the preceding six months. The employing agency shall perform a criminal history records check of the agency's own files for each applicant. A certified copy of the results of all required criminal history records checks shall be forwarded with the applicant's Report of Appointment form (F-4) or (F-4A) to the Division. Additionally, a photocopy of the results of all required criminal history records checks shall be retained by the agency in the applicant's personnel file.~~

(b) (e) Certifications issued prior to the receipt by the Division of the fingerprint and criminal

history records check of state and federal files, as conducted by the SBI and FBI, are conditional. Such conditional certifications may summarily be suspended by the Commission upon receipt from the SBI or FBI of a fingerprint or criminal history records check that indicates that the officer has been convicted of an offense as specified in Rule .0307, 12 NCAC 10B .0307.

(c) In compliance with 12 NCAC 10B .0404 (a) (1), a justice officer shall not be eligible for general certification and shall remain on probationary certification until the requirements of this Rule have been met.

Statutory Authority G.S. 17E-7.

.0304 MEDICAL EXAMINATION

(a) Each applicant shall complete the Commission's Medical History Statement Form (F-1) and shall be examined by a physician or surgeon licensed in North Carolina to help determine his/her fitness in carrying out the physical requirements of the position of deputy sheriff or jailer. The examining physician should read and sign the F-2A form attached to the Medical Examination Report Form (F-2) prior to beginning the examination. The examining physician shall record the results of the examination on the Medical Examination Report Form (F-2) and sign and date the form. The F-2 form shall be valid one year from the date the Medical Examination was completed and signed by the physician. The physical examination shall be conducted and the Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be completed prior to whichever of the following occurs first:

- (1) the applicant's beginning the Jailer Certification Course and/or the Basic Law Enforcement Training Course; or
- (2) the applicant's applying to the Commission for certification.

(b) Although not presently required by these rules, it is recommended by the Commission that each candidate for the position of justice officer be examined by a licensed psychiatrist or clinical psychologist, or be administered a psychological evaluation test battery, ~~prior to employment~~, to determine his/her ~~mental and emotional~~ suitability to perform the duties essential job functions of a justice officer.

Statutory Authority G.S. 17E-7.

.0305 BACKGROUND INVESTIGATION

(a) Prior to the background investigation ~~conducted~~ by the employing agency to ~~determine~~ the applicant's suitability to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3) to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment.

- (1) ~~the applicant's beginning the Jailer Certification Course and/or Basic Law Enforcement Training Course; or~~
- (2) ~~the applicant's applying to the Commission for certification.~~

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's ~~applying to the Commission for certification~~ date of appointment, the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes of a new Personal History Statement (F-3) must be completed.

(c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal History Statement (F-3) prior to submission to the Division.

(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to his/her performance as a justice officer and shall determine whether the applicant is of good moral character. The investigator shall summarize the results of the investigation on a commission-approved form which shall be signed and dated by the investigator.

(e) Each applicant shall provide to the employing agency a certified copy of a check of the applicant's criminal history record from the Clerk of Court in each county where the applicant has resided within the preceding six months. The employing agency shall perform a criminal history records check of the agency's own files for each applicant. A certified copy of the results of all required criminal history records checks shall be forwarded with the applicant's Report of Appointment form (F-4) or (F-4A) to the Division. Additionally, a photocopy of the results of all required criminal history records shall be retained by the agency in the applicant's personnel file.

(f) The employing agency shall also forward to the Division certified copies of any criminal charge(s) and disposition(s) known to the agency and/or listed on the applicant's Personal History Statement (F-3). This documentation shall be included with all other documentation required in

NCAC 10B .0408.

Statutory Authority G.S. 17E-7.

307 CRIMINAL HISTORY RECORD

(a) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal or military court of:

- (1) a felony, unless pardoned by the Governor; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- ~~(3) an act, or any series of acts which violate the laws of the State of North Carolina and which, in the opinion of the sheriff, will affect his/her ability to act or carry out the office and duties of a justice officer.~~
- (3) ~~(4)~~a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment appointment; or
- (4) ~~(5)~~four or more crimes or unlawful acts defined as "Class B Misdemeanors" regardless of the date of conviction or commission; or
- (5) ~~(6)~~four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the applicant ~~may~~ can be employed if the last conviction or commission occurred more than two years prior to the date of application for employment appointment.

~~(b) Every justice officer employed in North Carolina shall also be subject to the requirements of 12 NCAC 10B .0204.~~

~~(b)~~ (e) The requirements of this Rule shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applications for certification.

Statutory Authority G.S. 17E-7.

SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS

401 CERTIFICATION OF SHERIFFS' DEPARTMENT PERSONNEL

Every person employed or appointed as a justice officer by a sheriff's department performing the

duties of a deputy sheriff or a jailer as defined in 12 NCAC 10B .0203 (13) and (14), except those certified pursuant to ~~Rule .0407~~ 12 NCAC 10B .0407, shall meet the certification requirements of this ~~Subchapter~~ Section .0400. ~~Justice officers meeting the requirements as specified in this chapter may be certified as either a deputy sheriff, a jailer, or both.~~

Statutory Authority G.S. 17E-4; 17E-7.

.0404 GENERAL CERTIFICATION

(a) The Commission shall grant an officer general certification if evidence is received by the Division that the officer has: ~~successfully completed the required training within the probationary period, and that the officer has met all other requirements for general certification.~~

- (1) complied with all of the requirements of 12 NCAC 10B .0300; and
- (2) successfully completed the required training within the probationary period.

(b) General certification is continuous from the date of issuance if:

- (1) The certified officer remains continuously employed or appointed as an officer in good standing with an agency and the certification has not been terminated for cause; or
- (2) The certified officer, having separated in good standing from an agency, is reemployed or reappointed as a justice officer within one year, and the certification has not been terminated for cause.

Statutory Authority G.S. 17E-4; 17E-7.

.0406 LATERAL TRANSFER/ REINSTATEMENTS

(a) An officer with general or grandfather certification who:

- (1) is currently certified; or
- (2) has been separated but has not been out of service for more than one year or who has had no break in service, may ~~be appointed by laterally transfer to~~ be appointed by laterally transfer to an agency and be certified upon compliance with this Rule. ~~-.0406.~~

(b) The employing agency shall verify the applicant's certification status with the Division prior to submission of the application for certification as a justice officer.

(c) ~~(b)~~In order for an officer to be certified pursuant to this Rule ~~-.0406 there must be, the~~

employing agency shall submit to the Division, along with the Report of Appointment (F-4 and/or (F-4A), the following documents:

- (1) ~~verification by the employing agency of the officer's certification status with the Division;~~
- (1) (2) ~~compliance with the requirements for fingerprints~~ fingerprint cards and criminal history records checks as specified in Rule 12 NCAC 10B .0303;
- (2) (3) ~~compliance with the requirement for the applicant's Medical History Statement (F-1) and Medical Examination Report (F-2) specified in Rule 12 NCAC 10B .0304;~~
- (3) (4) ~~evidence of a negative result on a drug screen administered according to the specifications as outlined in 12 NCAC 10B .0301(6);~~
- (5) ~~compliance with the Report of Appointment form requirement of Rule .0403;~~
- (4) (6) ~~submitted to the Division;~~ a copy of the Oath of Office for applicants requesting certification as a deputy sheriff;
- (5) (7) ~~evidence of satisfactory completion of the employing agency's in-service firearms training and requalification program pursuant to Sections .2000 and .2100; and 12 NCAC 10B .2000 and .2100;~~
- (6) (8) ~~documentary evidence of high school, college or university graduation to the employing agency. Documentary evidence consists of diplomas from recognized public schools or approved private schools, colleges or universities which meet approval guidelines of the North Carolina Department of Public Instruction or a comparable out of state agency; or documentary evidence of the attainment of satisfactory scores on any military high school equivalency examination will be acceptable as verified by a true copy of the veteran's DD214.~~

(d) (e) An officer whose certification has been suspended pursuant to 12 NCAC 10B .0204(b)(1) may have that certification reinstated provided that:

- (1) the period of suspension has been one year or less; and
- (2) the officer has successfully completed

the basic training requirements as prescribed in 12 NCAC 10B .0500 or .0600.

(e) (d) Requirements of Paragraph (b) (c) of this Rule are waived for officers whose certification are reinstated pursuant to Paragraph (e) (d) of this Rule.

(f) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws and guidelines governing confidentiality.

Statutory Authority G.S. 17E-4; 17E-7.

.0408 VERIFICATION OF RECORDS TO DIVISION

(a) Prior to the initial probationary certification of each justice officer, for the purpose of verifying compliance with these Rules, the employing agency shall submit to the Division, along with the Report of Appointment (F-4) and/or (F-4A), copies of the following documents:

- (1) verification of the applicant's compliance with the educational requirement pursuant to ~~Rule .0302(a)~~ 12 NCAC 10B .0302 (a);
- (2) certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (3) the applicant's Medical History Statement (F-1);
- (4) the applicant's Medical Examination Report (F-2 and F-2A);
- (5) the applicant's notarized Personal History Statement (F-3); ~~and~~
- (6) a summary of the applicant's background investigation;
- (7) documentation of negative results on a drug screen pursuant to 12 NCAC 10B .0301(6); and
- (8) certified copies of criminal charges and dispositions as required in 12 NCAC 10B .0305(e) and (f).

(b) Compliance with this Rule .0408(a) is waived for officers applying for dual certification as defined in Rule 12 NCAC .0103(10) (12) provided that:

- (1) the officer holds a valid certification as either a deputy sheriff or jailer with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws and guidelines governing confidentiality.

requirements of this Rule shall be subject to all state and federal laws and guidelines governing confidentiality.

Statutory Authority G.S. 17E-4.

Statutory Authority G.S. 17E-4; 17E-7.

0409 EMPLOYING AGENCY RETENTION OF CERTIFICATION RECORDS

(a) Each employing agency shall place in the appropriate justice officer's personnel file the official notification of either probationary or general certification. Such files shall be available for examination at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. Each personnel file shall also contain:

- (1) a copy of the applicant's Report of Appointment (F-4) and/or (F-4A);
- (2) verification of the applicant's compliance with the educational requirement pursuant to ~~Rule .0302(a)~~; 12 NCAC 10B .0302(a);
- (3) a certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (4) the results of the applicant's fingerprint records check and the criminal history records check;
- (5) the applicant's Medical History Statement (F-1);
- (6) the applicant's Medical Examination Report (F-2 and F-2A);
- (7) the applicant's Personal History Statement (F-3);
- (8) a summary of the applicant's background investigation;
- (9) a copy of a commission-approved Firearms Qualification Record Form;
- (10) documentation of negative results on drug screen pursuant to ~~Rule .0301(6)~~ 12 NCAC 10B .0301(a)(6).

(b) Compliance with this Rule ~~.0409(a)~~ is waived for officers applying for dual certification as defined in ~~Rule .0103(10)~~ 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid certification as either a deputy sheriff or jailer with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) All information maintained pursuant to the

SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFF

.0505 EVALUATION FOR TRAINING WAIVER

(a) The Division staff shall evaluate each deputy's training and experience to determine if equivalent training has been satisfactorily completed as specified in Rule 12 NCAC 10B .0504(a). Applicants for certification with prior law enforcement experience shall have been employed in a sworn law enforcement position in order to be considered for training evaluation under this Rule. The following rules shall be used by Division staff in evaluating a deputy's training and experience to determine eligibility for a waiver of training.

- (1) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-accredited Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for more than one year shall complete a subsequent commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (2) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-accredited Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (3) Persons who separated from a sworn law enforcement position during their probationary period without having completed Basic Law Enforcement Training, or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1), and who have remained separated or suspended for over one year shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (4) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees:
 - (A) shall have a minimum of two years full-time sworn law enforcement experience;
 - (B) shall not have a break in service exceeding two years; and
 - (C) shall have successfully completed the Basic Law Enforcement Training Course accredited by the state from which he/she is transferring. Out-of-state transferees meeting these requirements shall successfully complete a commission-accredited Basic Law Enforcement Training Course which includes the following topics of North Carolina law and procedure and successfully pass the State Comprehensive Examination in its entirety within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(i) Laws of Arrest, search and Seizure	16 hour
(ii) Elements of Criminal Law	24 hour
(iii) Juvenile Laws and Procedures	8 hour
(iv) Controlled Substances	6 hour
(v) ABC Laws and Procedures	4 hour
(vi) Motor Vehicle Laws	20 hour
(vii) Civil Process	24 hour
(viii) Supplemental Custody Procedures	8 hour
(ix) Firearms Qualification (Handgun and Shotgun Courses)	

TOTAL HOURS

110 hour

- (5) Persons previously holding Grandfather law enforcement certification in accordance with G.S. 17C-10(a) or G.S. 17E-7(a) who have been separated from a sworn law enforcement position for more than one year and who have not previously completed a minimum Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and/or the North Carolina Sheriffs' Education and Training Standards Commission shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- (6) Persons who have completed a minimum 160-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have been separated from a sworn law enforcement position for more than one year but no more than two years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Juvenile Law and Procedures	8 hours
(B) Laws of Arrest, Search and Seizure	16 hours
(C) Elements of Criminal Law	24 hours
(D) Controlled Substances	6 hours
(E) ABC Laws and Procedures	4 hours
(F) Motor Vehicle Laws	20 hours
(G) Law Enforcement Driver Training	16 hours
(H) Civil Process	24 hours
(I) Supplemental Custody Procedures	8 hours
(J) Firearms Qualification (Handgun and Shotgun Courses)	

TOTAL HOURS	26 hours
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- (7) Persons who have completed a minimum 160-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have been separated from a sworn law enforcement position for more than two years shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- (8) Persons who have completed a minimum 240-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Laws of Arrest, Search and Seizure	16 hours
(B) Elements of Criminal Law	24 hours
(C) Juvenile Laws and Procedures	8 hours
(D) Controlled Substances	6 hours
(E) ABC Laws and Procedures	4 hours
(F) Motor Vehicle Laws	20 hours
(G) Civil Process	24 hours
(H) Supplemental Custody Procedures	8 hours
(I) Firearms Qualification (Handgun and Shotgun Courses)	

TOTAL HOURS	110 hours
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- (9) Persons who have completed a minimum 240-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for more than three years shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of prior training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- (10) Persons who have completed a minimum 381 hour Basic Law Enforcement Training Course

accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and ending December 31, 1988 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- | | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS

110 hours

- (11) Persons transferring to a sheriff's department from another law enforcement agency who hold certification issued by the North Carolina Criminal Justice Education and Training Standards Commission and who have previously completed a ~~minimum 369-hour~~ commission-accredited Basic Law Enforcement Training Course ~~accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning on or after October 1, 1984 and ending July 1, 1989~~ and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commission-accredited Basic Law Enforcement Training Course and successfully pass that portion of the State Comprehensive Oath Examination which deals with those subjects within 12 months of the date of ~~their Oath of Office appointment~~ as prescribed defined in 12 NCAC 10B .0503(a). .0103(1).

- | | |
|-------------------------------------|----------|
| (A) Civil Process | 24 hours |
| (B) Supplemental Custody Procedures | 8 hours |

TOTAL HOURS

32 hours

- (12) Persons who have completed a minimum 369-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Commission under guidelines beginning October 1, 1984 and ending July 1, 1989 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- | | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS

110 hours

- ~~(13) Persons transferring to a sheriff's department from another law enforcement agency who hold certification issued by the North Carolina Criminal Justice Education and Training Standards Commission and who have previously completed a commission accredited 410-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1989 and ending~~

February 1, 1991 and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commission accredited Basic Law Enforcement Training Course and successfully pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of their Oath of Office as prescribed in 12 NCAC 10B .0503(a):

- | | |
|-------------------------------------|----------|
| (A) Civil Process | 24 hours |
| (B) Supplemental Custody Procedures | 8 hours |

TOTAL HOURS	32 hours
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(13) ~~(14)~~ Persons who have completed a minimum 422-hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriff's Education and Training Standards Commission under the guidelines administered beginning January 1, 1989 and ending February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- | | |
|--|----------|
| (A) Lawss of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS	110 hours
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(14) ~~(15)~~ Persons who have previously completed a minimum 410-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1989 and ending February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- | | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
| (B) Elements of Criminal Law | 24 hours |
| (C) Juvenile Laws and Procedures | 8 hours |
| (D) Controlled Substances | 6 hours |
| (E) ABC Laws and Procedures | 4 hours |
| (F) Motor Vehicle Laws | 20 hours |
| (G) Civil Process | 24 hours |
| (H) Supplemental Custody Procedures | 8 hours |
| (I) Firearms Qualification (Handgun and Shotgun Courses) | |

TOTAL HOURS	110 hours
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(15) ~~(16)~~ Persons who have completed a minimum 444-hour Basic Law Enforcement Training Course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under the guidelines administered beginning February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- | | |
|--|----------|
| (A) Laws of Arrest, Search and Seizure | 16 hours |
|--|----------|

(B) Elements of Criminal Law	24 hour
(C) Juvenile Laws and Procedures	8 hour
(D) Controlled Substances	6 hour
(E) ABC Laws and Procedures	4 hour
(F) Motor Vehicle Laws	20 hour
(G) Civil Process	24 hour
(H) Supplemental Custody Procedures	8 hour
(I) Firearms Qualification (Handgun and Shotgun Courses)	

TOTAL HOURS

110 hour

(16) ~~(17)~~ Persons who have previously completed a minimum 432-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning February 1, 1991 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited Basic Law Enforcement Training Course and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Laws of Arrest, Search and Seizure	16 hour
(B) Elements of Criminal Law	24 hour
(C) Juvenile Laws and Procedures	8 hour
(D) Controlled Substances	6 hour
(E) ABC Laws and Procedures	4 hour
(F) Motor Vehicle Laws	20 hour
(G) Civil Process	24 hour
(H) Supplemental Custody Procedures	8 hour
(I) Firearms Qualification (Handgun and Shotgun Courses)	

TOTAL HOURS

110 hour

~~(18) Persons transferring to a sheriff's department from another law enforcement agency who hold certification issued by the North Carolina Criminal Justice Education and Training Standards Commission and who have previously completed a commission-accredited 432-hour Basic Law Enforcement Training Course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning February 1, 1991 and who have been separated from a sworn law enforcement position for no more than one year or who have no break in service shall be required to complete the following enumerated topics of a commission-accredited Basic Law Enforcement Training Course and successfully pass that portion of the State Comprehensive Examination which deals with these subjects within 12 months of the date of their Oath of Office as prescribed in 12 NCAC 10B .0503(a).~~

(A) Civil Process	24 hour
(B) Supplemental Custody	8 hour

TOTAL HOURS

32 hour

- (17) ~~(19)~~ Persons who have completed training as a federal law enforcement officer and are appointed as a ~~sworn law enforcement officer~~ deputy sheriff in North Carolina shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of previous federal training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (18) ~~(20)~~ Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (19) ~~(21)~~ Wildlife Enforcement Officers who completed the Basic Law Enforcement Training Course prior to September 30, 1985 and are sworn as justice officers shall be subject to the evaluation rules as stated in Rule 12 NCAC 10B .0505 Paragraphs (a)(1) and (a)(4) through (11).
- (20) ~~(22)~~ Wildlife Enforcement Officers who separate from employment with the Wildlife Enforcement

Division and have less than one year break in service, who transfer to a Sheriff's Department in a sworn capacity, and who completed their Basic Training after September 30, 1985 shall complete the following blocs of instruction and pass the state exam in its entirety within one year of their date of appointment as defined in 12 NCAC 10B .0103(1).

(A) Crime Prevention Techniques	4 hours
(B) Mechanics of Arrest: Custody Procedure	2 hours
(C) Mechanics of Arrest: Processing Arrestee	4 hours
(D) Special Populations	12 hours
(E) Techniques of Traffic Law Enforcement	6 hours
(F) Dealing with Victims and the Public	8 hours
(G) Civil Process	24 hours
(H) Supplemental Custody Procedures	8 hours
(I) Firearms Qualification (Handgun and Shotgun Courses)	

TOTAL HOURS 68 hours

(21) ~~(23)~~ Wildlife Enforcement Officers who completed Basic Law Enforcement Training on or after September 30, 1985 and have been out of a sworn position over one year but no more than three years, and are sworn as a justice officer must complete the following blocs of instructions and pass the state exam in its entirety during their probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Laws of Arrest Search and Seizure	16 hours
(B) Elements of Criminal Law	24 hours
(C) Juvenile Laws and Procedures	8 hours
(D) Controlled Substances	6 hours
(E) ABC Laws and Procedures	4 hours
(F) Motor Vehicle Laws	20 hours
(G) Crime Prevention Techniques	4 hours
(H) Mechanics of Arrest: Custody Procedures	2 hours
(I) Mechanics of Arrest: Processing Arrestees	4 hours
(J) Special Populations	12 hours
(K) Techniques of Traffic Law Enforcement	6 hours
(L) Dealing with Victims and the Public	8 hours
(M) Civil Process	24 hours
(N) Supplemental Custody Procedures	8 hours
(O) Firearms Qualification (Handgun and Shotgun Courses)	

TOTAL HOURS 146 hours

(22) Alcohol Law Enforcement Officers who completed the Basic Law Enforcement Training Course prior to April 1, 1983 and are sworn as a justice officer shall be subject to the evaluation rules as prescribed in 12 NCAC 10B .0505(a)(1) and (a)(4) through (9).

(23) Alcohol Law Enforcement Officers who separate from employment with the Alcohol Law Enforcement Division and have less than a one year break in service, who transfer to a Sheriff's Department in a sworn capacity, and who completed their Basic Training after April 1, 1983 shall complete the following blocs of instruction and pass the state comprehensive exam in its entirety within one year of their date of appointment as defined in 12 NCAC 10B .0103(1).

(A) Law Enforcement Communication and Information Systems	4 hours
(B) Patrol Techniques	16 hours
(C) Crime Prevention Techniques	4 hours
(D) Mechanics of Arrest: Vehicle Stops	6 hours
(E) Mechanics of Arrest: Custody Procedures	2 hours
(F) Mechanics of Arrest: Processing Arrestee	4 hours
(G) Special Populations	12 hours
(H) Interviews: Field and In-Custody	8 hours
(I) Motor Vehicle Law	20 hours
(J) Techniques of Traffic Law Enforcement	6 hours

(K) <u>Dealing with Victims and the Public</u>	8 hour
(L) <u>Civil Process</u>	24 hour
(M) <u>Supplemental Custody Procedures</u>	8 hour
(N) <u>Firearms Qualification</u> (<u>Handgun and Shotgun Course</u>)	

TOTAL HOURS

(24) <u>Alcohol Law Enforcement Officers who completed their Basic Training after April 1, 1983 and are sworn as a justice officer and who have been out of a sworn position for over one year but no more than three years shall complete the following blocs of instruction and pass the state examination in its entirety during their one year probationary period as prescribed in 12 NCAC 10B .0503(a).</u>	122 hour
(A) <u>Laws of Arrest, Search and Seizure</u>	16 hour
(B) <u>Elements of Criminal Law</u>	24 hour
(C) <u>Juvenile Laws and Procedures</u>	8 hour
(D) <u>Controlled Substances</u>	6 hour
(E) <u>ABC Laws and Procedures</u>	4 hour
(F) <u>Law Enforcement Communication and Information Systems</u>	4 hour
(G) <u>Patrol Techniques</u>	16 hour
(H) <u>Crime Prevention Techniques</u>	4 hour
(I) <u>Mechanics of Arrest: Vehicle Stops</u>	6 hour
(J) <u>Mechanics of Arrest: Custody Procedures</u>	2 hour
(K) <u>Mechanics of Arrest: Processing Arrestee</u>	4 hour
(L) <u>Special Populations</u>	12 hour
(M) <u>Interviews: Field and In-Custody</u>	8 hour
(N) <u>Motor Vehicle Law</u>	20 hour
(O) <u>Techniques of Traffic Law Enforcement</u>	6 hour
(P) <u>Dealing with Victims and the Public</u>	8 hour
(Q) <u>Civil Process</u>	24 hour
(R) <u>Spplmental Custody Procedures</u>	8 hour
(S) <u>Firearms Qualification</u> (<u>Handgun and Shotgun Course</u>)	

TOTAL HOURS

180 hour

(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Basic Law Enforcement Training Course would be impractical, the director is authorized to exercise his/her discretion in determining the amount of training those persons shall complete during their probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

.0507 COMPLETION OF THE BASIC LAW ENFORCEMENT TRAINING COURSE

(a) Each delivery of an accredited "Basic Law Enforcement Training Course" is considered to be a unit. Each trainee shall attend and satisfactorily complete the full course during a scheduled delivery. The Director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the trainee school director provides evidence that:

- (1) he trainee attended and satisfactorily completed specified class hours and topics of the "Basic Law Enforcement

Training Course" but through extended absence occasioned by illness, accident, emergency, or other good cause was absent for more than ten percent of the total class hours of the course offering; or

- (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in Rule 12 NCAC 10B .0506(c) due to valid reasons; or
- (3) The trainee participated in an offering of the "Basic Law Enforcement

Training Course" but had an identified deficiency in essential knowledge or skill in either one, two or three, but no more than three, of the specific topic areas incorporated in course content as prescribed under Rule in 12 NCAC 10B .0502(a).

b) An authorization of limited enrollment in a subsequent course delivery may not be issued by Director unless in addition to the evidence required by Paragraph (a) of this Rule:

(1) The ~~sheriff of the agency employing the~~ trainee submits a written request to the Director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished ~~within the period of the trainee's probationary certification~~ pursuant to Subparagraph (c) of this Rule; and

(2) The school director of the previous course offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.

c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Basic Law Enforcement Training Course" commencing within 120 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

(1) The trainee need only attend and satisfactorily complete those portions of the course which were missed or were identified by the school director as areas of trainee deficiency in the prior course participation.

(2) Following proper enrollment in the subsequent course offering, scheduled class attendance, and active participation with satisfactory achievement in the course, the trainee would be eligible for administration of the State Comprehensive Examination by the Commission and possible certification of successful course completion.

d) A trainee who is deficient in four or more subject-matter or topical areas at the conclusion of a course delivery shall complete a subsequent program in its entirety within the trainee's

probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR JAILERS

.0603 EVALUATION FOR TRAINING WAIVER

(a) The following rules shall be used by division staff in evaluating a jailer's training and experience to determine eligibility for a waiver of training:

(1) Persons who have separated from a jailer position during the probationary period after having completed a commission-accredited jailer training course and who have been separated from a jailer position for more than one year shall complete a subsequent commission-accredited jailer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as described in 12 NCAC 10B .0602(a).

(2) Persons who separated from a jailer position during their probationary period after having completed a commission-accredited jailer training course and who have been separated from a jailer position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.

(3) Persons who separated from a jailer position during the probationary period without having completed a jailer training course or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1) and who have remained separated or suspended for over one year shall complete a commission-accredited jailer training course in its entirety and successfully pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).

(4) Persons holding General Jailer Certification who have completed a commission-accredited jailer training course and who have separated from a jailer position for more than one year

shall complete a subsequent commission-accredited jailer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).

- (5) Persons holding Grandfather Jailer Certification who separate from a jailer position and remain separated from a jailer position for more than one year shall be required to complete a commission-accredited jailer training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (6) Persons transferring to a sheriff's department from another law enforcement agency who hold a jailer certification issued by the North Carolina Criminal Justice Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. The Division staff shall determine the amount of training required of these applicants.
- (7) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission and who:
 - (A) completed training as a correctional officer after January 1, 1981; and
 - (B) transfer to a sheriff's department in a jailer position; and
 - (C) have had less than a one year break in service or, no break in service shall serve a 12-month probationary period as prescribed in 12 NCAC 10B .0602(a) and shall complete the following topic areas in a commission -accredited jailer certification course and take the state examination in its entirety during that probationary period:
 - (i) Disciplinary Procedures 2 hours
 - (ii) Medical Care in the Jail 5 hours
 - (iii) Legal Rights and Responsibilities 12 hours
 - (iv) Civil Liability 2 hours
 - (v) Suicides 4 hours
 - (vi) Introduction to Rules

and Regulations Governing Jail Facilities 3 hours

(vii) Handling Fire Emergencies 16 hours

(viii) Investigative Duties of the Jailer 3 hours

(ix) Legal Aspects of Investigation 3 hours

TOTAL HOURS 50 hours

(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Jailer Training Course would be impractical, the director is authorized to exercise his/her discretion in determining the amount of training those persons shall complete during the probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

.0605 COMPLETION OF JAILER CERTIFICATION COURSE

(a) Each delivery of an accredited "Jailer Certification Course" is considered to be a unit. Each trainee shall attend and satisfactorily complete a full course during a scheduled delivery. The Director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the trainee school director provides evidence that:

- (1) The trainee attended and satisfactorily completed specified class hours and topics of the "Jailer Training" course but through extended absence occasioned by illness, accident, emergency, or other good cause was absent for more than ten percent of the total class hours of the course offering or
- (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in 12 NCAC 10B .0604(c) due to valid reasons; or
- (3) The trainee participated in an offering of the "Jailer Certification Course" but had an identified deficiency in essential knowledge or skill in either one, two or three, but no more than three, of the

specified topic areas incorporated in the course content as prescribed under 12 NCAC 10B .0601(b).

b) An authorization of limited enrollment in a subsequent course delivery may not be used by the director unless in addition to the evidence required Paragraph (a) of this Rule:

- (1) The ~~sheriff of the agency employing the~~ trainee submits a written request to the Director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished ~~within the period of the trainee's probationary certification pursuant to Subparagraph (c) of this Rule; and~~
- (2) The school director of the previous school offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.

c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Jailer Certification Course" commencing within 120 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

- (1) The trainee need only attend and satisfactorily complete those portions of the course which were missed or identified by the school director as areas of trainee deficiency in the proper course participation.
- (2) Following proper enrollment in the subsequent course offering, scheduled class attendance and active participation with satisfactory achievement in the course, the trainee would be eligible for administration of the State Comprehensive Examination by the Commission and possible certification of successful course completion.

Statutory Authority G.S. 17E-4; 17E-7.

SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

II SUSPENSION: REVOCATION: DENIAL OF JAIL INSTRUCTOR CERTIFICATION

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise; or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Jailer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials. This publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation.

Statutory Authority G.S. 17E-4.

**.0912 PERIOD OF SUSPENSION:
REVOCATION: OR DENIAL OF
J A I L I N S T R U C T O R
C E R T I F I C A T I O N**

The period of suspension, revocation or denial of the certification of an instructor pursuant to 12 NCAC 10B .0911 shall be:

- (1) no more than one year where the cause of sanction is:
 - (a) failure to deliver training in a manner consistent with the instructor lesson plans; or
 - (b) failure to follow specific guidelines outlined in the "Jailer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials. This publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
 - (c) unprofessional personal conduct or demonstration of instructional incompetence in the delivery of the Jailer Certification Course.
- (2) no more than five years where the sanction is knowingly and willfully obtaining or attempting to obtain instructor certification by deceit, fraud, or misrepresentation.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
 - (a) failure to meet and maintain any of the requirements for qualification; or
 - (b) failure to remain currently knowledgeable in the person's areas of expertise.

Statutory Authority 17E-4.

**SECTION .2100 - JUSTICE OFFICERS'
FIREARMS IN-SERVICE
TRAINING REQUALIFICATION
PROGRAM**

**.2101 DEPARTMENT HEAD
RESPONSIBILITIES**

The Department head is responsible for ensuring that the Justice Officers' In-Service Firearms Training and Requalification Program is conducted

according to minimum specifications as outlined in ~~Rules .2103 and .2104~~ 12 NCAC 10B .2103 and .2104. In addition, the Department head:

- (1) shall maintain copies of each course of fire adopted for use by his department and shall make those courses available for review by the Commission's representative upon request; and
 - (2) ~~(4)~~ shall maintain in each officer's personnel file a copy of the Commission's a commission-approved Firearms Requalification Record Form which verifies that the officer did, or did not, successfully complete the minimum annual in-service firearms training requirement; and
 - (3) ~~(2)~~ should, where the officer fails to successfully qualify with any of the weapons specified in Rule .2104— 12 NCAC 10B .2104 prohibit access or possession of such weapon while on duty or when acting in the discharge of the agency's official duties and should deny the officer authorization to carry such weapons concealed when off-duty, except when the officer is on his/her own premises; and
 - (4) ~~(3)~~ shall notify the Division within five days when an officer fails to qualify pursuant to Rule .2105
- 12 NCAC 10B .2105; and
- (4) ~~shall submit in writing to the Director the course of fire to be utilized pursuant to Rule .2104 for approval by the Director and such approval should be received by the Department head from the Director prior to conducting the Firearms Requalification required by this Section and~~
 - (5) should ensure that once each year all officers receive a review of departmental policies regarding the use of force. It is recommended by the Commission that all officers be tested on departmental policies.

Statutory Authority G.S. 17E-4; 17E-7.

.2102 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct the Justice Officers' In-Service Firearms Training and Requalification Program:

- (1) he instructor shall hold "Specific Instructor Certification-Firearms" issued

by the North Carolina Criminal Justice Education and Training Standards Commission;

The instructor shall deliver the training consistent with the minimum specifications as established by Rules .2103 and .2104 12 NCAC 10B .2103 and .2104;

The instructor shall document the successful or unsuccessful completion of training for each officer on a commission-approved Firearms Qualification Record Form and forward such form to each officer's department head.;

The instructor shall submit to the agency head copies of all courses of fire used for qualification of justice officers in compliance with 12 NCAC 10B .2101(1).

Statutory Authority G.S. 17E-4; 17E-7.

03 MINIMUM TRAINING REQUIREMENTS

In order to qualify for commission approval In-Service Firearms Training and Qualification Program shall include, at a minimum, the ~~mandated course of fire as specified Rule .2104~~ following specified topics:

~~Topical areas to be included but not limited are:~~

(1) Use of Force:

(A) review the authority to use deadly force [G.S. 15A-401(d)(2)] including relevant case law and materials.

(2) Safety:

(A) Range rules and regulations;
(B) Handling of a firearm;
(C) Malfunctions.

(3) Review of Basic Marksmanship Fundamentals:

(A) Grip, stance, breath control and trigger squeeze;
(B) Sight and alignment/sight picture;
(C) Nomenclature.

(4) Operation and Maintenance of all authorized weapons.

~~(e)The Commission recommends that students be tested on the authority to use deadly force.~~

~~(f)The Specialized Firearms Instructor shall teach the same training objectives for the topical areas listed in Rule .2103(b) this Rule as specified in the Specialized Firearms Instructor Training Manual published by the North Carolina Justice~~

Academy which is hereby ~~adopted~~ incorporated by reference and shall automatically include any later amendments and editions of the ~~adopted matter referenced materials as authorized by G.S. 150B-14(e)~~ as the approved source for the above mandated topical areas. Copies of this publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

Statutory Authority G.S. 17E-4; 17E-7.

.2104 IN-SERVICE FIREARMS QUALIFICATION SPECIFICATIONS

(a) All justice officers who are authorized by the sheriff to carry a handgun shall qualify a minimum of once each year with each handgun that the officer is authorized to carry while on duty on a commission-approved day and night course. The course of fire shall not be less stringent than the "Basic Law Enforcement Training Course" requirements for firearms qualification.

(b) All justice officers who are issued, or otherwise authorized by the sheriff to carry a shotgun, rifle, or automatic weapon shall be required to qualify with each weapon respectively a minimum of once each year on a commission-approved course of fire.

(c) Qualifications conducted pursuant to Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or duty-type ammunition meeting the specifications of the duty ammunition as to type projectile, weight and velocity.

~~(d) (e)All justice officers who are authorized by the sheriff to carry off duty handguns shall qualify with their off duty handgun a minimum of once each year pursuant to Rule .2104(a) 12 NCAC 10B .2103 and .2104(a) and (b) with each handgun the officer carries off duty using ammunition approved by the sheriff.~~

~~(e) (f)All justice officers who are issued or have access to any weapons not stated in this Rule must qualify with these weapons once each year using ammunition approved by the sheriff. The course of fire must be submitted and approved by the Director prior to qualification.~~

~~(f) (g)In cases where reduced-sized targets are used to simulate actual distances, a modified course of fire may be used. The proposed course of fire must be submitted to and approved by the Director prior to qualification.~~

~~(g) (h)To satisfy the minimum training~~

requirements for all in-service firearms requalifications, a justice officer shall attain a minimum qualification score of 70 percent accuracy with each weapon once in three attempts with no more than three attempts on each course of fire per day.

(h) ~~(g)~~The "In-Service Firearms Qualification Manual" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments or editions of the referenced materials to apply as a minimum guide for conducting the annual in-service firearms qualification. Copies of the publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

Statutory Authority G.S. 17E-4; 17E-7.

.2105 FAILURE TO QUALIFY

(a) Justice officers who fail to qualify pursuant to Rule .2104 should immediately surrender their weapons to the sheriff and shall have 30 days in which to obtain the qualification score required in Rule .2104 12 10B .2104.

(b) Failure to qualify within the 30 day time period allowed in Rule .2105(a) 12 NCAC 10B .2105(a) will result in the summary suspension of the justice officer's certification by the Commission.

(c) No justice officer summarily suspended under Paragraph (b) of this Rule and in compliance with 12 NCAC 10B .0206(a) (3) may work as a certified justice officer until:

- (1) the sheriff forwards to the Commission documentary evidence verifying that the officer has complied with the requirements of Rules .2103 and .2104 12 NCAC 10B .2103 and .2104; and
- (2) the justice officer and the sheriff receive from the Commission documentation that the Commission has terminated the suspension and reissued the certification to the suspended justice officer.

(d) Any justice officer previously unauthorized to carry a weapon but whose status changed to "authorized to carry a weapon," must comply with the provisions set out in Rules .2103 and .2104 12 NCAC 10B .2103 and .2104; and may not carry a firearm until:

- (1) the sheriff forwards to the Commission documentary evidence verifying that the

officer has complied with the requirements of Rules .2103 and .2104 12 NCAC 10B .2103 and .2104; and the justice officer and the sheriff receive from the Commission documentation that the Commission has amended the officer's status "authorized to carry a weapon" and certification files reflect the same.

Statutory Authority G.S. 17E-4; 17E-7.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Division of Environmental Management intends to amend rule(s) cited as 15A NCAC 2B .0503 - .0508.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 7:00 p.m. on September 9, 1992 at the Ground Floor Hearing Room, Archdale Building, 512 Salisbury Street, Raleigh, N.C.

Reason for Proposed Action: The existing rules have been in need of updating for several years. Changes are needed to meet EPA requirements, achieve a higher level of water quality protection and achieve a more equitable implementation of the monitoring program.

Comment Procedures: All persons interested in this matter are invited to attend the hearing. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information about the rules, contact Dennis Ramsey or Bob DeVane, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-5083. For copies of the rules, contact Linda Jones or Kay Stallings at the same number and address.

This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on July 21, 1992, and to the Board of Municipalities on July 21, 1992, and N.C. Association of County Commissioners on July 21, 1992.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0500 - SURFACE WATER MONITORING: REPORTING

03 DEFINITIONS

Unless the context otherwise requires, the terms used herein shall be as defined in G.S. 143-213 as follows:

- (1) "Actual flow" means the total volume of wastewater discharged from a point source in any calendar month divided by the number of days during the month in which discharge occurred.
- (2) "Bioassay monitoring" means tests employed to determine the effluent concentration, expressed as a percent volume, that is lethal to 50 percent of the organisms within a prescribed period of time. Such tests may include either static and/or flow through methodologies for acute evaluations and may also include chronic tests if warranted.
- (3) "Biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of a wastewater effluent sampling or testing of the biological integrity of surface waters and measurements of impacts including accumulations of pollutants in tissue, toxicity monitoring, and characterization of instream biological populations.
- (4) "Classified water pollution control facility" means a treatment works classified by the Wastewater Treatment

Plant Operators Certification Commission Water Pollution Control System Operator Certification Commission pursuant to Chapter 90A of the North Carolina General Statutes as class I, class II, class III, or class IV facility, or such other classifications system as the Water Pollution Control System Operator Certification Commission may hereafter adopt.

- (5) "Commercial laboratory" means any laboratory which analyzes water samples for a fee.
- (6) "Composite sample" means: as a minimum, either a combination of four or more multiple grab samples or a single sample collected continuously during the complete period of daily discharge. The volume of each grab sample or the rate of collection of the continuously collected sample shall be in direct proportion to the rate of flow during the time of collection. Where the rate of flow does not vary significantly, grab samples may must be of equal size taken at equal intervals of time. Note: See .0505 (c)(3)(B) for details. combining grab samples in such a manner as to result in a total sample which is representative of the wastewater discharge during the sample period. This sample may be obtained by methods given below, however, the Director may designate the most appropriate method, number and size of aliquots necessary and the time interval between grab samples on a case-by-case basis. Samples may be collected manually or automatically.
 - (a) Continuous : a single, continuous sample collected over a 24 hour period proportional to the rate of flow.
 - (b) Constant time/variable volume : a series of grab samples collected at equal time intervals over a 24 hour period of discharge and combined proportional to the rate of flow measured at the time of individual sample collection, or
 - (c) Variable time/constant volume : a series of grab samples of equal volume collected over a 24 hour period with the time intervals between samples determined by a preset number of gallons passing the sampling point. Flow measurement between sample intervals shall be determined by use of

- a flow recorder and totalizer, and the present gallon interval between sample collection fixed at no greater than 1/24 of the expected total daily flow at the treatment system, or
- (d) Constant time/constant volume - a series of grab samples of equal volume collected over a 24 hour period at a constant time interval. This method may be used in situations where flow effluent rates vary less than 15 percent. The grab samples shall be taken at intervals of no greater than 20 minutes apart during any 24 hour period and must be of equal size and of no less than 100 milliliters. Use of this method requires prior approval by the Director.
- (75) "Daily" means every day on which a wastewater discharge occurs except Saturdays, Sundays and legal holidays unless otherwise specified by the Director.
- (86) "Design flow" means the average daily volume of wastewater which a water pollution control facility was designed, approved and constructed to treat.
- (97) "Design treatment capability" means ~~the capability of a water pollution control facility to adequately treat a specified wastewater flow, and a designated quantity of organic wastes and suspended and dissolved solid wastes a water pollution control facility's capacity to achieve a specified degree of reduction in waste constituents at a specified design flow, to meet specified limits or removal efficiencies.~~
- (408) "Director" means the Director of the Division of Environmental Management, Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources.
- (49) "Division" means the Division of Environmental Management, Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources.
- (4210) "Domestic sewage wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from ~~residences used exclusively for human habitation~~ non-industrial processes.
- (4311) "Downstream" means a locations in the receiving waters below (downstream of a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."
- (412) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.
- (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.
- (4514) "Grab sample" means an individual sample collected instantaneously. Samples of this type must be representative of the discharge or the receiving waters.
- (4615) "Industrial establishment" means any industrial, business, commercial or governmental enterprise which produces water carried wastes.
- (4716) "Influent" means the wastewater entering a water pollution control facility.
- (4817) "Monitoring" means a program of sample collection, ~~and analysis, and observation~~ sufficient to determine the volume of influent and effluent flow of a water pollution control facility or other point source; the nature of waste contained therein; and the effects on receiving waters of waste discharged thereto; or, in the case of septic tank nitrification line type wastewater disposal systems, visual observation.
- (4918) "Point source" means any discernible confined, and discrete conveyance including, but ~~not specifically not~~ limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which waste is or may be discharged to the waters of the state.
- (2019) "Quarterly" means occurring four times during a 12-month period at a frequency of once per each intervals of three consecutive months.
- (20) "Quarterly Average" means the average of all samples taken over a quarterly period.

- 21) "Sample" means a small representative portion of the wastewater influent, wastewater effluent from water pollution control facilities or of receiving waters.
- 22) "Standard ~~i~~Industrial ~~e~~Classification" (SIC) means those numerical designations set forth in "The Standard Industrial Classification Manual, 1972" (Superintendent of Documents, U.S. Government Printing Office) classifying industries according to the type of activity (relating to major products manufactured or principle services furnished) in which they are engaged. For the purposes of this Section, each industry or unit of government shall be classified by SIC numbers applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned SIC number 9999 4952. "The Standard Industrial Classification Manual, 1972, as used in this Section, is hereby incorporated by reference", including any subsequent amendments and editions may be available in public libraries and, a A copy is available for reference inspection at the field and central offices of the Department of Natural Resources and Community Development Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained at the GPO Bookstore, Room 100, 275 Peachtree Street NE, or Post Office Box 56445, Atlanta GA 30343 at a cost of twenty-four (\$24.00).
- 23) "Storet number" means a number appearing in the "Water Quality Control Information System Handbook" (U.S. Environmental Protection Agency) which designates a test or measurement according to the analytical procedure used or a method of measurement and units of measurement. Storet is an acronym for the water quality data storage and retrieval computer system of the Environmental Protection Agency.
- (24) "Toxic waste substances" means those wastes any substance, or combinations of wastes substances, including disease-causing agents, which, after discharge,

and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, ~~will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities, in such organisms or their offspring.~~ Toxic substances include, by way of illustration and not limitation: lead, cadmium, chromium, mercury, vanadium, arsenic, molybdenum, antimony, nickel, barium, beryllium, copper, selenium, zinc, ortho-nitro-chlorobenzene (ONCB), polychlorinated biphenyls (PCB's) and dichlorodiphenyl trichloroethane (DDT); and any other materials that have or may hereafter be determined to have toxic properties has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression of reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

- (25) "Toxicity monitoring" means controlled toxicity testing procedures employed to measure lethality or other harmful effects as measured by either aquatic populations or indicator species used as test organisms from exposure to a specific chemical or mixture of chemicals (as in an effluent) or ambient stream conditions.
- (256) "Unit of government" means any incorporated city, town or village, county, sanitary district, metropolitan sewerage district, water or sewer authority, special purpose district, other municipality, or any agency, board, commission, department or political subdivision or public corporation of the state, now or hereafter created or established, empowered to provide wastewater collection systems or wastewater treatment works.
- (267) "Upstream" means a locations in the receiving waters near but above (upstream of) a point a wastewater discharge and unaffected by the discharge.
- (278) "Water pollution control facilities" or

"facility" means "treatment works" as defined in G.S. 143-213.

Statutory Authority G.S. 143-213; 143-215.68.

.0504 CLASSIFICATION OF WASTE SOURCES

(a) All persons subject to the requirements of these Rules ~~regulations~~ shall determine the standard industrial classification (SIC) number for each type of activity (required to be reported under Rule .0506 of this Section) in which they are engaged by reference to the Standard Industrial Classification Manual, 1972. ~~Copies of the manual may be available in public libraries and a copy is available for at the regional and central offices of the Division of Environmental Management.~~

(b) Environmental Management Commission hereby assigns SIC number ~~9999~~ 4952 to every industrial establishment or unit of government which collects or discharges domestic ~~sewage~~ wastewater, whether from on-premises bathrooms, restrooms, kitchens, dining rooms, water pollution control facilities, or from any other source.

(c) The owner or person in responsible charge of every water pollution control facility, which receives a wastewater influent from more than one source, shall determine and report to the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources the name and standard industrial classification number(s) for each applicable activity(ies) of every industrial establishment contributing wastes containing toxic ~~materials~~ substances, in toxic quantities, and also every industrial establishment contributing an average daily wastewater influent of one percent or more of the design flow of the facility or in excess of 100,000 gallons per day, whichever is less, and shall report such other information as is required by Rule Regulation .0505 of this Section; provided; however, that it is not required that the name and SIC number of any source contributing domestic sewage influent only be reported hereunder.

(d) The average daily influent volume contributed by any one source may be computed by dividing the total ~~estimated~~ volume of wastewater discharged by the source during the reporting year by the total number of days that the source operated during the reporting year.

Statutory Authority G.S. 143-215.64; 143-215.68.

.0505 MONITORING REQUIREMENTS

(a) General. Every person subject to this Section shall be required to establish, operate and maintain a monitoring program consistent with their NPDES National Pollutant Discharge Elimination System (NPDES) Permit or a required by the Director.

(b) Wastewater and Stream Flow Measurement

(1) A device or method, approved by the Director for determining the rate of flow of all discharges of wastewater whether treated or untreated shall be provided at those point sources of which monthly reports of monitoring tests and measurements are required unless specifically excepted by the Director as not significant. All water pollution control facilities shall install, operate, and maintain continuous flow measuring with recording devices or totalizing devices, if approved by the Director, or shall employ other flow measuring or flow control method approved by the Director and shall submit monthly reports of such data as required in Rule .0506 of this Section. The permittee shall install appropriate flow measurement devices consistent with approved engineering and scientific practices to ensure the accuracy and reliability of measurements of the volume of monitored discharges. Devices selected shall be capable of measuring flow with a maximum deviation of less than 10 percent from true discharge volumes. Flow measurement devices shall be accurately calibrated at a minimum of once per year and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. The flow measurement device and location shall be approved by the Director prior to installation. Records of flow measurement device calibration shall be kept on file by the permittee for a period of at least three years. At a minimum, data to be included in this documentation shall be:

- (A) Date of flow measurement device calibration
- (B) Name of person performing calibration.

(2) A reading of the U.S. Geological

Survey stream flow staff gauge or reference point shall be made at the time of stream sampling in those instances ~~where so determined to be needed by the Director.~~

c) Sampling.

- (1) Frequency and Location. Except as otherwise provided herein, all industrial establishments and units of government shall take influent, effluent and stream samples at such locations and with such frequency as shall be necessary to conduct the tests and analyses required by Rule .0508 of this Section.

- (2) Establishment of Sampling Points:

- (A) Sampling points as required in Rule .0508 of this Section shall be established for collecting influent and effluent samples for each facility.
- (B) Sampling points shall be established in the receiving waters at one or more upstream locations and at least one or more but ~~not more than three~~ downstream locations. These locations shall be specified by the Director. ~~adequate in the opinion of the Director to measure impact of the discharge on receiving waters; provided that if the receiving waters are subject to tidal influence, the Director may require two upstream sampling points.~~

~~(C) Personnel of the Division shall be contacted to assist in locating the sampling points.~~

- (3) Collection of Samples:

- (A) Samples collected in receiving waters shall be grab samples.
- (B) Samples of the influent and effluent of the water pollution control facility or other point source shall be composite samples, except as provided in Rule .0505 (c)(3)(C) of this Section, or for facilities with design flows of 30,000 gallons per day or less ~~when determined unnecessary unless required by the Director.~~ If the composite sample is obtained from grab samples, the following requirements apply. The intervals between influent grab samples shall be no greater. The Director may specify the methods of sample collection as to type of sample and type of composite sampling required.

~~than hourly. Intervals between effluent grab samples shall be no greater than hourly except where the detention time of the wastewater in the facility is greater than 24 hours, in which case, the interval between grab samples shall be no greater in number of hours than the detention time in number of days; provided, however, in no case may the time between effluent grab samples be greater than six hours nor the number of grab samples less than four during any discharge period of 24 hours or less.~~

- (C) The following influent and effluent tests shall be made on grab samples ~~which shall be collected during the period of maximum flow, and shall not be made on composite samples:~~

- (i) dissolved oxygen,
- (ii) temperature,
- (iii) settleable matter,
- (iv) turbidity,
- (v) pH,
- (vi) residual chlorine,
- (vii) coliform bacteria (fecal or total)
- (viii) cyanide,
- (ix) oil and grease,
- (x) sulfides,
- (xi) phenols,
- (xii) volatile organics.

~~(4) If the Director approves identical sampling points on receiving waters for two or more facilities, the facilities may collaborate in operating stream sampling points.~~

- ~~(54)~~ Stream sampling may be discontinued at such times as flow conditions in the receiving waters or extreme weather conditions will result in a substantial risk of injury or death to persons collecting samples. In such cases, on each day that sampling is discontinued, written justification for the discontinuance shall be ~~attached to~~ specified in the monitoring report for the month in which the event occurred. This provision shall be strictly construed and may not be utilized to avoid the requirements of this Section when performance of these requirements is ~~feasible~~ attainable. When there is a discontinuance pursuant to this provision, stream sampling shall

be resumed at the first opportunity after the risk period has ceased.

(d) Biological and ~~Bioassay~~ Toxicity Monitoring. Biological and ~~Bioassay~~ Toxicity monitoring may be required when, in the opinion of the Director, such monitoring is necessary to establish whether the designated best use of ~~larger rivers, bodies or impoundments of water, the waters~~ as determined by the Environmental Management Commission, is being or ~~will~~ may be impaired or when toxic ~~effluents~~ substances are known or suspected to ~~exist at a facility~~ be present in the facility's discharge.

(e) Tests and Analyses.

(1) If a water pollution control facility receives waste influent from two or more sources, every test required by Rule .0508 of this Section for the standard industrial classification number applicable to the sources shall be performed one time, and it shall not be necessary to repeat such tests for each source; however, the tests shall be performed at the intervals specified by Rule .0508 of this Section for the applicable industrial classification requiring the most frequent test interval.

(2) If analyses of samples of any effluent or any receiving water (collected by the state or a public agency) indicate a violation of effluent limitations, or water quality standards or indicate exceedances of stream action levels or that a violation ~~or of~~ water quality standards or exceedances of stream action levels may result under any projected conditions including minimum stream flow and temperature extremes, the Director may require the person responsible for the violation or potential violation to monitor the pollutants or parameters at such points and with such frequency as he determines appropriate. If the source of the pollutant is unknown, the Director may require ~~all persons that he determines may be discharging each pollutant to monitor for it~~ monitoring for specific pollutants from any suspected discharger.

(3) If the wastewaters discharged by any water pollution control facility violate any effluent limitations or water quality standards or exceeds any stream action levels or contribute to the violation of

water quality standards or exceedance of stream action levels established by the Environmental Management Commission the facility shall perform and report such additional tests and measurements at such frequencies and for such periods of time as the Director ~~may direct~~ require.

(4) Approved Methods of Analysis. The methods used in collection, preservation and analysis of samples shall conform to the guidelines of the Environmental Protection Agency codified as 40 CFR Part 136, which ~~are as amended through June 1, 1984~~ is hereby incorporated by reference including any subsequent amendments and editions. Copies may be obtained from the New Orders, Superintendent of Documents PO Box 371954, Pittsburgh, PA 15250 7954 at a cost of three hundred forty dollars (\$340.00) per edition. The single volume containing 40 CFR Part 136 may be obtained at a cost of thirty dollars (\$30.00). Other analytical procedures shall conform to those found in either the ~~Fourteenth Edition~~ most recent approved edition of "Standard Methods for the Examination of Water and Wastewater", 1975, (published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution—Control Environment Federation), or "Methods for Chemical Analysis of Waters and Wastes", 1971, 1983, or subsequent editions (prepared by the U.S. Environmental Protection Agency and available from the Superintendent of Documents, U.S. Government Printing Office) ~~which are adopted by reference~~ or other methods as approved by the Director. Standard Methods for the Examination of Water and Wastewater is hereby incorporated by reference including any subsequent approved amendments and approved editions. Copies may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver CO 82535 at a cost of one hundred sixty dollars (\$160.00) per edition. Methods for Chemical Analysis of Waters and Wastes is hereby incorporated by reference

including any subsequent amendments and editions. Copies may be obtained from the NTIS, 5285 Port Royal Road, Springfield, VA 22161 at a cost of fifty dollars (\$50.00) per edition. All material incorporated by reference in this Rule is available for inspection at the Central office of the Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. All test procedures must produce minimum detection and reporting levels that are below the permit discharge requirements and all data generated must be reported down to the minimum detection or lower reporting level of the procedure. If no approved methods are determined capable of achieving minimum detection and reporting levels below permit discharge requirements, then the most sensitive (method with the lowest possible detection and reporting level) approved method must be used. Biological testing shall be performed in accordance with 15A NCAC 2B.0103(b).

- (5) Approval of Laboratories. Analytical determinations made pursuant to the monitoring and reporting requirements of this Section shall be made in adequately equipped laboratories staffed by person(s) competent to perform tests. Only monitoring programs which provide for the making of analytical determinations by qualified employees of the owner or by a laboratory certified by the Division under 15A NCAC 2H .0800 or 15A NCAC 2H .1100 will be considered adequate.

f) Process Control Monitoring Testing: The Director may require, on a case-by-case basis, process control monitoring testing suitable for the use and classification of the facility.

Statutory Authority G.S. 143-215.64; 143-215.66; 143-215.68.

506 REPORTING REQUIREMENTS

a) General:

- (1) Every person subject to this Section shall file certified monitoring reports setting forth the results of tests and measurements conducted pursuant to NPDES permit monitoring

requirements.

- (A) Monthly monitoring reports shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.
- (B) Reports filed pursuant to the requirements of Subdivision (a)(1) of this Rule shall be of forms furnished or approved by the Director and shall be submitted in duplicate to: ~~the Division at its main office in Raleigh~~
ATTN: CENTRAL FILES
DIVISION OF ENVIRONMENTAL MANAGEMENT
DEHNR
POST OFFICE BOX 29535
RALEIGH, NORTH CAROLINA
27626-0535.
- (C) ~~A copy of all reports submitted to the Director pursuant to this Section shall be retained by the owner of each water pollution control facility for a period of at least three years from the date of submission. A maximum of three copies of Annual Report Forms and 36 copies of necessary Monthly Report Forms will be furnished per year by the Division for each point source subject to the provisions of this Section. In order to document information contained in reports submitted to the Director pursuant to this section, the owner of each pollution control facility is required to retain for a period of at least three years from report submission and have readily available for inspection by the Division, the following items:~~
- (i) ~~a copy of all reports submitted to the Director;~~
- (ii) ~~the original laboratory reports from any certified laboratory utilized for sample analysis. Such reports must be signed by the laboratory supervisor, and must indicate the date and time of sample collection and analysis, and the analysts' name;~~
- (iii) ~~bench notes and data logs for sample analyses performed by the pollution control facility staff or operator in responsible charge, whether or not the facility has a certified lab; and~~
- (iv) ~~copies of all process control~~

- testing.
- (D) In situations where no discharge has occurred from the facility during the report period, the permittee is required to submit a monthly monitoring report giving all required information and indicating "NO FLOW" unless the Director agrees to waive the reporting requirement during extended conditions of no discharge.
- (2) Every person subject to this Section shall report by telephone ~~or telegraph~~ to either the central office or appropriate regional office of the Division ~~(telephone numbers will be furnished by the department)~~ normally within a ~~period of 24 hours~~ as soon as possible but no later than 24 hours after occurrence or on the next working day (however, if the occurrence is one which may endanger the public health, or fish or wildlife, and contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the State Highway Patrol Warning Point in state 1-800-662-7952 or out of state 919-733-3861) following the occurrence or first knowledge of the occurrence or any of the following:
- (A) Any failure of a collection system, pumping station or treatment facility resulting in a by-pass ~~directly to receiving waters~~ without treatment of all or any portion of the ~~influent to such station or facility~~ wastewater.
- (B) Any occurrence at the water pollution control facility which results in the discharge of inadequately treated wastewater or significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester, the known passage of a ~~slug~~ of hazardous substance through the facility, or any other unusual circumstances.
- (3) Persons reporting such occurrences by telephone ~~or telegraph~~ shall also ~~file~~ provide a written report to the Division in letter form setting out the information required in Subdivision (a)(4) of this Regulation Rule and pertinent information pertaining to the
- occurrence. This report must be received by the Division within 15 five days following first knowledge of the occurrence.
- (4) All reports required to be filed by this Section shall contain the following information in addition to such other information as is required for the particular report:
- (A) ~~name of facility, governmental unit or industrial establishment,~~
- (B) ~~designation of water pollution control facility and location,~~
- (C) ~~the class assigned to the water pollution control facility,~~
- (D) ~~the water pollution control facility permit number assigned by the Department of Environment, Health, and Natural Resources Natural Resources and Community Development to the permit or other approval document issued by the Environmental Management Commission under which the discharge is made,~~
- (E) contact name and telephone number and mailing address,
- (F) nature and extent of environmental damage caused the incident.
- (5) Any person desiring confidentiality for any influent information submitted shall specify the influent information for which confidentiality is sought and shall justify such request to the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources, and if ~~approved~~ such request is approved by the Director shall by an appropriate stamp indicate the location of such information on each report filed thereafter.
- (b) Monthly Monitoring Reports:
- (1) Every person operating a monitoring system required by this Section shall file a monitoring report once each month which includes the data for the samples collected during the month. This report shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.
- (2) Monthly monitoring reports shall be reviewed, compliance status determined, certified by signature, and

submitted by the following:

- (A) For a corporation: by a responsible corporate officer. For the purpose of the Section, a responsible corporate officer means:
 - (i) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 - (ii) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.
- (B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- (C) For a municipality, State, Federal, County, or other public agency: by either a principal executive officer or ranking elected official;
- (D) Duly authorized representative of the person described in Paragraph (b) (2) (A) (B) and (C). A person is a duly authorized representative only if:
 - (i) The authorization is made in writing by a person described in Paragraph (b) (2) (A) (B) and (C);
 - (ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
 - (iii) The written authorization is

submitted to the Permit Issuing Authority. Permittees authorizing another individual to sign as representative in no way relinquishes any responsibility for permit or his responsibility to remain familiar with the permit conditions, limits, including any modifications, and for the compliance data reports for the permit.

- (E) Permittee signing the report certifies to the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."~~the chief administrative official of a unit of government, by the owner or chief executive officer of an industrial establishment or their duly appointed designee. The monthly report shall also be certified by the operator in responsible charge of a classified treatment facility or by the manager of an industrial establishment which has a point source of waste discharge and which does not have a classified water pollution control facility.~~

- (3) In addition to the information required on all reports [see Subparagraph (a)(4) of this Rule] the following information shall be submitted in monthly monitoring reports:

- (A) name of person or group collecting sample or making observation;
- (B) name of person or group that analyzed sample;
- (C) name of operator in responsible charge of the facility and the grade

- certificate held;
- (D) sampling point for each sample;
 - (E) date and time (on 2400 hour clock basis) at which each grab sample was collected;
 - (F) composite samples:
 - (i) date on which collection of composite samples is commenced,
 - (ii) time of starting and ending of composite sample period on 2400 hour clock basis;
 - (G) wastewater flow in million gallons per day (MGD);
 - (H) Results of analyses (reported to the designated number of figures with a properly placed decimal point as indicated on each report sheet) together with the proper storet number (to be furnished by the Division) for the analytical procedure used and the reporting units shall be those specified by the NPDES permit or current enforcement document, unless modified by the Director;
 - (I) Only numeric values will be accepted in reporting results of fecal coliform testing;
 - (J) The results of all tests on the characteristics of the effluent, including but not limited to NPDES Permit Monitoring Requirements, shall be reported on monthly report forms;
 - (K) The monthly average of analysis for each parameter and the maximum and minimum values for the month shall be reported.
 - (L) Certification by the Operator in Responsible Charge (ORC) as to the accuracy and completeness of the report and that he has performed and documented the required visitation and appropriate process control.
- (c) Additional Reporting/Monitoring Requirements:
- (1) When a facility is operated on an independent contract basis, the operator in responsible charge shall notify the owner of the facility in writing of any existing or anticipated conditions at the facility which may interfere with its proper operation and which need corrective action by the owner. The notice shall include recommendations for corrective action.
 - (2) Two copies of the notice to the owner shall be sent to the Division as an attachment to the next monthly monitoring report.
 - (3) A log demonstrating visitation at the proper frequency for the assigned classification, including dates and times of visits, and documentation of proper process control monitoring shall be maintained and shall be submitted to the Division upon request. Copies of all information must be readily available for inspection for a period of three years.
- ~~(d) Reporting Addresses and Phone Numbers:~~
- ~~(1) The following list includes the addresses and phone numbers for the Division director and staff to which appropriate notifications shall be made~~
 - ~~(A) Raleigh Central Office~~
~~Director's Office~~
~~Division of Environmental Management~~
~~P.O. Box 27687~~
~~Raleigh, North Carolina 27611~~
~~919/733-7015~~
~~Water Quality Section Chief~~
~~Division of Environmental Management~~
~~P.O. Box 27687~~
~~Raleigh, North Carolina 27611~~
~~919/733-5083~~
 - ~~(B) Asheville Regional Office~~
~~Regional Supervisor~~
~~Division of Environmental Management~~
~~P.O. Box 370~~
~~Asheville, North Carolina 28801~~
~~704/253-3341~~
 - ~~(C) Fayetteville Regional Office~~
~~Regional Supervisor~~
~~Division of Environmental Management~~
~~Wachovia Building~~
~~Suite 714~~
~~Fayetteville, North Carolina 28301~~
~~919/486-1541~~
 - ~~(D) Mooresville Regional Office~~
~~Regional Supervisor~~
~~Division of Environmental Management~~
~~P.O. Box 950~~
~~Mooresville, North Carolina 28115~~
~~704/663-1699~~
 - ~~(E) Raleigh Regional Office~~

Regional Supervisor
~~Division of Environmental~~
~~Management~~
~~3800 Barrett Drive~~
~~P.O. Box 27687~~
~~Raleigh, North Carolina 27611~~
~~919/733-2314~~

(F) ~~Washington Regional Office~~
~~Regional Supervisor~~
~~Division of Environmental~~
~~Management~~
~~1502 North Market Street~~
~~Washington, North Carolina 27889~~
~~919/946-6481~~

(G) ~~Wilmington Regional Office~~
~~Regional Supervisor~~
~~Division of Environmental~~
~~Management~~
~~7225 Wrightsville Avenue~~
~~Wilmington, North Carolina 28401~~
~~919/256-4161~~

(H) ~~Winston-Salem Regional Office~~
~~Regional Supervisor~~
~~Division of Environmental~~
~~Management~~
~~8003 North Point Boulevard~~
~~Winston-Salem, North Carolina 27106~~
~~919/761-2351~~

d) All information submitted will be classified
public information unless determined otherwise
by the Director.

Statutory Authority G.S. 143-215.1(b); 143-
 5.64; 143-215.65; 143-215.68.

08 TESTS AND MEASUREMENTS APPLICABLE TO SICs

a) Determination of Type and Frequency of Tests and Measurements:

- (1) Introduction. The tables set forth in this Rule are designed to indicate, for any particular water pollution control facility or point source, the minimum standard tests and measurements which are to be performed, the minimum frequency with which the tests and measurements are to be ~~made~~ conducted, and the location and minimum number of sampling points that are required.
- (2) Determination of Facility Class and SIC Numbers. Before these tables may be ~~used~~ applied, the standard industrial classification(s) of the activities discharging to the water pollution control facility must be determined from The Standard Industrial Classification Manual—~~(Superintendent of Document, U.S. Government Printing Office), 1972 or subsequent editions.~~ The classification of the facility as determined by the Wastewater Treatment Plant Operators Certification Commission Water Pollution Control System Operators Certification Commission, must also be known.

b) Modification of Test(s) or Measurement(s) Requirements:

- (1) If it is demonstrated to the satisfaction of the Director that any of the tests and measurements, sampling points, or frequency of sampling requirements, as required in this Rule for a particular SIC group, are not applicable to the discharge of a particular water pollution control facility, or if it can be ~~shown~~ demonstrated that the objectives of this Section can be achieved by other acceptable means, then such requirements may be waived or modified to the extent that the Division Director, determines to be appropriate.
- (2) In addition to the tests and measurements as listed in this Rule applicable to each of the SIC

PROPOSED RULES

groups, persons subject to this Section may be required to perform such additional tests and measurements at such sampling points and with such frequency as are determined by the Director to be necessary to adequately monitor constituents of the waste discharge and their effect upon the receiving waters. This monitoring may include, but not be limited to weekends and holidays as deemed necessary by the Director to ensure representative sampling and proper operation and maintenance of any facility.

(c) Unclassified Activities:

- (1) Any person owning or operating a water pollution control facility who determines that a major SIC group(s) is not listed in this Rule for an activity subject to this Section shall so notify the Division
- (2) The Director shall prescribe the number and location of sampling points and the frequency with which tests and measurements must be made for such pollutant or pollutant effects as it shall deem necessary to properly monitor the quantity or quality of waste discharges resulting from any activity subject to this Section which is not included in the major SIC groups set forth in this Rule and to properly monitor effects of the discharges upon the waters of this state.

(d) Index of Major Standard Industrial Groups:

SIC Number	Major Products or Services
0200-0299	Agricultural Production <u>Livestock</u>
1400-1499	Mining
2000-2099 <u>2199</u>	Food and Beverage and <u>Tobacco</u> Processing
2100-2199	Tobacco Processing
2200-2299	Textile Processing
2400-2499 <u>2599</u>	Lumber and Wood Products Except Furniture <u>Wet Decking</u>
2500-2599	Manufacturing of Furniture and Fixtures
2600-2699	Paper and Allied Products
2800-2899	Chemical and Allied Products
2900-2999	Petroleum Refining and Related Industries
3100-3199	Leather and Leather Products
3400-3499 <u>3699</u>	Fabricated Metal Products Except Ordnance, Machinery and Transportation Equipment
3500-3599	Machinery Except Electrical
3600-3699	Electrical Machinery, Equipment and Supplies
4600-4699	Pipe Line Transportation
4900-4939	Electric, and Gas and <u>Sanitary</u> Services
4941	<u>Water Supply</u>
4952	<u>Wastewater and all facilities discharging only domestic wastewater</u>
7000-7200 <u>8999</u>	Personal Services
7300-7399	Miscellaneous Business Service
7500-8599	Automobile Repairing Services and Garages
9999	Domestic Sewage

Abbreviations for sampling locations and frequencies to be used with SIC monitoring requirements:

"I" means influent "E" means effluent "U" means upstream "D" means downstream

"2/month" means samples are collected twice per month with a required 10 day interval between the collection of the samples

"3/week" means samples are collected three times per week on three separate days

AGRICULTURAL PRODUCTIONS - LIVESTOCK MINIMUM REQUIREMENTS FOR SIC 0200-0299 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
	CLASS I&II	CLASS III&IV

PROPOSED RULES

1. pH	E	Weekly	Daily
2. Temperature, °C	E	Weekly	Daily
3. BOD, 5-day, 20°C	E	2/month	Daily
4. Total Suspended Residue	E	2/month	Daily
5. Ammonia Nitrogen	E	Monthly	Weekly
6. Total Nitrogen	E	*	*
7. Total Phosphorus	E	*	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. BOD, 5-day, 20°C	E	2/month	Daily
7. Total Suspended Residue	E	2/month	Daily
8. Ammonia Nitrogen	E	2/month	Daily
9. Total Nitrogen	E	*	*
10. Total Phosphorus	E	*	*

MINING

MINIMUM REQUIREMENTS FOR SIC 1400-1499 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
	CLASS I&II	CLASS III&IV
1. Turbidity	E	Weekly
2. Settleable Matter	E	Weekly
3. Total Suspended Residue	E	2/month
4. pH	E	Weekly

WATER QUALITY LIMITED

1. Turbidity	E	Weekly	Daily
2. Turbidity	U,D	Weekly	3/week +
3. Settleable Matter	E	Weekly	Daily
4. Total Suspended Residue	E	2/month	Daily
5. pH	E	Weekly	Daily

FOOD AND BEVERAGE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2000-2099 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
	CLASS I&II	CLASS III&IV
1. pH	E	Weekly
2. Temperature, °C	E	Weekly
3. BOD, 5-day, 20°C	E	2/month
4. Total Suspended Residue	E	2/month
5. Ammonia Nitrogen	E	Monthly
6. Total Nitrogen	E	*
7. Total Phosphorus	E	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	Weekly	Daily

PROPOSED RULES

4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. BOD, 5-day, 20°C	E	2/month	Daily
7. Total Suspended Residue	E	2/month	Daily
8. Ammonia Nitrogen	E	2/month	Daily
9. Total Nitrogen	E	*	*
10. Total Phosphorus	E	*	*

TOBACCO PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2100-2199 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
	CLASS I&II	CLASS III&IV
1. pH	E	Daily
2. Temperature, °C	E	Daily
3. BOD, 5-day, 20°C	E	Daily
4. Total Suspended Residue	E	Daily
5. Ammonia Nitrogen	E	Monthly
6. Total Nitrogen	E	*
7. Total Phosphorus	E	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. BOD, 5-day, 20°C	E	2/month	Daily
7. Total Suspended Residue	E	2/month	Daily
8. Ammonia Nitrogen	E	2/month	Daily
9. Total Nitrogen	E	*	*
10. Total Phosphorus	E	*	*

TEXTILE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2200-2299 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
	CLASS I&II	CLASS III&IV
1. pH	E	Daily
2. Temperature, °C	E	Daily
3. BOD, 5-day, 20°C	E	Daily
4. COD	E	Monthly
5. Total Suspended Residue	E	2/month
6. Total Nitrogen	E	*
7. Total Phosphorus	E	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. BOD, 5-day, 20°C	E	2/month	Daily
7. COD	E	2/month	Weekly

PROPOSED RULES

8. Total Suspended Residue	E	2/month	Daily
9. Total Nitrogen	E	*	*
10. Total Phosphorus	E	*	*

LUMBER AND WOOD PRODUCTS (EXCEPT FURNITURE) MINIMUM REQUIREMENTS FOR SIC 2400-2499 EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>
	<u>CLASS I&II</u>	<u>CLASS III&IV</u>
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. BOD, 5-day, 20°C	E 2/month	Daily
4. COD	E Monthly	Weekly
5. Total Phenolics	E 2/month	Daily
6. Total Suspended Residue	E 2/month	Daily
7. Total Nitrogen	E *	*
8. Total Phosphorus	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. BOD, 5-day, 20°C	E 2/month	Daily
7. COD	E 2/month	Daily
8. Total Phenolics	E 2/month	Daily
9. Total Suspended Residue	E 2/month	Daily
10. Total Nitrogen	E *	*
11. Total Phosphorus	E *	*

MANUFACTURING OF FURNITURE AND FIXTURES MINIMUM REQUIREMENTS FOR SIC 2500-2599 EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>
	<u>CLASS I&II</u>	<u>CLASS III&IV</u>
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. BOD, 5-day, 20°C	E 2/month	Daily
4. COD	E Monthly	Weekly
5. Total Phenolics	E 2/month	Daily
6. Formaldehyde	E 2/month	Daily
7. Total Suspended Residue	E 2/month	Daily
8. Total Nitrogen	E *	*
9. Total Phosphorus	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. BOD, 5-day, 20°C	E 2/month	Daily
7. COD	E 2/month	Daily
8. Total Phenolics	E 2/month	Daily

PROPOSED RULES

9. Formaldehyde	E	2/month	Daily
10. Total Suspended Residue	E	2/month	Daily
11. Total Nitrogen	E	*	*
12. Total Phosphorus	E	*	*

PAPER AND ALLIED PRODUCTS MINIMUM REQUIREMENTS FOR SIC 2600-2699 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
	CLASS I&II	CLASS III&IV
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. BOD, 5-day, 20°C	E 2/month	Daily
4. Total Suspended Residue	E 2/month	Daily
5. Total Nitrogen	E *	*
6. Total Phosphorus	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. BOD, 5-day, 20°C	E 2/month	Daily
7. Total Suspended Residue	E 2/month	Daily
8. Total Nitrogen	E *	*
9. Total Phosphorus	E *	*

CHEMICAL AND ALLIED PRODUCTS MINIMUM REQUIREMENTS FOR SIC 2800-2899 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
	CLASS I&II	CLASS III&IV
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. BOD, 5-day, 20°C	E 2/month	Daily
4. Total Suspended Residue	E 2/month	Daily
5. Total Nitrogen	E *	*
6. Total Phosphorus	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. BOD, 5-day, 20°C	E 2/month	Daily
7. Total Suspended Residue	E 2/month	Daily
8. Total Nitrogen	E *	*
9. Total Phosphorus	E *	*

PETROLEUM REFINING AND RELATED INDUSTRIES MINIMUM REQUIREMENTS FOR SIC 2900-2999 EFFLUENT LIMITED

PROPOSED RULES

REQUIRED TEST	LOCATION		FREQUENCY
	CLASS	I&II	CLASS III&IV
1. pH	E	Weekly	Daily
2. Temperature, °C	E	Weekly	Daily
3. BOD, 5-day, 20°C	E	2/month	Daily
4. Total Suspended Residue	E	2/month	Daily
5. Total Phenolies	E	2/month	Daily
6. Oil and Grease	E	2/month	Daily
7. Total Nitrogen	E	*	*
8. Total Phosphorus	E	*	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. BOD, 5-day, 20°C	E	2/month	Daily
7. Total Suspended Residue	E	2/month	Daily
8. Total Phenolies	E	2/month	Daily
9. Oil and Grease	E	2/month	Daily
10. Total Nitrogen	E	*	*
11. Total Phosphorous	E	*	*

LEATHER AND LEATHER PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 3100-3199

EFFLUENT LIMITED

REQUIRED TEST	LOCATION		FREQUENCY
	CLASS	I&II	CLASS III&IV
1. pH	E	Weekly	Daily
2. Temperature, °C	E	Weekly	Daily
3. BOD, 5-day, 20°C	E	2/month	Daily
4. Total Suspended Residue	E	2/month	Daily
5. COD	E	Monthly	Weekly
6. Ammonia Nitrogen	E	Monthly	Weekly
7. Oil and Grease	E	2/month	Daily
8. Turbidity	E	Weekly	Daily
9. Total Nitrogen	E	*	*
10. Total Phosphorous	E	*	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week
6. BOD, 5-day, 20°C	E	2/month	Daily
7. Total Suspended Residue	E	2/month	Daily
8. COD	E	2/month	Daily
9. Ammonia Nitrogen	E	2/month	Daily
10. Oil and Grease	E	2/month	Daily
11. Turbidity	E	Weekly	Daily
12. Total Nitrogen	E	*	*
13. Total Phosphorous	E	*	*

FABRICATED METAL PRODUCTS EXCEPT ORDINANCE:-

PROPOSED RULES

MACHINERY AND TRANSPORTATION EQUIPMENT
MINIMUM REQUIREMENTS FOR SIC 3400-3499
EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>
	<u>CLASS I&II</u>	<u>CLASS III&IV</u>
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. Oil and Grease	E 2/month	Daily
4. Total Nitrogen	E *	*
5. Total Phosphorous	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. Oil and Grease	E 2/month	Daily
7. Total Nitrogen	E *	*
8. Total Phosphorous	E *	*

MACHINERY EXCEPT ELECTRICAL
MINIMUM REQUIREMENTS FOR SIC 3500-3599
EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>
	<u>CLASS I&II</u>	<u>CLASS III&IV</u>
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. Oil and Grease	E 2/month	Daily
4. Total Nitrogen	E *	*
5. Total Phosphorous	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. Oil and Grease	E 2/month	Daily
7. Total Nitrogen	E *	*
8. Total Phosphorous	E *	*

ELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES
MINIMUM REQUIREMENTS FOR SIC 3600-3699
EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>
	<u>CLASS I&II</u>	<u>CLASS III&IV</u>
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. Oil and Grease	E 2/month	Daily
4. Total Nitrogen	E *	*
5. Total Phosphorous	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
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PROPOSED RULES

2. Dissolved Oxygen	U,D	Weekly	3/week
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. Oil and Grease	E	2/month	Daily
7. Total Nitrogen	E	*	*
8. Total Phosphorous	E	*	*

PIPELINE TRANSPORTATION

MINIMUM REQUIREMENTS FOR SIC 4600-4699

EFFLUENT LIMITED

REQUIRED TEST	LOCATION		FREQUENCY
	CLASS	I&II	III&IV
1. pH	E	Weekly	Daily
2. Temperature, °C	E	Weekly	Daily
3. Oil and Grease	E	2/month	Daily
4. Total Nitrogen	E	*	*
5. Total Phosphorous	E	*	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. Oil and Grease	E	2/month	Daily
7. Total Nitrogen	E	*	*
8. Total Phosphorous	E	*	*

ELECTRICAL, GAS, AND SANITARY SERVICES

MINIMUM REQUIREMENTS FOR SIC 4900-4999

EFFLUENT LIMITED

REQUIRED TEST	LOCATION		FREQUENCY
	CLASS	I&II	CLASS III&IV
1. pH	E	Daily	Daily
2. Temperature, °C	E	Daily	Daily
3. Total Nitrogen	E	*	*
4. Total Phosphorous	E	*	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Daily	Daily
2. Dissolved Oxygen	U,D	Daily	1/week
3. pH	E	Daily	Daily
4. Temperature, °C	E	Daily	Daily
5. Temperature, °C	U,D	Daily	3/week +
6. Total Nitrogen	E	*	*
7. Total Phosphorous	E	*	*

10 The following additional monitoring for steam electric generating establishments discharging cooling water shall be required whether or not the discharge is from a classified facility.

REQUIRED TEST	LOCATION		FREQUENCY
	CLASS	I&II	CLASS III&IV
1. Temperature, °C	E	Continuous	Continuous
2. Temperature, °C	U,C	3/week +	3/week +

PROPOSED RULES

3. Rate of Cooling Water

Discharge	E	Continuous during Discharge	Continuous during Discharge
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PERSONAL SERVICES

MINIMUM REQUIREMENTS FOR SIC 7200-7299 EFFLUENT LIMITED

REQUIRED TEST	LOCATION CLASS I&II	FREQUENCY CLASS III&IV
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. BOD, 5-day, 20°C	E 2/month	Daily
4. Total Suspended Residue	E 2/month	Daily
5. Ammonia Nitrogen	E Monthly	Weekly
6. Detergents (MBAS)	E 2/month	Weekly
7. Fecal Coliform (where applicable)	E 2/month	Daily
8. Total Nitrogen	E *	*
9. Total Phosphorous	E Monthly	Weekly

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. BOD, 5-day, 20°C	E 2/month	Daily
7. Total Suspended Residue	E 2/month	Daily
8. Ammonia Nitrogen	E 2/month	Daily
9. Detergents (MBAS)	E 2/month	Weekly
10. Fecal Coliform	E 2/month	Daily
11. Total Nitrogen	E *	*
12. Total Phosphorous	E *	*

MISCELLANEOUS BUSINESS SERVICE

MINIMUM REQUIREMENTS FOR SIC 7300-7399 EFFLUENT LIMITED

REQUIRED TEST	LOCATION CLASS I&II	FREQUENCY CLASS III&IV
1. pH	E Weekly	Daily
2. Temperature, °C	E Weekly	Daily
3. BOD, 5-day, 20°C	E 2/month	Daily
4. Total Suspended Residue	E 2/month	Daily
5. Total Nitrogen	E *	*
6. Total Phosphorous	E *	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E Weekly	Daily
2. Dissolved Oxygen	U,D Weekly	3/week +
3. pH	E Weekly	Daily
4. Temperature, °C	E Weekly	Daily
5. Temperature, °C	U,D Weekly	3/week +
6. BOD, 5-day, 20°C	E 2/month	Daily
7. Total Suspended Residue	E 2/month	Daily
8. Total Nitrogen	E *	*

PROPOSED RULES

9. Total Phosphorous E * *

AUTOMOBILE REPAIRING SERVICES AND GARAGES
MINIMUM REQUIREMENTS FOR SIC 7500-8599
EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>		<u>FREQUENCY</u>
	<u>CLASS</u>	<u>I&H</u>	<u>CLASS III&IV</u>
1. pH	E	Weekly	Daily
2. Temperature, °C	E	Weekly	Daily
3. BOD, 5-day, 20°C	E	2/month	Daily
4. Total Suspended Residue	E	2/month	Daily
5. Detergents (MBAS)	E	2/month	Weekly
6. Oil and Grease	E	Monthly	Weekly
7. Turbidity	E	Weekly	Daily
8. Total Nitrogen	E	*	*
9. Total Phosphorous	E	*	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	Weekly	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. BOD, 5-day, 20°C	E	2/month	Daily
7. Total Suspended Residue	E	2/month	Daily
8. Detergents MBAS	E	2/month	Daily
9. Oil and Grease	E	2/month	Daily
10. Turbidity	E	Weekly	Daily
11. Total Nitrogen	E	*	*
12. Total Phosphorous	E	*	*

DOMESTIC SEWAGE
MINIMUM REQUIREMENTS FOR SIC 9999
EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>		<u>FREQUENCY</u>
	<u>CLASS</u>	<u>I&H</u>	<u>CLASS III&IV</u>
1. pH	E	2/month	Daily
2. Temperature, °C	E	Weekly	Daily
3. BOD, 5-day, 20°C	I,E	2/month	Daily
4. Total Suspended Residue	E	2/month	Daily
5. Ammonia Nitrogen	E	Monthly	Weekly
6. Residual Chlorine (where applicable)	E	Daily	Daily
7. Fecal Coliform (where applicable)	E	2/month	Daily
8. Total Nitrogen	E	*	*
9. Total Phosphorous	E	*	*

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Daily
2. Dissolved Oxygen	U,D	Weekly	3/week +
3. pH	E	2/month	Daily
4. Temperature, °C	E	Weekly	Daily
5. Temperature, °C	U,D	Weekly	3/week +
6. BOD, 5-day, 20°C	I,E	2/month	Daily

PROPOSED RULES

7. Total Suspended Residue	E	2/month	Daily
8. Ammonia Nitrogen	E	2/month	Daily
9. Residual Chlorine	E	Daily	Daily
10. Fecal Coliform	E	2/month	Daily
11. Fecal Coliform	U,D	2/month	3/week +
12. Total Nitrogen	E	*	*
13. Total Phosphorous	E	*	*

MINING

MINIMUM REQUIREMENTS FOR SIC 1400-1499

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. Turbidity	E	Monthly	Monthly	Monthly	Monthly
2. Settleable Matter	E	Monthly	Monthly	Monthly	Monthly
3. TSS	E	Monthly	Monthly	Monthly	Monthly
4. pH	E	Monthly	Monthly	Monthly	Monthly
5. Toxics and Toxicity		**	**	**	**

FOOD AND BEVERAGE PROCESSING AND TOBACCO PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2000-2199

EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. pH	E	Weekly	Weekly	3/week	Daily
2. Temperature, °C	E	Weekly	Weekly	3/week	Daily
3. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4. TSS	E	2/month	Weekly	3/week	Daily
5. Ammonia Nitrogen	E	Monthly	2/month	Weekly	Weekly
6. Total Nitrogen	E	*	*	*	*
7. Total Phosphorus	E	*	*	*	*
8. Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2. Dissolved Oxygen	U,D	Weekly	Weekly	3/week +	3/week +
3. pH	E	Weekly	Weekly	3/week	Daily
4. Temperature, °C	E	Weekly	Weekly	3/week	Daily
5. Temperature, °C	U,D	Weekly	Weekly	3/week +	3/week +
6. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7. TSS	E	2/month	Weekly	3/week	Daily
8. Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9. Total Nitrogen	E	*	*	*	*
10. Total Phosphorus	E	*	*	*	*
11. Toxics and Toxicity		**	**	**	**
12. Conductivity	E	Weekly	Weekly	3/week	Daily
13. Conductivity	U,D	Weekly	Weekly	3/week +	3/week +

TEXTILE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2200-2299

EFFLUENT LIMITED

PROPOSED RULES

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. pH	E	Weekly	Weekly	3/week	Daily
2. Temperature, °C	E	Weekly	Weekly	3/week	Daily
3. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4. COD	E	2/month	Weekly	3/week	Daily
5. TSS	E	2/month	Weekly	3/week	Daily
6. Total Nitrogen	E	*	*	*	*
7. Total Phosphorus	E	*	*	*	*
8. Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2. Dissolved Oxygen	U,D	Weekly	Weekly	3/week +	3/week +
3. pH	E	Weekly	Weekly	3/week	Daily
4. Temperature, °C	E	Weekly	Weekly	3/week	Daily
5. Temperature, °C	U,D	Weekly	Weekly	3/week +	3/week +
6. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7. COD	E	2/month	Weekly	Weekly	Weekly
8. TSS	E	2/month	Weekly	3/week	Daily
9. Total Nitrogen	E	*	*	*	*
10. Total Phosphorus	E	*	*	*	*
11. Toxics and Toxicity		**	**	**	**
12. Conductivity	E	Weekly	Weekly	3/week	Daily
13. Conductivity	U,D	Weekly	Weekly	3/week +	3/week +

LUMBER AND WOOD PRODUCTS (EXCLUDING WET DECKING)

MINIMUM REQUIREMENTS FOR SIC 2400-2599

EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. pH	E	Weekly	Weekly	3/week	Daily
2. Temperature, °C	E	Weekly	Weekly	3/week	Daily
3. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4. COD	E	Monthly	2/month	Weekly	3/week
5. Total Phenols	E	2/month	Weekly	3/week	Daily
6. TSS	E	2/month	Weekly	3/week	Daily
7. Total Nitrogen	E	*	*	*	*
8. Total Phosphorus	E	*	*	*	*
9. Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2. Dissolved Oxygen	U,D	Weekly	Weekly	3/week +	3/week +
3. pH	E	Weekly	Weekly	3/week	Daily
4. Temperature, °C	E	Weekly	Weekly	3/week	Daily
5. Temperature, °C	U,D	Weekly	Weekly	3/week +	3/week +
6. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7. COD	E	2/month	Weekly	3/week	Daily
8. Total Phenols	E	2/month	Weekly	3/week	Daily
9. TSS	E	2/month	Weekly	3/week	Daily
10. Total Nitrogen	E	*	*	*	*

PROPOSED RULES

11. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
12. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>
13. <u>Conductivity</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
14. <u>Conductivity</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>

**PAPER AND ALLIED PRODUCTS
MINIMUM REQUIREMENTS FOR SIC 2600-2699
EFFLUENT LIMITED**

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u> <u>I</u>	<u>CLASS</u> <u>II</u>	<u>CLASS</u> <u>III</u>	<u>CLASS</u> <u>IV</u>
1. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
6. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
7. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

WATER QUALITY LIMITED

1. <u>Dissolved Oxygen</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Dissolved Oxygen</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
3. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Temperature, °C</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
6. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
9. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
10. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>
11. <u>Conductivity</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
12. <u>Conductivity</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>

**CHEMICAL AND ALLIED PRODUCTS
MINIMUM REQUIREMENTS FOR SIC 2800-2899
EFFLUENT LIMITED**

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u> <u>I</u>	<u>CLASS</u> <u>II</u>	<u>CLASS</u> <u>III</u>	<u>CLASS</u> <u>IV</u>
1. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
6. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
7. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

WATER QUALITY LIMITED

1. <u>Dissolved Oxygen</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Dissolved Oxygen</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
3. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Temperature, °C</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>

PROPOSED RULES

6.	<u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7.	<u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8.	<u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
9.	<u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
10.	<u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>
11.	<u>Conductivity</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
12.	<u>Conductivity</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>

PETROLEUM REFINING AND RELATED INDUSTRIES
MINIMUM REQUIREMENTS FOR SIC 2900-2999
EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u> <u>I</u>	<u>CLASS</u> <u>II</u>	<u>CLASS</u> <u>III</u>	<u>CLASS</u> <u>IV</u>
1. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Total Phenols</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
6. <u>Oil and Grease</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
8. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
9. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

WATER QUALITY LIMITED

1. <u>Dissolved Oxygen</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Dissolved Oxygen</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
3. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Temperature, °C</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
6. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8. <u>Total Phenolics</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
9. <u>Oil and Grease</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
10. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
11. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
12. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>
13. <u>Conductivity</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
14. <u>Conductivity</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>

LEATHER AND LEATHER PRODUCTS
MINIMUM REQUIREMENTS FOR SIC 3100-3199
EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u> <u>I</u>	<u>CLASS</u> <u>II</u>	<u>CLASS</u> <u>III</u>	<u>CLASS</u> <u>IV</u>
1. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>COD</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Daily</u>
6. <u>Ammonia Nitrogen</u>	<u>E</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>

PROPOSED RULES

7.	<u>Oil and Grease</u>	E	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8.	<u>Turbidity</u>	E	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>	<u>Daily</u>
9.	<u>Total Nitrogen</u>	E	*	*	*	*
10.	<u>Total Phosphorus</u>	E	*	*	*	*
11.	<u>Toxics and Toxicity</u>		**	**	**	**

WATER QUALITY LIMITED

1.	<u>Dissolved Oxygen</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2.	<u>Dissolved Oxygen</u>	U,D	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
3.	<u>pH</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4.	<u>Temperature, °C</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5.	<u>Temperature, °C</u>	U,D	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
6.	<u>BOD, 5-day, 20°C</u>	E	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7.	<u>TSS</u>	E	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8.	<u>COD</u>	E	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
9.	<u>Ammonia Nitrogen</u>	E	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
10.	<u>Oil and Grease</u>	E	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
11.	<u>Turbidity</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
12.	<u>Total Nitrogen</u>	E	*	*	*	*
13.	<u>Total Phosphorus</u>	E	*	*	*	*
14.	<u>Toxics and Toxicity</u>		**	**	**	**
15.	<u>Conductivity</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
16.	<u>Conductivity</u>	U,D	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>

FABRICATED METAL PRODUCTS EXCEPT ORDINANCE:

MACHINERY AND TRANSPORTATION EQUIPMENT

MACHINERY

ELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

MINIMUM REQUIREMENTS FOR SIC 3400-3699

EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1.	<u>pH</u>	E	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2.	<u>Temperature, °C</u>	E	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3.	<u>Oil and Grease</u>	E	<u>2/month</u>	<u>3/week</u>	<u>Daily</u>
4.	<u>Total Nitrogen</u>	E	*	*	*
5.	<u>Total Phosphorus</u>	E	*	*	*
6.	<u>Toxics and Toxicity</u>		**	**	**
7.	<u>Dissolved Oxygen</u>	E	<u>Weekly</u>	<u>Week</u>	<u>3/week</u>

WATER QUALITY LIMITED

1.	<u>Dissolved Oxygen</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2.	<u>pH</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3.	<u>Temperature, °C</u>	E	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4.	<u>Oil and Grease</u>	E	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5.	<u>Total Nitrogen</u>	E	*	*	*	*
6.	<u>Total Phosphorus</u>	E	*	*	*	*
7.	<u>Toxics and Toxicity</u>		**	**	**	**

ELECTRICAL AND GAS SERVICES

MINIMUM REQUIREMENTS FOR SIC 4900-4939

EFFLUENT LIMITED

PROPOSED RULES

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
2. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
3. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
4. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
5. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

WATER QUALITY LIMITED

1. <u>Dissolved Oxygen</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
2. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
4. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
5. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
6. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
7. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

Note: The following monitoring for steam electric generating establishments discharging once through cooling water or cooling tower blowdown shall be required whether or not the discharge is from a classified facility.

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. <u>Temperature, °C</u>	<u>E</u>	<u>Cont.</u>	<u>Cont.</u>	<u>Cont.</u>	<u>Cont.</u>
2. <u>Temperature, °C</u>	<u>U, D</u>	<u>3/week +</u>	<u>3/week +</u>	<u>3/week +</u>	<u>3/week +</u>
3. <u>Flow</u>		<u>Continuous</u>		<u>Continuous</u>	
		<u>during</u>		<u>during</u>	
		<u>discharge</u>		<u>discharge</u>	

WATER SUPPLY PLANTS

MINIMUM REQUIREMENTS FOR SIC 4941 EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. <u>Settleable Solids</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
2. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>2/month</u>	<u>2/month</u>	<u>2/month</u>
3. <u>Turbidity</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
4. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>
5. <u>Chloride</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>	<u>Weekly</u>

DOMESTIC WASTEWATER AND OTHER FACILITIES DISCHARGING ONLY DOMESTIC

MINIMUM REQUIREMENTS FOR SIC 4952 EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. <u>pH</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3. <u>BOD, 5-day, 20°</u>	<u>I,E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>TSS</u>	<u>I,E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>

PROPOSED RULES

5. <u>Ammonia Nitrogen</u>	<u>E</u>	<u>Monthly</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>
6. <u>Fecal Coliform</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
8. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
9. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

WATER QUALITY LIMITED

1. <u>Dissolved Oxygen</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Dissolved Oxygen</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
3. <u>pH</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Temperature, °C</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
6. <u>BOD, 5-day, 20°C</u>	<u>E,I</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7. <u>TSS</u>	<u>E,I</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8. <u>Ammonia Nitrogen</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
9. <u>Residual Chlorine</u>	<u>E</u>	<u>Daily</u>	<u>Daily</u>	<u>Daily</u>	<u>Daily</u>
10. <u>Fecal Coliform</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
11. <u>Fecal Coliform</u>	<u>U,D</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
12. <u>Conductivity</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
13. <u>Conductivity</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
14. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
15. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
16. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

SERVICES

MINIMUM REQUIREMENTS FOR SIC 7000-8999

EFFLUENT LIMITED

<u>REQUIRED TEST</u>	<u>LOCATION</u>	<u>FREQUENCY</u>			
		<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>	<u>CLASS</u>
		<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>
1. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
3. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Ammonia Nitrogen</u>	<u>E</u>	<u>Monthly</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week +</u>
6. <u>Detergents (MBAS)</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7. <u>Fecal Coliform</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
9. <u>Total Phosphorus</u>	<u>E</u>	<u>Monthly</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week +</u>
10. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>

WATER QUALITY LIMITED

1. <u>Dissolved Oxygen</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
2. <u>Dissolved Oxygen</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>
3. <u>pH</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
4. <u>Temperature, °C</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
5. <u>Temperature, °C</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week</u>
6. <u>BOD, 5-day, 20°C</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
7. <u>TSS</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
8. <u>Ammonia Nitrogen</u>	<u>E</u>	<u>Monthly</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week +</u>
9. <u>Detergents (MBAS)</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
10. <u>Fecal Coliform</u>	<u>E</u>	<u>2/month</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
11. <u>Total Nitrogen</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>
12. <u>Total Phosphorus</u>	<u>E</u>	<u>*</u>	<u>*</u>	<u>*</u>	<u>*</u>

PROPOSED RULES

13. <u>Toxics and Toxicity</u>		<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>
14. <u>Conductivity</u>	<u>E</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week</u>	<u>Daily</u>
15. <u>Conductivity</u>	<u>U,D</u>	<u>Weekly</u>	<u>Weekly</u>	<u>3/week +</u>	<u>3/week +</u>

+ Upstream and Downstream monitoring in water quality limited waters is to be ~~sampled~~ conducted three times per week during June, July, August, and September, and once per week during the rest of the year.

* Total Nitrogen and Phosphorus Monitoring

(1) Monitoring Requirements

- (A) All facilities equal to or greater than 50,000 gpd, shall monitor for total N and P.
- (B) Facilities less than 50,000 gpd shall monitor for total N and P when discharging into nutrient sensitive waters as designated by the Division.

(2) Monitoring frequency for total N and P is based on river subbasins in two separate areas of the state as follows:

- (A) Western area includes the French Broad, Broad, Savannah, New, Watauga, Little Tennessee, and Hiwassee:

Facility Design Capacity Frequency:

- (i) 50,000 gpd or higher Semi-annually
- (ii) 1,000,000 gpd or higher Quarterly.

- (B) Piedmont and Eastern area includes the Catawba, Lumber, Yadkin, Cape Fear, Chowan, Neuse, Pasquotank, Roanoke, Tar-Pamlico, and White Oak:

Facility Design Capacity

- (i) 50,000 gpd or higher Quarterly
- (ii) 1,000,000 gpd or higher Monthly.

(3) Definition for Total Nitrogen and Total Phosphorus:

- (A) Total Nitrogen shall be the sum of total kjeldahl nitrogen, nitrate nitrogen, and nitrite nitrogen expressed as "N" in milligrams per liter (mg/l).
- (B) Total Phosphorus shall include all orthophosphates and condensed phosphates, both dissolved and particulate, organic and inorganic, ~~measured as "P"~~ in expressed as "P" in milligrams per liter (mg/l).

** Specific test type, conditions, and limitations will be defined by permit. Toxicity limits will be applied to all major discharges and all discharges of complex wastewater. Toxicity limitations and/or monitoring requirements may be applied to permits for other discharges when, in the opinion of the Director, such discharge may impair the best use of the receiving water by the discharge of &toxic substances in toxic amounts.

Specific frequency will be defined by individual permit conditions. For most facilities with continuous and/or regularly occurring discharges, frequency will be defined as a minimum of quarterly.

Statutory Authority G.S. 143-215.65; 143-215.66; 143-215.68.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Division of Environmental Management intends to amend rules cited as 15A NCAC 2H .0102 - .0103, .0105 - .0109, .0111 - .0112, .0114 - .0115, .0117 - .0118, .0120, .0122 - .0124, .0127, .0138.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 7:00 p.m. on September 9, 1992 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC.

Reason for Proposed Action: The existing rules have been in need of updating for several years. Several existing operating procedures need to be placed in rules and some new requirements are being proposed.

Comment Procedures: All persons interested in this matter are invited to attend the hearings. Comments, statements, data and other information may be submitted in writing prior to, during or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information about the rules, contact Dennis Ramsey or Boyd Devane, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, 919-733-5083. For copies of the rules, contact Linda Jones or Kay Stallings at the same number and address.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2H - PROCEDURES FOR PERMITS; APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

.0102 SCOPE

These Rules apply to all persons:

- (1) discharging or proposing to discharge waste to the surface waters of the state;

or

- (2) discharging or proposing to discharge waste requiring pretreatment to a treatment works of another; or
- (3) constructing or proposing to construct a treatment or pretreatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (4) operate or propose to operate a treatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (5) discharging or proposing to discharge stormwater which results in water pollution.

This Rule does not apply to those persons who have obtained a permit from a local pretreatment control authority, authorized to issue such permits and whose pretreatment program was approved in accordance with Section .0900 of this Subchapter

Statutory Authority G.S. 143-215.3(a)(1) 143-215.1; 143-215.3(a)(14).

.0103 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-213 and as follows:

- (1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.
- (2) ~~(1)~~ "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.
- (3) ~~(2)~~ "Committee" means the NPDES committee of the Environmental Management Commission.
- (4) ~~(3)~~ "Director" means the Director of the Division of Environmental Management, Department of Environment, Health, and Natural Resources or his designee.
- (5) ~~(4)~~ "EPA" means the United States Environmental Protection Agency.
- (6) ~~(5)~~ "Existing", with respect to implementing the NPDES permitting program, means:
 - (a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.
 - (b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have

- constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.
- (c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.
- (d) For the purpose of this definition, significant construction will be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (7) ~~(15)~~ "General Permit" means an NPDES "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters which all involve the same or substantially similar types of operations, discharge the same types of waste, require the same effluent limitations or operating conditions, require the same or similar monitoring, and in the opinion of the Director are more appropriately controlled under a general permit than under individual permits.
- (8) ~~(16)~~ "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.
- (9) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law and having jurisdiction over disposal of wastewater.
- (10) ~~(6)~~ "NPDES" means the a National Pollutant Discharge Elimination System-permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
- (11) ~~(7)~~ "New", with respect to implementing the NPDES permitting program, means:
- (a) Proposed facilities that do not have a NPDES Permit nor have any facilities constructed.
- (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.
- (c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.
- (d) Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct will be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.
- (e) For the purpose of this definition, significant construction will be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (12) ~~(8)~~ "New Source" means any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards ~~and/or~~ or pretreatment standards for new sources by the Environmental Protection Agency.
- (13) ~~(9)~~ "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
- (14) ~~(17)~~ "Notice of Intent" means formal written notification to the Division that a proposed discharge is intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (15) ~~(18)~~ "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
- (16) ~~(19)~~ "Once-through non-contact cooling

- water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
- (17) "Point Source Discharge" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.
- (18) ~~(10)~~ "POTW" means Publicly Owned Treatment Works.
- (19) ~~(11)~~ "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 30F 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.
- (20) ~~(10)~~ "Primary industry" means an industry listed in 40 CFR 122, Appendix A which is hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty-six (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Environmental Management, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.
- (21) ~~(13)~~ "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (22) ~~(20)~~ "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (23) ~~(21)~~ "Seafood packing facility" means a business which is primarily engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (24) "Seafood processing facility" means a business which is primarily engaged in the removal of heads, fins or scales filleting, cooking, canning, or preparation of fresh seafood.
- (25) ~~(14)~~ "Staff" means the staff of the Division of Environmental Management, Department of Environment, Health and Natural Resources.
- (26) ~~(22)~~ "Stormwater" means the flow of water which results from precipitation and which occurs immediately following rainfall or a snowmelt.
- (27) ~~(23)~~ "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pool as well as spas with backwash filter facilities.
- (28) "Tourist Gem Mine" means a business which is primarily engaged in the recreational practice of removing gem from mined material.
- (29) ~~(24)~~ "Trout farm" means a facility for the commercial production of trout.
- (30) ~~(25)~~ "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

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

0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES

(a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in triplicate, an application accompanied by the processing fee described herein for each application in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources.

The State NPDES application forms to be used for the various types of discharges are as follows:

Std. Form A:	a All municipal systems greater than or equal to 1.0 MGD as well as any municipal system receiving industrial waste from a primary industry.
Short Form A:	a Any municipal system not covered by Std. Form A.
Short Form B:	All agriculture related discharges.
Std. Form C:	All primary industries as listed in 40 CFR 122.21, or EPA Forms Appendix A or and all other industrial process and 1 and 2-C: commercial discharges except cooling waters, cooling tower blowdown, and boiler blowdown.
EPA Forms 1 and 2F:	Discharges consisting entirely of stormwater associated with industrial activity.
EPA Forms 1 and 2D:	Discharges consisting of stormwater and non-stormwater.
Short Form C:	Cooling waters, cooling tower blowdown, and boiler blowdown.
Short Form D:	All domestic waste discharges not covered by Std. Form A and Short Form A.
Short Form E:	Notice of Intent to be covered by general permit for once-through non-contact cooling waters, statewide.
Short Form F:	Notice of Intent for mine dewatering facilities, statewide.
Short Form G:	Notice of Intent for water filtration facilities, statewide.
Short Form H:	Notice of Intent for seafood packing facilities, statewide.
Short Form I:	Notice of Intent for oil terminal storage facilities discharging to water supply (WS-III) waters.
Short Form J:	Notice of Intent for oil terminal storage facilities discharging to waters, other than water supply (WS-III) waters.
Short Form K:	Notice of Intent for sand dredges, statewide.
Short Form L:	Notice of Intent for trout farms, statewide.
Short Form M:	Notice of Intent for aquifer restoration.
Short Form N:	Notice of Intent for stormwater discharges, statewide.

The ~~pretreatment~~ Authorization to Construct and Notice of Intent application forms to be used will be supplied by the Division.

(b) Permit Fees

(1) Permit Application Processing Fees. For every application for new or renewed NPDES permits, ~~or~~ Notice of Intent to be covered by a general permit or Authorizations to Construct, a nonrefundable application processing fee in the amount stated in Subparagraph (b)(5) of this Rule shall be submitted at the time of application.

(A) ~~This fee schedule does not apply to renewal of general permits.~~

(A) (B)Each permit or renewal application is incomplete until the processing fee is received.

(B) (C)For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.

(C) (D)No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director

(D) (E)An application processing fee of fifty one hundred dollars (\$5100.00) will be charged for the minor modifications listed in Rule .0114(b) of this Section.

(E) (F)A full processing fee will be charged for modifications other than those listed in Rule .0114(b) of this Section; this fee will be in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for new applications/modifications.

(F) (G)Permittees requesting special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00).

(2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and

compliance monitoring shall be charged in each year of the term of every NPDES permit, ~~including general permits~~, according to the schedule in Subparagraph (b)(5) of this Rule.

- (A) Collection of annual fees shall begin on the effective date of this Rule.
 - (B) Annual fees must be paid for any facility operating on an expired permit after the effective date of this Rule. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual administering and compliance monitoring fees.
 - (C) For a facility with multiple discharges under a single permit, the annual administering and compliance monitoring fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
 - (D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.
 - (E) A person with multiple permits may have annual fees consolidated into one annual bill.
 - (F) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes.
 - (G) ~~A discharge which has recognized low potential for environmental impact may be charged the same fee schedule as cooling water and domestic waste. A low potential for environmental impact exists if it can be shown that the effluent flow can be expected to meet all water quality standards including a BOD-5 concentration of less than 2 mg/l at the outlet of the treatment works. Also, intermittent discharges meeting these quality criteria with average flows less than 100,000 GPD but which are permitted at a higher flow may upon request be allowed to meet the fee schedule of the cooling water rate of the less than 100,000 GPD category. Request for this special consideration should be made as part of the permit application and must be accompanied by documentation of eligibility under this Rule. Accompanying the payment of the Annual Administering and Compliance Monitoring Fee shall be a written description of current waste minimization and waste reduction activities during the past annual billing cycle and projected plans for the present billing cycle to reduce the discharge of wastes and pollutants by source reduction or recycling.~~
 - (H) Permit Application Processing Fees and Annual Administering and Compliance Monitoring Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in Subparagraph (b)(5) of this Rule.
- (3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.
 - (4) Failure to pay an annual fee within 30 days after being billed may cause the Division to initiate action to revoke the permit.
 - (5) Schedule of Fees:

CATEGORY	PERMIT APPLICATION PROCESSING FEE		ANNUAL ADMINISTERING AND COMPLIANCE MONITORING FEE	
	NEW APPLICATIONS/ MODIFICATIONS/ <u>LATE RENEWALS</u>	<u>TIMELY</u> RENEWALS WITHOUT MODIFICATIONS	STANDARD	IN COMPLIANCE
> 10,000,000 GPD				
Industrial	\$400.	\$400.	\$1500	\$1125.
Domestic/Cooling Water	400.	400.	1500.	1125.

PROPOSED RULES

<u>,000,001 - 10,000,000 GPD</u>				
Industrial	400.	300.	1500.	1125.
Domestic/Cooling Water	400.	300.	1200.	900.
<u>100,001 - 1,000,000 GPD</u>				
Industrial	400.	250.	800.	600.
Domestic/Cooling Water	400.	250.	600.	450.
<u>,001 - <= 100,000 GPD</u>				
Industrial	400.	200.	600.	450.
Domestic/Cooling Water	400.	200.	450.	300.
<u><= 1,000 GPD and</u>				
Single family dwelling	240.	120.	0	0
<u>Stormwater-</u>				
<u>Municipal Sep.</u>				
Stormwater Sys.	400.	400.	600.	450.
<u>Industrial Activity</u>				
Stormwater	400.	400.	600.	450.
General Permits	200.	\$200.	\$100.	\$80.
<u>General Permits</u>				
<u>Construction (Stormwater)</u>	<u>50.</u>	<u>50.</u>	<u>n/a</u>	<u>n/a</u>
<u>Domestic</u>	<u>240.</u>	<u>120.</u>	<u>n/a</u>	<u>n/a</u>
<u>Others</u>	<u>400.</u>	<u>400.</u>	<u>n/a</u>	<u>n/a</u>
<u>Authorization to Construct</u>				
<u>(Facility Design Flow)</u>				
<u>> = 100,001 GPD</u>	<u>400.</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
<u>< = 100,000 GPD</u>	<u>200.</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
<u>< = 1,000 GPD</u>	<u>100.</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>

- (6) If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy-five hundred dollars (\$7,500.00) per year, ~~then~~ the total for all these fees will be reduced for this facility so that the total payment is seventy-five hundred dollars (\$7,500.00) per year
- (7) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:
 - (A) All nonmunicipal facilities treating wastewater which is predominantly domestic waste with design flows of 100,000 gallons per day or less, except single family dwellings, seventy-five dollars (\$75.00);
 - (B) Single family dwellings, forty dollars (\$40.00);
 - (C) All other facilities, zero.
- (8) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.
- (9) In order to avoid violation of the statutory limit that total permit fees collected in any year not

exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.

- (10) Any applicant whose facility qualifies for a general permit under ~~Rules~~ Rule .0127 of this Section may pay the lower fees set in Subparagraph (b)(5) of this Rule for the appropriate general permit.

(c) Applicants for new NPDES permits ~~projects~~ requiring construction of wastewater control facilities shall in addition to applications required in Paragraph (a) of this Rule, file, in triplicate, an engineering proposal setting forth the following information:

- (1) a description of the origin, type and flow of waste which is proposed to be discharged Justification and a demonstration of need shall be provided for expected flow volumes. Flow shall be determined in accordance with Rule H .0219(1) of this Chapter;
- (2) a summary of waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to assure that the most environmentally sound alternative was selected from the reasonably cost effective options;
- (3) a narrative description of the proposed treatment works including type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system or components with well established treatment capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the nature of waste or degree of treatment needed to meet the permit limits;
- (4) a general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/rivers, etc.);
- (5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;
- (6) special studies or modelling may be required in cases where the impacts of the discharge cannot be readily determined by the Division;
- (7) a statement to demonstrate financial qualification and substantial previous compliance with federal and state laws, regulations, and rules for the protection of the environment as required by G.S. 143-215.1(b)(4)(b).

(d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with criteria approved by the Director, or shall file in triplicate, an engineering proposal setting forth the information required in Paragraph (c) of this Rule.

(e) ~~(d)~~ Applications for permit renewals shall be accomplished by filing the appropriate application form as listed in Paragraph (a) of this Rule, with the processing fee described herein in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources, at least 180 days prior to expiration of a permit. Renewal requests received less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than the timely renewal without modification fee. The notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for each request for permit renewal ~~reissuance of the permit.~~ An acceptable residual management plan shall be submitted with the application for permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees are received, and may be returned to the applicant.

(f) ~~(e)~~ Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director and submitted along with applicable supporting information to the Division of Environmental Management.

(g) ~~(f)~~ Applications ~~Applicants~~ for permits for new discharges which propose to discharge industrial process or domestic wastewater in excess of 5400,000 gallons per day or 10 MGD of cooling water ~~or any other~~

proposed discharge of 1 MGD or greater to the surface waters shall file, in addition to the applications and supporting documents required in Paragraphs (a) and (b) of this Rule, an assessment which shall meet the requirements of 1 NCAC 25 .0502 sufficient to describe the impact of the proposed action upon the waters of the area. As a minimum, the assessment shall contain the following:

- (1) ~~Cover Sheet. The cover sheet shall indicate the nature of the proposed action, the name of the permit applicant, the date of the assessment, and the signature of the responsible company official.~~
- (2) ~~The assessment shall identify, develop, and analyze the pertinent issues concerning the impact on the aquatic environment as follows:~~
 - (A) ~~Background and description of the proposed discharge: The assessment shall describe the proposed discharge, its product or purpose, its location, and its construction and operation time schedule in as broad a context as is reasonable. The relationship of the project to other projects and proposals directly affected by or stemming from the construction and operation of the discharge should be discussed. Maps, photos, or artist sketches should be incorporated if available to help depict the environmental setting and, if not available, supporting documents should be referenced.~~
 - (B) ~~Alternatives available for treatment or other control methods should be described, developed and objectively weighed against the proposed discharge. The analysis should be sufficiently detailed to allow for comparative evaluation of impacts on the aquatic environment. The analysis of alternatives shall be compared to the existing aquatic environment.~~
 - (C) ~~The assessment should discuss the primary and secondary environmental impacts both beneficial and adverse. The scope of the description should include both short term and long term impacts.~~
 - (D) ~~Adverse impacts which cannot be avoided should the permit be issued should be described in detail and proposed remedial or protective measures which will be taken to minimize such impacts should be described. This shall be a description of the extent to which the proposed activity involves trade-offs between short term environmental gains at the expense of long term losses or vice versa and the extent to which proposed actions may foreclose future options. The assessment must adequately address irreversible and irretrievable commitments of aquatic resources which will result if the permit issued.~~
- (3) Any assessment which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided aquatic impacts are adequately addressed.

(h) ~~(g)~~ Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to North Carolina Environmental Policy Act, NCGS 113A. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.

(i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement indicating whether or not each city or county government having jurisdiction over any part of the lands on which the proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect, whether or not the proposed facility is consistent with the ordinance.

(j) ~~(h)~~ For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix D which are adopted by reference as amended through January 1, 1986 hereby incorporated by reference including any subsequent amendments and editions, and for other direct discharges as required by the Director. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars (\$30.00).

Statutory Authority G.S. 143-215.1(c); 143-215.3(a); 143-215.3B; 143-215.1(c)(6)

0106 FILING APPLICATIONS

(a) Permit applications shall be filed with the Director, Division of Environmental Management, P.O. Box 276879535, Raleigh, North Carolina, 27611-26-0535.

(b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180 days in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a

waste discharge to ensure compliance with all legal procedures.

(c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed commencement date of construction of water pollution control facilities or 90 days in advance of advertisement for construction bids but no earlier than the establishment of effluent limitations by means of a finalized Wasteload Allocation.

(d) All NPDES stormwater construction permit applications shall be filed at least 30 days in advance of the proposed commencement date of land disturbing activity which results in a stormwater discharge.

(e) ~~(e)~~ Permit applications filed with the Director shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the permit application form originates;
- (2) in the case of a partnership or a limited partnership, ~~by a general partner and in the case of a limited partnership, by a~~ general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality standards are contravened and it shall not be necessary for the Division to issue separate permits for these activities:

- (1) filter backwash and draining associated with swimming pools;
- (2) condensate from residential or commercial air conditioning units;
- (3) individual non-commercial vehicle washing operations;
- (4) flushing and hydrostatic testing water associated with utility distribution systems;
- (5) groundwaters generated by well construction or other construction activities;
- (6) landscape irrigation, foundation or footing drains, or water from crawl

space pumps;

(7) street wash water; and

(8) flows from fire fighting.

The Director may determine that a facility or a class of facilities should not be deemed to be permitted in accordance with this Rule and the facility or class of facilities would be required to obtain individual permits or coverage under a general NPDES permit. This determination will be made based upon existing or projected environmental impacts or contravention of water quality standards associated with the particular discharge or discharges.

Statutory Authority G.S. 143-215.3(a)(1), 143-215.1(c).

.0107 STAFF REVIEW AND EVALUATION

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge disposal of waste into waters classified as sources of public water supply (WS classification WS-II and III) and shellfish waters classified SA to the Division of Environmental Health, Department of Environment, Health, and Natural Resources, for review and written approval.

(b) The Director shall acknowledge receipt of a complete NPDES or Authorization to construct application or, if not complete, shall may return the application to the applicant as incomplete or request the with a statement of what additional information is required. The applicant may be given up to sixty (60) days to provide the information to make the application complete.

(c) Tentative Determination and Draft individual NPDES Permit.

(1) The staff shall conduct a site investigation including an on-site inspection and shall prepare its written evaluation and tentative determination to issue or deny the NPDES permit. Site investigations will not be necessary for Authorization to Construct permits and activities covered under general permits.

(2) If the staff's tentative determination in Paragraph (1) of this Subdivision is to issue the permit, it shall if necessary make the following additional determinations in writing:

- (A) proposed effluent limitations for those pollutants proposed to be limited;

- (B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
 - (C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- (3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) of this Subdivision into a draft permit.
- (d) In the case of permits for which notice of intent is given on ~~short forms E through N~~ as described in Rule .0105(a) of this Section, a Certificate of Coverage under a general permit shall be prepared and issued directly to the applicant in lieu of any other acknowledgement. If the Notice of Intent is unacceptable, it will be returned to the applicant with a brief explanation.

Statutory Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a); 143-215.1(c).

.0108 FACT SHEETS

(a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or more gallons on any day, or as may be determined by the Director, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

- (1) a sketch or detailed description of the location of the discharge described in the application;
- (2) a quantitative description of the discharge described in the application which includes at least the following:
 - (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
 - (B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; and
 - (C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition;
- (3) the tentative determinations required

- under Rule.0107 of this Section;
- (4) a brief citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including a brief identification of the uses for which the receiving waters have been classified; and
- (5) a fuller description of the procedures for the formulation of final determinations than that given in a public notice including:
 - (A) the 30-day comment period required by Rule .0110 of this Section,
 - (B) procedures for requesting a public meeting and the nature thereof, and
 - (C) any other procedures by which the public may participate in the formulation of the final determinations.

(b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(i);

.0109 PUBLIC NOTICE

(a) Notice of Application

- (1) Public notice of each complete individual NPDES permit and each general NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the Director at least 45 days prior to any proposed final action:
 - (A) by publishing the notice one time in a newspaper having general circulation in said county; and
 - (B) by mailing the notice to all persons or agencies listed in Subsection (c) of this Rule.
- (2) The notice shall set forth at least the following:
 - (A) name, address, and phone number of the agency issuing the public notice;
 - (B) name and address of each applicant;
 - (C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;
 - (D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an

- existing discharge;
- (E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
- (F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and
- (G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.
- (3) Public notice for those activities covered by general permits Certificates of Coverage issued pursuant to a general permit and Authorizations to Construct shall not be required.
- (b) Notice of Public Meeting
 - (1) Notice of public meeting on any NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the Director at least 30 days prior to the date of the meeting:
 - (A) by publishing the notice one time in a newspaper having general circulation in said county;
 - (B) by mailing the notice to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and
 - (C) by mailing the notice to any person or group upon request.
 - (2) The ~~contents of public~~ notice of any public meeting shall include at least the following:
 - (A) name, address, and phone number of agency holding the public meeting;
 - (B) name and address of each applicant whose application will be considered at the meeting;
 - (C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;
 - (D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;
 - (E) information regarding the time and location for the meeting;
 - (F) the purpose of the meeting;
 - (G) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and
 - (H) a brief description of the nature of the meeting including the rules and procedures to be followed; The notice shall also state that additional information is on file with the Division of Environmental Management, Department of Environment, Health, and Natural Resources and Community Development at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.
- (c) Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director shall mail such notice to any such person. An annual charge of twenty-five dollars (\$25.00) may be charged for any person desiring to be placed and maintained on the NPDES Permit mailing list. The Director shall also give notice to the following for NPDES permits:
 - (1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and Georgia;
 - (2) Appropriate district engineer, U.S. Army Corps of Engineers;
 - (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act, 33 U.S.C. Section 1251 et seq, in approved 208 areas;
 - (4) State agency responsible for the

preparation of plans pursuant to Section 303(e) of the Clean Water Act, 33 U.S.C. Section 1251 et seq;

- (5) North Carolina Department of Environment, Health, and Natural Resources ~~Human Resources~~, Division of Environmental Health; and Services, ~~and appropriate local health agency;~~
- (6) Any other federal, state, or local agency upon request; ~~and~~
- ~~(7) The local governmental unit or units having jurisdiction over specific residential projects as specified in N.C.G.S. 143-215.1(d1).~~

Statutory Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c);

.0111 MEETINGS AND HEARINGS

(a) Public Meetings:

- (1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate agency, the regional administrator, or any interested agency, person, or group of persons to request or petition for a public meeting with respect to NPDES permit applications. Any person who desires a public meeting on any NPDES permit application shall so request in writing to the Director within 30 days following the publication date of the notice of application. Any such request or petition for public meeting shall indicate the interest of the party filing such request and the reasons why a meeting is warranted.
- (2) The Director shall consider all such requests for meeting and, if he determines there is a significant public interest and additional information may be obtained from the meeting process pertaining to water quality impacts or uses of the waters, shall issue public notice of meeting. ~~Instances of doubt shall be resolved in favor of holding the meeting.~~
- (3) All comments received within 30 days following the publication date of the notice of NPDES permit application shall be made part of the application file and shall be considered by the Director prior to taking final action on the application.
- (4) Any meeting brought pursuant to this

Subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.

(b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.5; 143-215.1(e);

.0112 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director shall take final action on all NPDES applications not later than 60 days following notice of application or, if a public meeting is held, within 90 days following the closing of the record of the meeting or in the case of an Authorization to Construct pretreatment permit 90 days after the receipt of a complete application or, if a public meeting is held concerning the Authorization to Construct, within 90 days following the closing of the record of the meeting.

(b) The Director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1 and G.S. 143-215.67;
- (2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements;
- (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule .0114(a) of this Section;
- (4) suspend a permit pursuant to Rule .0114(a) of this Section;
- (5) rescind a permit upon request by the permittee;
- (6) ~~(5)~~deny a permit application:
 - (A) where necessary to effectuate the purposes of Article 21 Chapter 143,
 - (B) for a discharge prohibited by G.S. 143-214.2(a),
 - (C) where the Secretary of the Army finds the discharge would substantially impair anchorage and navigation,
 - (D) for a discharge to which the regional administrator of EPA has objected as

provided in Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,

- (E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4, 1987.

(c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply with all applicable water quality standards and requirements. No permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations of all affected states.

(d) The Director shall submit to the Commission at its regular meetings a report which contains the action taken by the Division with respect to any permit application since the last commission meeting.

(e) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall permits be issued for a period to exceed five years.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a).

.0114 MODIFICATION AND REVOCATION OF PERMITS

(a) Any permit issued pursuant to this Regulation is subject to revocation or modification in whole or part pursuant to 40 CFR 122.62 or for good cause including but not limited to:

- (1) violation of any terms or conditions of the permit;
 - (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
 - (3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; and
 - (4) refusal of the permittee to permit the Director or his authorized representative upon presentation of credentials:
- (A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of

the permit,

- (B) to have access to any copy and records required to be kept under terms and conditions of the permit,
 - (C) to inspect any monitoring equipment or method required in the permit, or
 - (D) to sample any discharge of pollutants
- (5) failure to pay the annual fee for administering and compliance monitoring.

(b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural requirements as the issuance of permits except as follows:

- (1) modifications of the monitoring program contained in the permit,
- (2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated
- (3) a single modification of any compliance schedule not in excess of four months
- (4) modification of compliance schedule (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,
- (5) modifications to include or amend pretreatment program requirements,
- (6) issuance of permits revoked for failure to pay the annual administering and compliance monitoring fee,
- (7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps and similar minor changes.

~~The Director may disallow these exemptions on a case by case basis.~~ Requirements for complete reevaluation and processing of the permit, such as the public notice requirement, shall be made on a case by case determination by the Director.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3).

.0115 PUBLIC ACCESS

(a) All records, reports, and information required to be submitted to the Commission or the Director; any public comment on these records reports or information; and the draft and final permits shall be disclosed upon request to the public unless the person submitting the information can show that such information, if made public would disclose methods or processes entitled to protection as trade secrets.

(b) The Director is authorized to determine

formation which is entitled to confidential treatment. In the event the Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take steps to protect such information from disclosure. He shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.

(c) The Director shall:

- (1) provide facilities for the inspection of information relating to permit applications and permits,
- (2) ensure that the staff handle request for such inspections promptly,
- (3) ensure that copying machines or devices are available for a reasonable fee.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6; 143-215.65.

0117 INVESTIGATIONS: MONITORING: AND REPORTING

(a) Staff of the Department of Environment, Health and Natural Resources and Community Development are authorized to conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

(b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting requirements of Rules in Section 15A NCAC 2B .0500.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7); 143-215.1(b)(1); 143-215.3(a)(9); 143-215.63.

0118 EFFLUENT LIMITATIONS AND STANDARDS

Any state NPDES permit ~~or state permit for a pretreatment facility~~ will contain effluent limitations and standards required by 15A NCAC 2B .0400 and the Clean Water Act ~~as amended through February 4, 1987 or any later adopted amendments or editions of this document as is allowed by G.S. 150B-14.(c) which is hereby incorporated by reference including any subsequent amendments and editions.~~ This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N.

Salisbury Street, Raleigh, North Carolina. Copies of the Clean Water Act may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of fifty dollars (\$50.00). That rule contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule ~~adopts~~ incorporates by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act.

Statutory Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1).

.0120 LIMITATION ON DELEGATION

The Director is authorized to delegate any or all of the functions contained in this Rule except the following:

- (1) denial of a permit application,
- (2) suspension of a permit,
- (3) revocation of a permit not requested by the permittee.
- (4) modification of a permit where initiated by the Division and which does not fall within the exceptions listed in Rule .0114(b) of this Section, or
- (5) determination of confidentiality.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4).

.0122 CONCENTRATED ANIMAL FEEDING OPERATIONS

Part 122.23 of Title 40 of the Code of Federal Regulations, as revised April 1, 1983, entitled "Concentrated Animal Feeding Operations", is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars (\$30.00). ~~adopted as part of the Regulations of this Section.~~

Statutory Authority G.S. 143-213(24); 143-215; 143-215.1; 143-215.3(a)(1).

**.0123 REQUIREMENTS: EVALUATING
FEEDLOT PERMIT APPLICATIONS**

(a) Guidelines. Upon identifying any concentrated animal feeding operation or animal feeding operation that the staff has reason to believe should or could be regulated under this permit program, the staff shall conduct an on-site inspection of such operation, and shall make the following determinations as a result thereof:

- (1) For a concentrated animal feeding operation as described in 40 CFR 122.23(b)(3) and Paragraph (a) of Appendix B of those regulations, does a discharge of pollutants occur to the surface waters of the state by any means, as a result of any rainfall event less severe than a 25-year, 24 hour event.
- (2) For a concentrated animal feeding operation as described in 40 CFR 122.23(b)(3) and Paragraph (b) of Appendix B of those regulations;
 - (A) Does a pollutant discharge occur to the surface waters of the state through a man-made ditch, flushing system, or similar man-made device; or
 - (B) Does a pollutant discharge occur to the surface waters of the state which originate outside of and pass over, across, through, or otherwise come in contact with animals confined in the operation, as a result of any rainfall event less severe than a 25-year, 24 hour event.
- (3) Case-by-Case Determination
 - (A) For an animal feeding operation not otherwise falling within the definition provided in 40 CFR 122.23(b)(3):
 - (i) Does a pollutant discharge occur to the state's surface waters through a man-made ditch, flushing system, or similar man-made device; or
 - (ii) Does a pollutant discharge occur to the state's surface waters which originate outside of and pass over, across, through, or otherwise come into direct contact with animals confined in the operation as a result of any rainfall event less severe than a 25-year, 24 hour event.
 - (B) If the staff determines that a discharge occurs under either (3)(A)(i) or (3)(A)(ii) of this Paragraph, then such an

animal feeding operation may be designated by the Director, Division of Environmental Management, as a concentrated animal feeding operation. In making such designation, the Director shall consider the following factors:

- (i) The size of the animal feeding operations; the amount of waste therefrom reaching the state's surface waters;
- (ii) The operation's location relative to the surface waters of the state;
- (iii) The means of conveyance of animal wastes or process waste waters into the surface waters of the state;
- (iv) The degree of slope, nature of vegetation, extent of rainfall, and other factors relative to the likelihood or frequency of discharge of animal wastes and process waste waters into the state's surface waters;
- (v) Other factors relative to the significance of the pollution problem sought to be regulated;
- (vi) Does a discharge of pollutants occur which results in a violation of water quality standards, as a result of any rainfall event less severe than a 25-year, 24 hour event.

(b) Notice to Apply for Permit. If the field determination verifies that a discharge from an animal feeding operation or concentrated animal feeding operation occurs under any of the conditions listed in Paragraph (a)(1) to (3) of this Rule, the Director shall give written notice to the owner or operator of the concentrated animal feeding operation, that he must submit an application for a permit. The notice shall specify that if the owner or operator can permanently eliminate a discharge of pollutants to the surface waters of the state, by such minor changes as can be affected within 60 days of the receipt of notice to submit a permit application (such as, but not limited to, diversion of outside drainage from pet areas, modifications to lagoons, closing of drainage ditches) a permit application will not be required. If modifications necessary to eliminate permanently discharges of pollutants to surface waters of the state cannot or are not completed within 60 days of receipt of notice, a permit application must be submitted.

(c) Permit Applications. Permit applications as required by 40 CFR 122.21 will be available in the Division of Environmental Management regional offices. On determination that an application could be submitted, the applicant shall forward a completed application with supporting information required by Rules .0105 to .0109 of this Section. Applications with supporting documentation are to be mailed to the Director, Division of Environmental Management, P.O. Box 76879535, Raleigh, North Carolina 764426-0535. On receipt of the application, a representative of the Division of Environmental Management will conduct an inspection to determine whether a permit is required. If a permit is required, the application will be processed. If not, it will be returned without action. Those concentrated animal operations that can alleviate the requirement to have a permit through minor modifications to facilities will be given 60 days to make such modifications prior to processing the permit application. On completion of required modifications to facilities, the permit application will be returned with written confirmation that the concentrated animal operation is in compliance with these Rules.

(d) Methodology for Establishing a Potential for Discharge as a Result of Any Rainfall Event Less Severe Than a 25-year, 24 Hour Event. The staff site evaluation shall include soil characteristics of the feedlot and of the land area lying between the feedlot and the receiving stream; slope and other topographic characteristics of the feedlot and the area between the feedlot, and the receiving stream; and the total drainage area. Using the results of the site evaluation, the staff shall use either the "rational method for determination of runoff" or the "SCS method for determination of runoff" to establish whether a discharge occurs at rainfall events of less than the 24-hour, 25-year rainfall.

(e) Impact Evaluation. Utilizing the results of the site evaluation and the runoff evaluation required in Paragraph (d) of this Rule, the staff shall through mathematical modeling determine whether pollutants discharged as a result of rainfall runoff will cause a violation of water quality standards at flows in existence during the runoff period.

(f) Final Determination and Fact Sheet. Upon a final determination that a permit is not required, the staff shall prepare a fact sheet which delineates the reasons which have been established for requiring the permit, the corrective actions if any necessary to control the discharge of pollutants,

and an implementation schedule for completing such actions. If no corrective actions are required, the fact sheet shall specifically state that none are required and provide the justification for not requiring corrective actions. Upon completion of the fact sheet, the staff shall prepare an NPDES draft permit containing a description of needed corrective actions and a schedule for implementation and process the permit in accordance with Rule .0107-.0108 of this Section.

Statutory Authority G.S. 143-213(24); 143-215; 143-215.1; 143-215.3(a)(1),(4).

.0124 RELIABILITY

All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will insure continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their best intended uses. The reliability measures shall include the following:

- (1) For new facilities with mechanically operated components ~~a design capacity of 10,000 gpd or greater~~, and for any facility designated by the Director, multiple (dual at a minimum) components such as pumps, chemical feed systems, aeration equipment and disinfection equipment: and
- (2) At least one of the following, ~~for facilities whose discharge could impact waters classified as WS, SA, B or SB, and any other facility designated by the Director:~~
 - (a) dual or standby power supply on site, or
 - (b) approval by the Director that the facility:
 - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
 - (ii) has sufficient storage capacity that no potential for overflow exists, and
 - (iii) can tolerate septic wastewater due to prolonged detention, ~~or~~ and
 - (iv) would have de minimus impacts as a result of power failure, ~~or~~ where the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power

source would not be needed or demonstrate other measures which provide comparable assurances that surface waters will not be impacted during power failures;

- (3) For new mechanical facilities whose discharge could impact waters classified as B or SB, the applicants treatment plant must contain parallel units for components in the liquid line (screening, primary sedimentation, biological treatment units, chemical and physical treatment units, clarifiers, disinfection chlorine contact chambers and effluent filters), unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous operation, twenty-four (24) hours, seven (7) days per week, with each shift supervised by at least one operator with certification of no less than one grade below the rated facility classification shall be provided; and
- (5) For all facilities requiring an operator by the Water Pollution Control System Operator Certification Commission, adequate lab facilities shall be provided at the wastewater treatment facility to provide for routine process monitoring; and
- (6) For facilities permitted under this Section, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and
- (7) In order to insure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and
- (8) ~~(4)~~ Compliance with other reliability measures that, in the opinion of the Director, are necessary in a particular case.

143-215.3(a)(1).

.0127 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other discharges that all: Involve the same or substantially similar operations; ~~Discharge the same type of waste~~ Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and In the opinion of the Director are more appropriately controlled by a general permit such as:

- (1) once-through non-contact cooling waters with no biocidal additives;
- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities ~~discharging to water supply (WS III) waters;~~
- (7) tourist gem mines ~~oil terminal storage facilities discharging to waters other than those classified as water supply waters;~~
- (8) sand dredges;

Statutory Authority G.S. 143-214.1; 143-215.1(b);

- (9) trout farms;
- (10) aquifer restoration;
- (11) stormwater discharges;
- (12) other discharges that meet the criteria in Paragraph (a) of this Rule.

(b) ~~Coverage under g~~ General permits will only be granted for discharge into waters classified either WS or SA following review and ~~written~~ approval by the Division of Environmental Health, Department of Environment, Health, and Natural Resources.

~~(e) Coverage under general permits will only be granted where the individual requesting coverage verifies that the management practices required as conditions in each general permit have been installed.~~

~~(d) These general permits apply only to cooling water, and mine dewatering discharges with volumes of less than 10 MGD and to other discharges listed in this Rule with volumes of less than 1 MGD.~~

~~(c) (e)~~ No provision in any general permit issues under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

~~(d) (f)~~ For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using ~~short~~ forms ~~through N~~ described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure will be required.

~~(e) (g)~~ General permits will be effective for a term of five years at the end of which the Division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

~~(f) (h)~~ All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.

~~(g) (i)~~ Anyone engaged in activities covered by the general permit rules but not permitted in

accordance with this Section will be considered in violation in G.S. 143-215.1.

~~(h) (j)~~ Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.

~~(i) (k)~~ The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

- (1) the discharge is a significant contributor of pollutants;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;
- (3) ~~(4)~~ noncompliance with the general permit;
- (4) ~~(2)~~ noncompliance with Division Rules; or
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (6) effluent limitations are promulgated for the point sources covered by the general permit;
- (7) a water quality management plan containing the requirements applicable to such point sources is approved after the issuance of the general permit;
- (8) the Director determines at his own discretion that an individual permit is required; or
- (9) ~~(3)~~ a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.

~~(j) (l)~~ Any interested person may petition the Director to take an action under Paragraph ~~(k)~~ (i) of this Rule to require an individual NPDES permit.

~~(k) (m)~~ General permits may be modified,

terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

Statutory Authority G.S. 143-215(1); 143-215(3)(a)(1).

.0138 AUTHORIZATION TO CONSTRUCT PERMITS

(a) Required. After an NPDES permit has been issued by the Division of Environmental Management in accordance with this Section, construction of wastewater treatment facilities or additions thereto shall not begin until final plans and specifications have been submitted to and ~~written approval~~ an Authorization to Construct has been issued to the permittee by the Division of Environmental Management. If an Authorization to Construct has not been applied for in accordance with the requirements of the NPDES permit during the term of the permit, the permit will be considered void upon expiration and future actions will be considered as a new application.

(b) Application.

- (1) Application for ~~approval of plans and specifications~~ Authorizations to Construct must be made in triplicate on official forms completely filled out, where applicable, and fully executed. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization from the permittee.
- (2) Required sets of plans and specifications:
 - (A) regular projects -- ~~three~~ five sets of detailed plans and specifications,
 - (B) federal and state grants/loan projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;
- (3) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project.
- (4) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available.
- (5) If a Sedimentation and Erosion Control Plan is required by the Division of

Land Resources or their designee, documentation shall be provided verifying that the applicant has developed and submitted to the governing agency the required Plan. If more than one contiguous acre of land is to be uncovered by a project, documentation should be supplied verifying that the applicant has completed an erosion control plan.

- (6) A 110 volt power source and a potable water supply, equipped with backflow prevention, must be available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Section Chief.
- (7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information must be provided as specified in Rule 2H .0205 of this Subchapter.
- (8) A residuals management plan must be submitted for all wastewater treatment systems that generate residuals and must include the following:
 - (A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets the Environmental Protection Agency's criteria for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby adopted by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty six dollars (\$36.00).
 - (B) An evaluation of the residual storage requirements for the treatment facility. A minimum of thirty (30)

days storage will be required on all facilities. Storage shall be calculated based upon average sludge production rate and shall be units that are separate from the treatment system, i.e., not the clarifiers, aeration basins nor sludge digestion facilities. Additional storage may be required based upon the method of final disposal/utilization.

- (C) No authorization to construct will be issued unless the application package includes a commitment from a DEM approved residual disposal/utilization site for the acceptance of the residual and which demonstrates that the DEM approved site has adequate capacity to accept the residuals.
- (9) A construction sequence plan must be submitted with applications for an Authorization to Construct for modification of existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.
- (c) Fees for Authorization to Construct Permits
- (1) For every application for a new or modified construction permit, for facilities with a design flow of greater than 100,000 gallons per day, a nonrefundable application processing fee of four hundred dollars (\$400.00) must be submitted.
- (2) For every application for a new or modified construction permit, for facilities with a design flow of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a nonrefundable application processing fee of two hundred dollars (\$200.00) must be submitted.
- (3) For every application for a new or modified construction permit, for facilities with a design flow of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one hundred dollars (\$100.00) must be submitted.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend 1 rules cited as 19A NCAC 2E .0219 and .0221.

The proposed effective date of this action is December 1, 1992.

Instructions on How to Demand a Public Hearing: A demand for a public hearing must be made in writing and mailed to N.C. Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, Attn: Emily Lee. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: 19A NCAC 2E .0219 - To allow DOT flexibility in its logo sign program to accommodate the traveling public's need to know of services on interstates/freeways by increasing maximum location distance of service from 3 to 6 miles when no qualifying services exist within 3 miles and by allowing bed and breakfast establishments with fewer than 10 units to participate if sign space available. 19A NCAC 2E .0221 - To exclude "GAS", "FOOD", and "LODGING" services located more than 3 miles from the interchange from being able to avoid being removed from a logo sign by a qualifying business that is located within 3 miles of the interchange.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to: N.C. Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, Attn: Emily Lee within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

.0219 ELIGIBILITY FOR PROGRAM

Business signs may be permitted, provided said businesses comply with the following criteria and have a public telephone:

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Statutory Authority G.S. 143-215.1(c)(1).

- (1) The individual business installation whose name, symbol or trademark appears on a business sign shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin. An individual business may apply for additional sign positions on a sign panel provided no qualified applicant is denied space on the sign panel. An individual business, under construction, may participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application.
- (2) The maximum distance that a "GAS" "FOOD", or "LODGING" service can be located from the Interstate, or other fully controlled access highway shall not exceed three miles in either direction via an all-weather road. Where no qualifying services exist within three miles, the maximum distance may be increased to six miles, provided the total travel distance to the business and return to the interchange does not exceed twelve miles. ~~with~~ The maximum distance ~~being ten miles~~ for a "CAMPING" service shall not exceed ten miles in either direction via an all-weather road. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of the Interstate or other fully controlled access highway route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring. If the office (main building) of a business is located more than .2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.
- (3) "GAS" and associated services. Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law;
 - (b) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
 - (c) restroom facilities and drinking water suitable for public use;
 - (d) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs;
 - (e) year-round operation at least 16 continuous hours per day, seven days a week.
- (4) "FOOD". Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) year-round operation at least 11 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), seven days a week;
 - (c) indoor seating for at least 20 persons;
 - (d) public restroom facilities.
- (5) "LODGING". Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) adequate sleeping accommodation consisting of a minimum of 10 units each, including bathroom and sleeping room, except a Lodging business operating as a "Bed and Breakfast" establishment with less than 10 units may participate. "Bed and Breakfast" businesses shall be identified on the Logo signs by a standard message specified by the Department. "Bed and Breakfast" businesses shall only be allowed to participate in the program if the maximum number of qualified Lodging businesses do not request participation in the program and occupy spaces on the Logo sign panels;
 - (c) off-street vehicle parking for each lodging room for rent;
 - (d) year-round operation.

- (6) "CAMPING". Criteria for erection of a business sign on a panel shall include:
- (a) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having adequate water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
 - (b) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
 - (c) adequate parking accommodations;
 - (d) continuous operation, seven days a week during business season;
 - (e) removal or masking of said business sign by the department during off seasons, if operated on a seasonal basis.

authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

0221 FEES

(a) The fee for an initial installation is two hundred fifty dollars (\$250.00) per business sign. Contracts are renewed annually every November . The annual fee is two hundred fifty dollars (\$250.00) per business sign. The initial fee shall cover a one-year period beginning with placement and acceptance of the "business sign" or "logo sign" by the department. The fee for that period of time between the first anniversary of placement and acceptance and the first annual renewal date shall be the prorated portion of the annual fee. Any business which meets the criteria to participate in the program may pay the cost of initial installation of a complete logo sign panel subject to a credit to be determined by the department at the time it receives any fee from a business which later qualifies and elects to participate in the program on the subject panel. The aforesaid payment of the cost of initial installation of a complete logo sign panel in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.

(b) Fees are payable by check or money order and due in advance of the period or service covered by said fee. Failure to pay a charge when due is ground for removal of the sign and termination of the contract.

(d) The department shall not be responsible for damages to business signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), etc., requiring repair or replacement of business sign(s). Applicants in such event shall provide a new or renovated business sign together with payment of a twenty-five dollar (\$25.00) service charge per business sign to the department to replace such damaged business sign(s).

(e) Any participating business, other than "GAS", "FOOD", or "LODGING" service located more than three miles from the Interstate, or other fully controlled access highway, which did not previously participate in the initial cost of the installation of logo sign panels, may by making application to the department and paying the balance of construction costs not previously paid, avoid being removed from this program by applications of other businesses deemed closer to the interchange. Any participating applicant may pay the balance of construction costs for only one logo sign on any sign panel. This payment of the balance of construction costs in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.

(f) Any business, other than "GAS", "FOOD", or "LODGING" service located more than three miles from the Interstate, or other fully controlled access highway, which meets the criteria to participate in the program, by making application to the department and prepaying all construction cost fees for addition to existing logo signs, may avoid being removed from this program by applications of other businesses deemed to be closer to the interchange. Any business applicant may prepay the balance of construction costs for only one logo sign on any sign panel. This prepayment of all construction cost fees in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.

(g) Any participating business located more than three miles from the Interstate, or other fully controlled access highway, that prepaid all construction costs for the initial installation of the logo background sign panels, shall be allowed a reimbursement if dislocated by another qualifying, participating business. This reimbursement amount will be determined by the Department, based on the life-cycle costs of the logo signs and the in-service time the business logo was displayed.

*Authority G.S. 136-89.56; 136-137; 136-139;
143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750,
Subpart A; 23 U.S.C. 131(f).*

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

AGRICULTURE

Structural Pest Control Division

NCAC 34 .0406 - Spill Control	RRC Objection 07/16/92
NCAC 34 .0603 - Waivers	RRC Objection 07/16/92
NCAC 34 .0902 - Financial Responsibility	RRC Objection 07/16/92

ECONOMIC AND COMMUNITY DEVELOPMENT

ABC Commission

NCAC 2R .0702 - Disciplinary Action of Employee	RRC Objection 05/21/92
Rule Returned to Agency	06/18/92
NCAC 2R .1205 - Closing of Store	RRC Objection 05/21/92
Agency Repealed Rule	Obj. Removed 06/18/92
NCAC 2S .0503 - Pre-Orders	RRC Objection 05/21/92
Rule Returned to Agency	06/18/92

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

5A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	RRC Objection 05/21/92
Rule Returned to Agency	06/18/92

Departmental Rules

5A NCAC 1J .0204 - Loans from Emergency Revolving Loan Accounts	RRC Objection 06/18/92
5A NCAC 1J .0302 - General Provisions	RRC Objection 06/18/92
5A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare	RRC Objection 06/18/92

Environmental Health

5A NCAC 18A .3101 - Definitions	RRC Objection 06/18/92
Agency Revised Rule	Obj. Removed 06/18/92

Environmental Management

5A NCAC 2O .0302 - Self Insurance	RRC Objection 06/18/92
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Health: Epidemiology

5A NCAC 19H .0601 - Birth Certificates	RRC Objection 06/18/92
Agency Revised Rule	Obj. Removed 06/18/92

Soil and Water Conservation

<i>15A NCAC 6E .0007 - Cost Share Agreement</i>	<i>RRC Objection</i>	<i>06/18/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10E .0004 - Use of Areas Regulated</i>	<i>RRC Objection</i>	<i>06/18/92</i>
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HUMAN RESOURCES

Aging

<i>10 NCAC 22R .0301 - Definitions</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>07/16/92</i>

Day Care Rules

<i>10 NCAC 46D .0305 - Administration of Program</i>	<i>RRC Objection</i>	<i>06/18/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>
<i>10 NCAC 46D .0306 - Records</i>	<i>RRC Objection</i>	<i>06/18/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

Mental Health: General

<i>10 NCAC 14M .0704 - Program Director</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

INSURANCE

Departmental Rules

<i>11 NCAC 1 .0106 - Organization of the Department</i>	<i>RRC Objection</i>	<i>06/18/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

Multiple Employer Welfare Arrangements

<i>11 NCAC 18 .0019 - Description of Forms</i>	<i>RRC Objection</i>	<i>06/18/92</i>
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Seniors' Health Insurance Information Program

<i>11 NCAC 17 .0005 - SHIP Inquiries to Insurers and Agents</i>	<i>RRC Objection</i>	<i>06/18/92</i>
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LICENSING BOARDS AND COMMISSIONS

Dietetics/Nutrition

<i>21 NCAC 17 .0014 - Code of Ethics for Professional Practice/Conduct</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

STATE PERSONNEL

Office of State Personnel

<i>25 NCAC 1E .1301 - Purpose</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>25 NCAC 1E .1302 - Policy</i>	<i>RRC Objection</i>	<i>07/16/92</i>

RRC OBJECTIONS

<i>NCAC 1E .1303 - Administration</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1E .1304 - Qualifying to Participate in Voluntary Shared Leave Prgm</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1E .1305 - Donor Guidelines</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1E .1306 - Leave Accounting Procedures</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1H .0603 - Special Recruiting Programs</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>
<i>NCAC 1I .1702 - Employment of Relatives</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1I .1903 - Applicant Information and Application</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1I .2401 - System Portion I: Recruitment, Selection, & Advancement</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1I .2402 - System Portion II: Classification/Compensation</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1I .2403 - System Portion III: Training</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1I .2404 - System Portion IV: Employee Relations</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1I .2405 - System Portion V: Equal Emp Oppty/Affirmative Action</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1I .2406 - System Portion VI: Political Activity</i>	<i>RRC Objection</i>	<i>07/16/92</i>
<i>NCAC 1J .1005 - Eligibility for Services</i>	<i>RRC Objection</i>	<i>05/21/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/18/92</i>

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle) Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

KEY TO CASE CODES

BC	Alcoholic Beverage Control Commission	DST	Department of State Treasurer
DA	Board of Dental Examiners	EDC	Department of Public Instruction
ME	Board of Medical Examiners	EHR	Department of Environment, Health, and Natural Resources
MS	Board of Mortuary Science	ESC	Employment Security Commission
OG	Board of Geologists	HAF	Hearing Aid Dealers and Fitters Board
ON	Board of Nursing	HRC	Human Relations Committee
OO	Board of Opticians	IND	Independent Agencies
FA	Commission for Auctioneers	INS	Department of Insurance
OM	Department of Economic and Community Development	LBC	Licensing Board for Contractors
PS	Department of Crime Control and Public Safety	MLK	Milk Commission
SE	Child Support Enforcement	NHA	Board of Nursing Home Administrators
OAG	Department of Agriculture	OAH	Office of Administrative Hearings
OCC	Department of Community Colleges	OSP	Office of State Personnel
OCR	Department of Cultural Resources	PHC	Board of Plumbing and Heating Contractors
OCS	Distribution Child Support	POD	Board of Podiatry Examiners
DHR	Department of Human Resources	SOS	Department of Secretary of State
DOA	Department of Administration	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOJ	Department of Justice	WRC	Wildlife Resources Commission
DOL	Department of Labor		
DSA	Department of State Auditor		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Anne R. Gwaltney, Milton H. Askew, Jr. and Anna L. Askew v. EHR and Pamlico County Health Department	89 DHR 0699	Reilly	07/17/92
CSX Transportation, Inc. v. Department of Environment, Health, & Natural Resources	90 EHR 0628	Reilly	07/17/92
Bruce Keeter v. Beaufort County Health Department	90 EHR 0666	Morgan	07/28/92
JHY Concord, Inc. v. Department of Labor	90 DOL 1421	Morgan	07/28/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Lick Fork Hills, Inc., Marion Bagwell, President v. Department of Environment, Health, & Natural Resources	91 EHR 0023	Morgan	07/28/92
Albert J. Johnson v. N.C. Victims Compensation Commission	91 CPS 0038	Morgan	07/28/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0257	West	06/30/92
Wade Charles Brown, Jr. v. N.C. Crime Victims Compensation Commission	91 CPS 0345	Chess	07/08/92
Charles E. Roe v. Department of Environment, Health, & Natural Resources	91 OSP 0520	Nesnow	07/23/92
Lisa M. Reichstein v. Office of Student Financial Aid, East Carolina University	91 OSP 0662	Nesnow	06/24/92
Alcoholic Beverage Control Commission v. Daniels Investments, Inc., t/a Leather & Lace - East 4205 Monroe Road. Charlotte, N.C. 28205	91 ABC 0799	Mann	07/14/92
ACT-UP Triangle (AIDS Coalition to Unleash Power Triangle, Steven Harris, and John Doe v. Commission for Health Services of the State of N.C., Ron Levine, as Assistant Secretary of Health and State Health Director for EHR of the State of N.C., William Cobey, as Secretary of EHR of the State of N.C., Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the N.C. EHR, Wayne Bobbitt, Jr., as Chief of the HIV/STD Control Branch of the N.C.EHR	91 EHR 0818	Becton	07/08/92
Jane C. O'Malley, Melvin L. Cartwright v. EHR and District Health Department Pasquotank- Perquimans-Camden-Chowan	91 EHR 0838	Becton	07/02/92
Grotgen Nursing Home, Inc., Britthaven, Inc. v. Certificate of Need Section, Div of Facility Svcs, DHR	91 DHR 0964 91 DHR 0966	Nesnow	07/06/92
Ramona S. Smith, R.N. v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 DST 0984	Chess	06/18/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Walter McGlone v. DHR, Division of Social Services, CSE	91 CSE 1030	Morrison	07/13/92
William Oscar Smith v. DHR, Division of Social Services, CSE	91 CSE 1042	Gray	07/24/92
William Watson v. DHR, Division of Social Services, CSE	91 CSE 1047	Becton	07/08/92
Catawba Memorial Hospital v. DHR, Div of Facility Svcs, Certificate of Need Section and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. and Thoms Rehabilitation Hospital Health Services Corp. and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. v. DHR, Div of Facility Svcs, Certificate of Need Section and Thoms Rehabilitation Hospital Health Services Corp. and Catawba Memorial Hospital	91 DHR 1061 91 DHR 1087	Reilly	07/13/92
Wade A. Burgess v. DHR, Division of Social Services, CSE	91 CSE 1114	Gray	07/01/92
Harry L. King v. Department of Transportation	91 OSP 1162	Morgan	07/13/92
Gilbert Lockhart v. DHR, Division of Social Services, CSE	91 CSE 1178	Morrison	07/30/92
Isaac H. Galloway v. DHR, Division of Social Services, CSE	91 CSE 1190	Reilly	06/30/92
Russell A. Barclift v. DHR, Division of Social Services, CSE	91 CSE 1207 92 CSE 0275	Reilly	06/30/92
Herman Edward Main II v. DHR, Division of Social Services, CSE	91 CSE 1225	Nesnow	07/07/92
Albert Louis Stoner III v. DHR, Division of Social Services, CSE	91 CSE 1244	Gray	07/01/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
James E. Greene v. DHR, Division of Social Services, CSE	91 CSE 1245	Nesnow	07/14/92
Joseph W. Harris v. DHR, Division of Social Services, CSE	91 CSE 1247	Morgan	07/28/92
Rodney Powell v. DHR, Division of Social Services, CSE	91 CSE 1257	Morgan	07/29/92
Floyd L. Rountree v. DHR, Division of Social Services, CSE	91 CSE 1275	Morgan	07/22/92
City-Wide Asphalt Paving, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1360	Chess	07/01/92
Alcoholic Beverage Control Commission v. Tre Three, Inc., T/A Crackers, Airport Rd., Rockingham, NC 28379	91 ABC 1372	Chess	07/07/92
Alcoholic Beverage Control Commission v. Rode Enterprises, Inc., T/A Jordan Dam Mini Mart	91 ABC 1388	Gray	07/30/92
Donald R. Allison v. DHR, Caswell Center	91 OSP 1427	Reilly	06/30/92
Lavern Fesperman v. Mecklenburg County	92 OSP 0030	Chess	07/17/92
Ronnie Lamont Donaldson v. Sheriffs' Education & Training Standards Commission	92 DOJ 0092	Reilly	07/27/92
Peggy N. Barber v. The University of North Carolina at Chapel Hill	92 OSP 0120	Reilly	07/13/92
Alcoholic Beverage Control Commission v. John Wade Lewis, t/a Tasty Grill	92 ABC 0145	Nesnow	07/15/92
Licensing Board for General Contractors v. Wright's Construction, Inc. (Lic. No. 23065)	92 LBC 0172	Gray	07/31/92
Herbert Hines Jr., H & H v. Alcoholic Beverage Control Commission	92 ABC 0189	Becton	07/22/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Town of Denton v. Department of Environment, Health, & Natural Resources	92 EHR 0241	Reilly	07/30/92
Alcoholic Beverage Control Commission v. Byrum's of Park Road, Inc., T/A Byrum's Restaurant	92 ABC 0252	Gray	07/30/92
Alcoholic Beverage Control Commission v. Leo's Delicatessen #2, Inc., T/A Leo's #2	92 ABC 0255	Gray	07/30/92
Clifton R. Johnson v. O'Berry Center, Department of Human Resources	92 OSP 0381	West	07/08/92
Southeastern Machine & Tool Company, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0386	Becton	07/20/92
Northview Mobile Home Park v. Department of Environment, Health, & Natural Resources	92 EHR 0507	Reilly	07/13/92
Alice Hunt Davis v. Department of Human Resources	92 OSP 0526	West	07/16/92
John W. Surles v. N.C. Crime Victims Compensation Commission	92 CPS 0595	Reilly	07/13/92
Stauffer Information Systems v. Department of Community Colleges and the N.C. Department of Administration and The University of Southern California	92 DOA 0666	West	07/08/92
L. Stan Bailey v. Chancellor Moran and UNC-Greensboro	92 OSP 0679	West	07/10/92
Arnold McCloud T/A Club Castle v. Alcoholic Beverage Control Commission	92 ABC 0681	Morrison	07/25/92
Joyce Faircloth, T/A Showcase Lounge v. Alcoholic Beverage Control Commission	92 ABC 0713	Morrison	07/25/92

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 OSP 0520

CHARLES E. ROE,

Petitioner

vs.

N. C. DEPARTMENT OF ENVIRONMENT,
HEALTH AND NATURAL RESOURCES,

Respondent

RECOMMENDED DECISION

The above-captioned matter was heard before Dolores O. Nesnow, Administrative Law Judge, on November 19, 20, 21, and 25, 1991, in Raleigh, North Carolina.

APPEARANCES

For Petitioner:

Reagan Weaver, Esq.
Weaver & McBennett
P.O. Box 25096
Raleigh, N. C. 27611
ATTORNEY FOR PETITIONER

For Respondent:

Edwin L. Gavin, II
Associate Attorney General
N. C. Department of Justice
P.O. Box 629
Raleigh, N. C. 27602-0629
ATTORNEY FOR RESPONDENT

ISSUES

1. Was Petitioner's conduct unacceptable personal conduct constituting just cause for dismissal?
2. Did Respondent follow proper procedure in terminating Petitioner's employment?
3. Did Respondent violate Petitioner's right to freedom of speech?

STATUTE IN ISSUE

N. C. Gen. Stat. 126-35

EXHIBITS

For Petitioner: P#1, 3, 4, 5, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22 and 23.

For Respondent: R#1, 2, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 20A, 21, 24, 25, 25A, 27, 28, 29, 30, 35, 36, and 38.

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner was a full-time employee of the North Carolina Department of Environment, Health and Natural Resources (EHNR) for 14 years up to his dismissal for unacceptable personal conduct on March 1, 1992.
2. Petitioner was a permanent State employee and was subject to the provisions of the State Personnel Act.
3. Petitioner was the Director of the Natural Heritage Program (Program), which is part of the Planning and Assessment Section (Section) of the Division of Parks and Recreation (Division) in EHNR.
4. The Program has as its purpose the inventory of locations of natural areas including habitats for rare and endangered species; the providing of information to influence land use; the planning of protection of critical natural areas, the establishment of a state registry of natural areas and implementation of binding preservation agreements with landowners.
5. On June 15, 1978, Petitioner received a letter of "Personnel Action" from Jim Stevens, Jr., then the Director of the Division, for calling outside the Division to complain about a personnel decision and for sending out the May 1978 bi-weekly report before it was distributed internally.
6. In 1985, then Division Director Wes Davis issued a memorandum enumerating those supervisors who had authority to sign memos of varying degrees of importance and also establishing a "reading file" for copies of all correspondence.
7. On April 2, 1987, Petitioner wrote a memorandum to the Respondent's Division of Personnel (Personnel) asserting that they had unilaterally cancelled a Duke Fellows intern position for the Program and accusing Personnel of insensitive, illogical, and arbitrary behavior and of threatening the survival of the Duke Fellows program.
8. After delivering the memorandum to Personnel, Petitioner requested that it be destroyed. However, Petitioner subsequently gave a copy to an officer of Duke University.
9. In April of 1987, Petitioner received a final written warning on the basis of personal conduct from Director Davis for the "Duke Fellows" memorandum. The description of the infraction was as follows: "(s)ending internal memo to outside cooperating institution without knowledge of, or clearance from, supervisor. Lodging a complaint external to Division with others without first sharing internally."
10. For a period of one year beginning in June of 1988, Dr. Frank Boteler, Petitioner's supervisor, initiated a policy whereby he would review all correspondence of his staff.
11. After that one year period, that policy was relaxed. However, all major activities were still required to be brought to Dr. Boteler's attention.
12. Additionally, Dr. Boteler continued to require that Petitioner's correspondence on major activities, including major concerns or problems, still be brought to him for signature.
13. In July of 1988, Dr. Boteler disciplined Petitioner for sending out the Program's grant proposal

before the Division Director had seen and prioritized all the grant proposals to be submitted at that time. Petitioner received a 3-day suspension without pay.

14. Dr. Boteler also counselled Petitioner and the Division Director issued an order that all correspondence with the Natural Heritage Trust Fund Board, the Board which made policy decisions for Petitioner's Program, was to go through his office.

15. Petitioner grieved this disciplinary action but was unsuccessful at all 3 steps of the internal grievance procedure.

16. In 1989, the Chairman of the Natural Heritage Trust Fund Board asked the Secretary of EHNR to reconsider Petitioner's final written warning.

17. Subsequently, on September 26, 1989, the warning was removed from his personnel file by Lynn Muchmore, an official with Respondent agency, in a memo which stated, "I am satisfied that disciplinary measures have successfully directed Mr. Roe's attention to the relevant standard of conduct."

18. In January of 1991, Dr. Phillip McKnelly, the current Division Director, wrote a memorandum concerning the Duraleigh Road connection which was a matter of some concern at that time.

19. In March of 1991, Petitioner also wrote a memorandum concerning the Duraleigh Connection.

20. Subsequently, Doug Lewis, an employee of the Division, came to Dr. McKnelly with both memoranda and stated that he was confused and did not know which memo represented the Division's position. Dr. McKnelly told Mr. Lewis that his January memo was the Department's position.

21. Petitioner was not disciplined for the March 1991 memo.

22. Petitioner's WPPR for 10/88-9/89 notes Petitioner's "weaknesses as seeking autonomy of his program - conflicts with Directorate at times in regard to this." The recommended action, in pertinent part, was noted as "Route drafts of most correspondence through Section Chief."

23. Petitioner's WPPR for 1989-90, notes that Petitioner, whenever he had the opportunity, avoided representing the program as part of a larger whole. At that time, Dr. Boteler told Petitioner not to continue in that practice. Dr. Boteler also told Petitioner not to exclude his chain of command from the Program, and in preparing correspondence, to identify the Program as a part of the Division and EHNR.

24. Petitioner's WPPR for 4/90-9/90, showed Petitioner's rating as excellent and under Supervisors comments noted: "Continues to do excellent job on 'breaking new ground' to pursue grants and contracts and administers them. Excellent support work to Land Trust movement. Needs to improve staffing function to Rec. and Nat. Heritage Trust be working through DPP and DEHNR chain of command."

25. At that time, Dr. Boteler further directed Petitioner not to send strong letters himself, but to let Dr. Boteler send them.

26. In January of 1991, Petitioner's WPPR notes: "Employee does not always clearly relay DPR policies or EHNR decision-making processes to Recreation Natural Heritage Trust Fund Board. Instead seems to support their distrust of ethics in State government."

27. Earlier in 1990, the policy was reiterated and expanded which required that all memos or letters sent outside the Department be listed in the reading log and a copy of the correspondence placed in the reading file. A Staff Directive outlining this procedure was sent to every staff member.

28. On March 14, 1991, Petitioner wrote a letter to Bjorn Dahl, Forest Supervisor, National Forests North Carolina, U. S. Forest Service.
29. The letter was sent to Mr. Dahl by Petitioner, who typed, copied and mailed it himself. The letter was 3-1/2 single-spaced pages, was typed on Respondent's letterhead, and used the plural "we" in identifying the source of the criticism.
30. The Division had a long term working relationship with the U.S. Forest Service which included contractual agreements and Memorandum of Understandings (MOUs).
31. The letter criticized the United States Forest Service for the dismissal of a probationary employee, Karin Heiman, and for the Forest Service's course of action in protecting endangered and threatened species on Forest Service lands in North Carolina.
32. The letter was strongly worded and expressed deepest concern and shock over the dismissal of Ms. Heiman. The letter related her general reputation for superior performance and questioned the Forest Service's commitment to botanical resource conservation of federally and State-listed endangered and threatened plant species in the context of the Forest Service's timber management programs.
33. The letter also asserted that the Forest Service had delayed the funding of State-run rare species and natural area surveys for the Highlands and French Broad districts and proposed to discontinue State work toward nomination of certain Forest Service lands to the Registry of Natural Heritage Areas and national forest special interest management areas.
34. The letter further stated that the Forest Service had refused to make available to its own personnel the revised list of proposed endangered and threatened species on national forest lands and stated that, without a trained botanist, the Forest Service would be unable to use new data to be provided by the State on known occurrences of rare species and exceptional natural communities on Forest Service lands.
35. The letter linked these problems and Ms. Heiman's dismissal to support an assertion of Forest Service disinterest in biological diversity and endangered species protection.
36. Additionally, the letter asked for an explanation of Ms. Heiman's dismissal, and evidence of assurance of protection of most sensitive and significant environmental resources on Forest Service lands.
37. Copies of the letter were prepared and sent by Petitioner to the Plant Conservation Program of the North Carolina Department of Agriculture, the Non-Game and Endangered Species Program of the Wildlife Resources Commission, the Nature Conservancy, and the United States Fish and Wildlife Service.
38. The Petitioner did not prepare a copy for any of his supervisors, nor did Petitioner list Respondent on the copy distribution list.
39. Before mailing the letter, Petitioner did not show a copy to or discuss the letter with his supervisor, Dr. Boteler or with Division Director McKnelly.
40. Petitioner did not discuss his concerns with Dr. Boteler or Dr. McKnelly before sending the letter.
41. Petitioner did not enter a copy of the letter in the correspondence log, or file a copy of the letter in the reading file.
42. Dr. McKnelly first became aware of the existence of the letter ten days later on March 22,

when Mr. Dahl, who was very disturbed by the letter, phoned to discuss it.

43. Dr. McKnelly told Mr. Dahl that he had no knowledge of the letter and asked Mr. Dahl to send him a copy. Mr. Dahl sent the copy as requested.

44. After the March 22 phone conversation with Mr. Dahl, Dr. McKnelly asked Dr. Boteler if he had seen or was aware of the letter. Dr. Boteler informed Dr. McKnelly that he, too, had no knowledge of it.

45. Dr. McKnelly also asked Dr. Boteler to check whether or not the letter had been placed in the reading file. Dr. Boteler reported back that it had not.

46. Dr. Boteler subsequently read the letter and made the determination that it was inappropriate because it had gone to a high level person, dealt with important issues, impliedly represented the Division's position on various issues, and included veiled threats.

47. He was also disturbed that the Petitioner had told people outside the agency about his concerns but had not expressed them to Dr. McKnelly or Dr. Boteler.

48. After Dr. McKnelly saw the letter, he identified dismissal as a possible action and discussed this with Dr. Ernest Carl, one of two Deputy Secretaries of Respondent agency.

49. Dr. Carl had authority to authorize Dr. McKnelly to carry out the requested disciplinary action.

50. Dr. McKnelly could not carry out the action without prior approval from Dr. Carl.

51. Dr. Carl had power to withdraw his authorization for this proposed disciplinary action.

52. Dr. McKnelly had authority not to sign the dismissal memo after the Predissmissal Conference.

53. Dr. McKnelly decided to, and, in fact, did conduct a Predissmissal Conference with Petitioner at approximately 3:45 p.m. on March 26, 1991. Dr. Boteler was present at the predissmissal conference.

54. On March 26, after meeting with Dr. McKnelly, and approximately contemporaneous to the Predissmissal Conference, Dr. Carl attempted to contact a number of persons by phone to attempt to obtain their reactions to the proposed dismissal.

55. In the Predissmissal Conference, Dr. McKnelly and the Petitioner discussed the letter which Petitioner had sent to Bjorn Dahl. Dr. McKnelly had not yet signed the Personnel Action Memorandum (Dismissal Letter).

56. Dr. McKnelly asked Petitioner if he had written the letter to Mr. Dahl. He also asked if petitioner had logged the letter in the correspondence log or placed the letter in the reading file. Additionally he asked if Petitioner was familiar with the terms of the previous written warning, and if Petitioner had received permission from his chain of command to mail the letter.

57. Petitioner answered he had written the letter; had neither logged it nor placed it in the reading file; that he was familiar with the terms of the written warning; and that he had received no permission to mail the letter.

58. Dr. McKnelly then advised Petitioner that the conference was his opportunity to justify his action and to explain why he should not be dismissed.

59. Dr. McKnelly testified, and it is found as fact, that he would not have signed the Memorandum Dismissal if Petitioner had presented any satisfactory explanation for the letter.

60. Petitioner asked if they couldn't just go back to the 1987 order that he was not to write anything without review. Dr. McKnelly said he did not think Petitioner would be able to stick to it for long.

61. The Predismissal Conference lasted more than one hour. In the conference the Petitioner never asserted any authority to send the letter to Mr. Dahl without the knowledge or clearance of Dr. Boteler, or without first sharing it internally within the Agency.

62. At the conclusion of the conference, Dr. McKnelly determined that he would dismiss Petitioner from his position. Dr. McKnelly then signed the dismissal letter and obtained Petitioner's signature on it.

63. After the Conference, Dr. Boteler offered to give Petitioner a ride home. Petitioner asked him, "Why are they out to get me?" Dr. Boteler told Petitioner that he had probably made the single greatest contribution to conservation in the State but that the letter was "wrong, simply wrong."

64.22 The reasons for the termination, as stated by Dr. McKnelly in the termination memorandum were that Petitioner had:

Sent a letter to an outside cooperating institution without knowledge of, or clearance from, his supervisor; and lodged a complaint external to the Division with others without first sharing internally.

65. This commentary was inserted on the Personnel Action Memorandum, which was a form memo, under the category entitled, "Corrective Action" instead of the next category which was entitled, "Supervisor's Description of Infraction."

66. Petitioner testified that it would have taken too long to explain the problem to everyone and get permission to send the letter. He did not think the letter would cause as much of a reaction as it did.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

Just Cause

1. A permanent employee subject to the State Personnel Act may be discharged from his position only for just cause. Just cause may consist of job performance or personal conduct.

While many infractions fall clearly within one of these two categories, some require a closer analysis before a determination can be made between job performance, which requires an established series of warnings as a condition precedent to dismissal, and personal conduct, which does not.

The Petitioner had a long history of counselling concerning the issue of unauthorized critical letters or memos being sent outside the agency without approval. It is the opinion of the undersigned that this letter was not an instance of unfamiliarity with protocol or an isolated instance of poor judgment. It is the opinion of the undersigned that Petitioner acted either intentionally or impulsively when he sent the letter to Mr. Dahl.

2. Because the letter was sent to a high level official of a federal agency with which the Respondent had established a formal working relationship, and because the letter strongly expressed a number of concerns

and criticisms, was sent without a review or approval of Petitioner's supervisors, and purported to represent the views of the Respondent which the Respondent had not authorized, it is the opinion of the undersigned that the letter sent from Petitioner to Bjorn Dahl constitutes personal misconduct.

3. Further, given *arguendo* that the letter was the only incident of its type committed by a 14 year supervisory employee, it is the opinion of the undersigned that this lengthy, highly critical letter going to an outside agency addressed to a high level administrator, standing alone, would amount to personal misconduct.

4. It is further concluded that the Respondent had just cause to dismiss the Petitioner for this personal conduct violation.

Dismissal Procedure

5. The Memorandum of Dismissal, a form memorandum with sections to be filled in by Supervisors, listed the reason for Petitioner's dismissal under the section entitled "Corrective Action" instead of the section entitled "Supervisor's description of Infraction(s)". It is the undersigned's opinion that this entry under the wrong heading is not procedural error sufficient to warrant a finding of a violation of Petitioner's procedural due process rights.

6. Additionally, Petitioner asserts that the reasons given for his dismissal made reference to sending a letter outside the division without the knowledge or clearance of the supervisor but did not specifically list the letter to Bjorn Dahl by name, date, or other identifying criteria. The Predissmissal Conference, however, lasted for more than an hour and centered around a discussion of the Bjorn Dahl letter. It is the opinion of the undersigned that the dismissal letter stated with sufficient particularity the cause for Petitioner's dismissal and the absence of a specific reference to the Bjorn Dahl letter by name and date was not a sufficient violation of the Petitioner's procedural due process rights such as to warrant a reversal of Respondent's action.

7. The Letter of Dismissal was handed to Petitioner at the close of the pre-dismissal conference. When an employee is being dismissed for personal misconduct, the requirement of timely written notice has been met where the written statement of the reasons for dismissal is given to the employee simultaneously with his dismissal.

8. Petitioner further asserts that since Dr. Carl telephoned people to discuss Petitioner's dismissal at or about the time Petitioner was engaged in his predissmissal conference, these facts indicate that Dr. Carl and Dr. McKnelly had made up their minds to dismiss Petitioner regardless of anything Petitioner would say during the Predissmissal Conference. The undersigned does not agree.

Although the evidence does not clearly establish how many calls were made by Dr. Carl, to whom they were made, or the exact time that they were made, the evidence does tend to indicate that Dr. Carl may have made one or more calls contemporaneously with Petitioner's predissmissal conference. While this practice is ill advised, it is important to note that Dr. McKnelly had not signed the dismissal memorandum and did not do so until the conclusion of the predissmissal conference. Because of Petitioner's exemplary record, had Petitioner presented any explanation, justification, legitimate excuse or mistake in the facts as Dr. McKnelly understood them, Dr. McKnelly would not have signed the dismissal memorandum and the dismissal would not occur.

It is, therefore, concluded that any telephone communications by Dr. Carl contemporaneous with Petitioner's predissmissal conference did not indicate a decision to terminate Petitioner which was inexorable.

9. It is concluded that Respondent followed proper procedure in the dismissal of Petitioner.

Freedom of Speech

10. The N. C. Court of Appeals recently addressed the issue of freedom of speech in public employment. Howell v. Town of Carolina Beach, N.C. App., 16 June, 1992.

A public employee does not relinquish First Amendment rights to comment on matters of public concern by virtue of his or her public employment. However, the test for determining if an employee's freedom of speech has been violated is (a) a determination of whether the subject is one of legitimate public concern and (b) if so, a balancing of the employer's interests in fulfilling its duties and responsibilities in managing its business without impediments or disruptive activity against the employee's interest in expressing his or her opinion freely.

The test for determining if a matter is one of public concern is whether the matter is one in which free and open debate is vital to informed decisionmaking by the electorate. The employee's speech must be examined in light of the content, form, and context of a given statement to determine whether it is a matter of public concern.

While concern for the environment is clearly an issue of legitimate public concern, the Petitioner's letter to Mr. Dahl addressed many concerns of the working relationship between Respondent and the U.S. Forest Service, the firing of an employee, and a criticism of past and future behavior by the U.S. Forest Service. The letter moved far beyond the area of public concern and entered into the specifics of the relationship between the Respondent and the United States Forest Service in North Carolina.

1. It is concluded that most, if not all, of the matters raised in the letter to Mr. Dahl transcended those matters which could be construed to be of public concern.

Additionally, even given arguendo that some of the matters raised were matters of public concern, the content, form and context of Petitioner's speech indicate that Petitioner did not "speak" as a private citizen, but spoke in his capacity as Head of the Natural Heritage Program. He further purported to speak not only for his program but for his Section and Division.

12. It is concluded that Petitioner was not engaged in an exercise of his freedom of speech right when he wrote the letter to Mr. Dahl and Respondent, therefore, did not violate Petitioner's right to freedom of speech when it took adverse personnel action against Petitioner.

Based upon the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATION

That the Personnel Commission uphold the Respondent's dismissal of Petitioner from his position of employment.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

CONTESTED CASE DECISIONS

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 23rd day of June, 1992.

Dolores O. Nesnow
Administrative Law Judge

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