

The **NORTH CAROLINA REGISTER**

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ISSUE DATE: June 15, 1994

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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 in 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 or 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 sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 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 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifty 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. Free renewal subscriptions for 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

(April 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
9:11	09/01/94	08/11/94	08/18/94	09/16/94	10/03/94	10/20/94	12/01/94
9:12	09/15/94	08/24/94	08/31/94	09/30/94	10/17/94	10/20/94	12/01/94
9:13	10/03/94	09/12/94	09/19/94	10/18/94	11/02/94	11/21/94	01/01/95
9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

** An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*** 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.*

EXECUTIVE ORDER NO. 49
FISCAL NOTES ON ADMINISTRATIVE RULES AFFECTING LOCAL
GOVERNMENTS

WHEREAS, GS 150B-21.4(b) requires analysis of proposed administrative rules for their affect on local revenues; and

WHEREAS, the actions of state agencies can have profound but unanticipated effects on local governments' budgets; and

WHEREAS, the Governor of North Carolina has pledged to work closely with local elected officials to forge a strong state-local government partnership; and

WHEREAS, the Governor wishes to establish a procedure to provide local governments with broader opportunities for input on proposed administrative rules which may impose additional costs at the local level; and

WHEREAS, all state agencies must take into account, as they develop administrative rules affecting local governments, the potential costs of implementing these rules;

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

Section 1. Role of the Governor's Office.

The Office of the Governor shall:

1. Implement a process to ensure any rule submitted for the Governor's review includes a fiscal note on its effects on local government; and
2. Request the Office of Administrative Hearings revise its form OAH-2A to provide additional information on the fiscal effects of proposed rule actions on local governments.

Section 2. Responsibility of All State Agencies.

1. Each department shall designate a staff member reporting directly to the department head who will be responsible for the following:

- a. Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note as required by G.S. 150B-21.4(b) has been completed; and
- b. Consultation with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to assure that these organizations have received copies of all fiscal notes prior to the publication of proposed rules in the North Carolina Register.

2. Each department is directed to consult with representatives of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities and other appropriate organizations to determine which local governments and local agencies could be affected by any proposed rule action.

3. Each department is directed to consult with an appropriate sample of city and/or county managers (with assistance available from the North Carolina Association of County Commissioners and the North Carolina League of Municipalities) at the earliest possible point in analyzing the fiscal effect of proposed rule actions and in developing and drafting rules and rule changes that:

- a. Could require local governments including counties, cities, school administrative units and other local agencies funded by or through any of these to carry out additional or modified responsibilities, or
- b. Could increase the cost of providing or delivering a public service funded in whole or in part by any local government, or
- c. Could otherwise affect the expenditures or revenues of a unit of local government.

4. Each department is directed to send a copy of the final fiscal note to the Office of State Budget and Management for compilation as noted in Section 4 of this Order.

5. Each department is further directed to compile a schedule of the administrative rules and amendments expected to be proposed during the next state fiscal year. The schedule shall be provided to the Office of State Budget and Management in a manner proposed by OSBM and within a time frame which will permit

the Budget Office to provide this information to the Governor, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities, as is specified in Section 4 of this Order.

Section 3. Minimizing Effects of Rules on Local Budgets.

Recognizing that rules imposed after the adoption of local budgets can significantly affect local fiscal condition, the departments are hereby directed to consider the timing for implementation of proposed rules as part of the preparation of the fiscal note.

In cases where the computation of costs in the fiscal note indicates the proposed rule action will disrupt the budget process as set out in Article 3 of Chapter 159 of the General Statutes (the Local Government Budget and Fiscal Control Act), the departments are hereby directed to establish the effective date of the rule or action as:

July 1 of the fiscal year following publication in the North Carolina Register, but not less than six months following such publication.

However, should conditions beyond the control of state departments compel a department to adopt rules with other than the July 1 effective date, the department shall include a statement with the fiscal note explaining the reason(s) for the deviation from this standard.

Section 4. Duties of the Office of State Budget and Management.

The Office of State Budget and Management shall be responsible for the following duties:

1. Compiling an annual summary of the projected fiscal impact on local governments of state administrative rules adopted during the preceding fiscal year;
2. Compiling from the departments the schedules of anticipated rule actions for the upcoming state fiscal year; and
3. Providing the Governor, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with a copy of the above mentioned summary and schedules no later than March 1 of each year.

Section 5. Effect on Other Executive Orders.

All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 17th day of May, 1994.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alarm Systems Licensing Board intends to amend rule cited as 12 NCAC 11 .0202; adopt rules cited as 12 NCAC 11 .0123, .0210.

The proposed effective date of this action is September 1, 1994.

The public hearing will be conducted at 2:00 p.m. on June 30, 1994 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, N.C. 27626-0500.

Reason for Proposed Action:

12 NCAC 11 .0123 - Attempts to protect the public by requiring monitoring companies and their agents to disclose basic information to consumers who have contracted with alarm companies for alarm monitoring services.

12 NCAC 11 .0202 - Changes the experience requirements needed to obtain an alarm systems business license. Current requirements are technically oriented. The Board wishes to delete the technical requirements in order to allow owners or managers the opportunity to hold a license.

12 NCAC 11 .0210 - Will require each alarm systems business office to employ an individual who is licensed with the N.C. Board of Electrical Contractors.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The Record of Hearing will be open for receipt of written comments through July 15, 1994. Written comments must be delivered to the Private Protective Services Board, 3320 Old Garner Road, Raleigh, N.C. 27626-0500.

CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

.0123 CONSUMER DISCLOSURE REQ. FOR THIRD-PARTY MONITORING CONTRACTS

(a) If a firm, association, or corporation installs

or services an alarm system and acts as a third-party agent for an alarm monitoring company by executing a contract between the consumer and a monitoring company, the agent alarm company shall disclose to the consumer the fee for alarm monitoring, the name, address, and telephone number of the monitoring company. For the purpose of this Rule a "third-party agent" is a person, firm, association, corporation or department or division of a firm, association, or corporation that holds itself out as the representative of a third-party monitoring company with the expressed or implied authority by the third-party monitoring company to contract monitoring services to a consumer on behalf of the third-party monitoring company.

(b) The consumer must be notified in writing 30 days prior to the cessation of alarm monitoring services. If the alarm monitoring services are being transferred to another monitoring company, the consumer must be notified in writing of the name, address, and telephone number of the new monitoring company. The third-party agent and the monitoring company are responsible for notifying the consumer of the termination or change in monitoring services.

Statutory Authority G.S. 74D-5.

SECTION .0200 - PROVISIONS FOR LICENSEES

.0202 EXPERIENCE REQUIREMENTS FOR LICENSE

(a) Applicants for an alarm system license must meet the following minimum requirements which are additional to those specified in G.S. 74D:

- (1) Establish to the Board's satisfaction two year's experience within the past five years in ~~an alarm systems business as defined in G.S. 74D-2(a);~~ alarm systems installation, and service, or alarm systems business management; or
- (2) Successfully pass an oral or written examination deemed by the Board to measure an individual's knowledge and competence in the alarm systems business; ~~and,~~
- (3) ~~Hold a license for either the SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors and maintain said license at all times while licensed by the Alarm Systems Licensing Board.~~

(b) Any applicant who takes the examination administered by the Board under 12 NCAC 11 .0202(a)(2) and who does not successfully complete said examination after two attempts, must wait six months before being allowed to take the examination again.

(c) Applicants engaged exclusively in monitoring or responding to alarms may be issued a limited license which authorizes the performance of monitoring and responding functions only. Applicants for such a limited license shall not be required to meet the experience requirements of 12 NCAC 11 .0202(a).

Statutory Authority G.S. 74D-5.

.0210 ELECTRICAL CONTRACTING LICENSE REQUIREMENTS

Each firm, association, corporation, department, division, or branch office required to be licensed pursuant to G.S. 74D-2(a) must maintain at all times a licensee or registered employee who holds a license for either a SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors. Pursuant to 12 NCAC 11 .0206, each firm, association, corporation, department, division, or branch office must maintain in its records a copy of the licensee's or registered employee's Electrical Contractors License. In the event the licensee holding the electrical contractor's license ceases to perform his duties as the electrical contractor licensee, the business entity shall notify the Board in writing within 10 working days. The business entity must obtain a substitute electrical contractor licensee within 30 days after the original electrical contract licensee ceases to serve. Each firm, association, corporation, department, division, or branch office must comply with this Rule within six months after the effective date of this Rule.

Statutory Authority G.S. 74D-2(a); 74D-5.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2B .0302, .0304 and .0308.

The proposed effective date of this action is November 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person requesting that the Environmental Management Commission conduct a public hearing on any of these proposed amendments must submit a written request to Suzanne Keen, Division of Environmental Management, Water Quality, P.O. Box 29535, Raleigh, N.C. 27626-0535 by July 1, 1994. The request must specify which rule the hearing is being requested on. Mailed written requests must be postmarked no later than July 1, 1994.

Reason for Proposed Action: To apply appropriate stream classifications to specific surface waters in the state.

Comment Procedures: All persons interested in these proposed amendments are encouraged to submit written comments. Comments must be postmarked by July 15, 1994, and submitted to Suzanne Keen, Division of Environmental Management, Water Quality, P.O. Box 29535, Raleigh, N.C. 27626-0535.

Fiscal Note: These Rules affect the expenditure or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on November 22, 1993, OSBM on November 22, 1993, N.C. League of Municipalities on November 22, 1993, and N.C. Association of County Commissioners on November 22, 1993.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0302 HIWASSEE RIVER BASIN

- (a) Places where the schedule may be inspected:
- (1) Clerk of Court:
Cherokee County
Clay County;
 - (2) North Carolina Department of Environment, Health, and Natural Resources

Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee will be classified "C Tr."

(c) The Hiwassee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) August 9, 1981;
- (2) February 1, 1986;
- (3) March 1, 1989;
- (4) August 1, 1990;
- (5) August 3, 1992;
- (6) November 1, 1994.

(d) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective March 1, 1989 as follows:

- (1) Fires Creek (Index No. 1-27) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
- (2) Gipp Creek (Index No. 1-52-23) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters(with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective November 1, 1994 with the reclassification of the Hiwassee River [Index Nos. 1-(42.7) and 1-(48.5)] from McComb Branch to the Town of Murphy water supply intake including tributaries from Classes WS-IV and WS-IV CA to Classes WS-IV, WS-IV CA, WS-V and C.

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

.0304 FRENCH BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
Avery County
Buncombe County
Haywood County
Henderson County
Madison County
Mitchell County
Transylvania County
Yancey County
- (2) North Carolina Department of Environment, Health, and Natural Resources
Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Tennessee will be classified "B."

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) March 1, 1989;
- (10) October 1, 1989;
- (11) January 1, 1990;
- (12) August 1, 1990;
- (13) August 3, 1992;
- (14) October 1, 1993;
- (15) November 1, 1994.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as

follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 1994 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

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

.0308 CATAWBA RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:

Alexander County
Avery County
Burke County
Caldwell County
Catawba County
Gaston County
Iredell County
Lincoln County
McDowell County
Mecklenburg County
Union County
Watauga County

- (2) North Carolina Department of Environment, Health, and Natural Resources:

(A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina

(B) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering South Carolina are classified "C".

(c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) August 12, 1979;
- (3) April 1, 1982;
- (4) January 1, 1985;
- (5) August 1, 1985;
- (6) February 1, 1986;
- (7) March 1, 1989;
- (8) May 1, 1989;
- (9) March 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) November 1, 1994.

(d) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1989 as follows:

- (1) Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:

- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and

Rock Creek which will remain Class C trout and Class C.

- (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C-Trout ORW.
- (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective November 1, 1994 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Environmental Management Commissions intends to amend rule cited as 15A NCAC 2B .0303.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 7:00 p.m. on August 18, 1994 at the Blue Ridge School Auditorium, Highway 107, Glenville, N.C.

Reason for Proposed Action: To reclassify Thorpe Reservoir and its tributary, Hurricane Branch, in Jackson County (Little Tennessee River Basin) as High Quality Waters.

Comment Procedures: All persons interested in these matters are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearing (9-17-94) or may be presented verbally at the hearing. Verbal statements may be limited at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged. Comments or questions may be addressed to Suzanne Keen, Division of Environmental Management, P.O. Box 29535, Raleigh, N.C. 27626-0535, (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0303 LITTLE TENN RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA

- (a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Clay County
Graham County
Jackson County
Macon County
Swain County
Transylvania County

- (2) North Carolina Department of Environment, Health, and Natural Resources
Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Georgia or Tennessee will be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina will be classified "B Tr."

(c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 16, 1977;
- (2) March 1, 1977;
- (3) July 13, 1980;
- (4) February 1, 1986;
- (5) October 1, 1987;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) July 1, 1990;
- (9) August 1, 1990;
- (10) March 1, 1991;
- (11) August 3, 1992;
- (12) February 1, 1993;
- (13) March 1, 1995.

(d) The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area was amended effective March 1, 1989 as follows:

- (1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.
- (2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective January 1, 1990 as follows:

- (1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No.

2-10-4-1) were reclassified from Class C to Class B.

- (2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1991 as follows:

- (1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.
- (2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area has been amended effective February 1, 1993 as follows:

- (1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (referencing 15A NCAC 2B .0201(d) to protect downstream waters; and
- (2) the Tuckaseegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1995 with the reclassification of Thorpe Reservoir (Lake Glenville) and its tributary Hurricane Creek [Index Nos. 2-79-23-(1) and 2-79-23-2, respectively] from Classes WS-III&B and WS-III Tr to Classes WS-III&B HQW and WS-III Tr HQW.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0313.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 7:00 p.m. on August 16, 1994 at the Stokes County Government Center, Courtroom A, Danbury, North Carolina.

Reason for Proposed Action: To reclassify Town Fork Creek in the Roanoke River Basin for water supply purposes.

Comment Procedures: All persons interested in these matters are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearing (9-15-94) may be presented verbally at the hearing. Verbal statements may be

limited at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged. Comments or questions may be addressed to Steve Zoufaly, Division of Environmental Management, P.O. Box 29535, Raleigh, N.C. 27626-0535, (919) 733-5083.

Fiscal Note: This Rule affects the expenditure or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on November 22, 1993, OSBM on November 22, 1993, N.C. League of Municipalities on November 22, 1993, and N.C. Association of County Commissioners on November 22, 1993.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0313 ROANOKE RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
Bertie County
Caswell County
Forsyth County
Granville County
Guilford County
Halifax County
Martin County
Northampton County
Person County
Rockingham County
Stokes County
Surry County
Vance County
Warren County
Washington County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
1424 Carolina Avenue
Washington, North Carolina
 - (C) Winston-Salem Regional Office
8025 North Point Boulevard, Suite 100

Winston-Salem, North Carolina

(b) Unnamed Streams. Such streams entering Virginia are classified "C." Except that all backwaters of John H. Kerr Reservoir and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "B," and all backwaters of Lake Gaston and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "C and B".

(c) The Roanoke River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) May 18, 1977;
- (2) July 9, 1978;
- (3) July 18, 1979;
- (4) July 13, 1980;
- (5) March 1, 1983;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) July 1, 1991;
- (9) August 3, 1992;
- (10) March 1, 1995.

(d) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective July 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective March 1, 1995 with the reclassification of Town Fork Creek [Index No. 22-25-(0.5)] from its source to the Stokes County water supply intake (at the Stokes-Forsyth County line) including tributaries from Class C to Classes C, WS-III and WS-III CA.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10D .0003.

The proposed effective date of this action is September 1, 1994.

The public hearing will be conducted at 7:00 p.m. on July 6, 1994 at the Richmond County Courthouse, Rockingham, NC.

Reason for Proposed Action: To establish/modify hunting seasons on game lands.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 15, 1994 to July 15, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0003 HUNTING ON GAME LANDS

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

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

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps

or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

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

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. No person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates: For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

Wayne County--Cherry Farm Game Land

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and

Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Special hunts on other days may also be set up for participants in the Disabled Sportsman Program. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the following Wednesday. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program. Wild turkey hunting is by permit only.)

Caswell County--Caswell Game Land-- (Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.)

Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's Backbone.)

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.) Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Either sex deer hunting with any legal weapon will also be permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in this Paragraph for participants in the Disabled Sportsman Program. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.) Wild turkey hunting is by permit only. Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.

Robeson County--Robeson Game Land

Robeson County--Bullard and Branch Hunting Preserve Game Land
Sampson County--Sampson Game Lands

Stokes County--Sauratown Plantation Game Land

Wayne County--Cherry Farm Game Land. (The use of centerfire rifles and handguns is prohibited.)

Yadkin County--Huntsville Community Farms Game Land

(3) Any game may be taken on the following game lands during the open season, except that:

- (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
- (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries located in and west of the counties of Madison, Buncombe, Henderson and Polk;
- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
 - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
 - (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
- (D) On Croatan, Jordan, and Shearon Harris Game Lands, and posted waterfowl impoundments on Goose Creek Game Lands, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. After November 1, on the Pamlico Point, Campbell Creek, and Spring

- Creek impoundments, located on the Goose Creek Game Lands, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day;
- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Anson, New Lake, Pee Dee River, Pungo River, and Gull Rock Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (H) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (I) On Angola Bay, Butner-Falls of Neuse, Goose Creek, Hofmann Forest, and Sutton Lake Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (J) On Croatan and Neuse River Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Tuesday;
- (K) Horseback riding is allowed on the Caswell and Thurmond Chatham game lands only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity;
- (L) On the posted waterfowl impoundments on the Jordan and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.
- (M) Additional restrictions or modifications apply as indicated in parentheses following specific designations:
 Alexander and Caldwell Counties--Brushy Mountains Game Lands
 Anson County--Anson Game Land
 Anson, Montgomery, Richmond and Stanly Counties--Pee Dee River Game Lands
 Ashe County--Elk Ridge Game Lands
 Ashe County--Cherokee Game Lands
 Ashe and Watauga Counties--Elk Knob Game Land
 Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands
 (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)
 Bertie--Bertie County Game Land
 Bertie and Washington Counties--Bachelor Bay Game Lands
 Beaufort and Pamlico Counties--Goose Creek Game Land
 Brunswick County--Green Swamp Game Land
 Burke and Cleveland Counties--South Mountains Game Lands
 Caldwell, Watauga and Wilkes Counties--Yadkin Game Land
 Camden--Camden County Game Land
 Carteret, Craven and Jones Counties--Croatan Game Lands
 Chatham County--Chatham Game Land
 Chatham, Durham, Orange, and Wake Counties--Jordan Game Lands
 (On areas posted as "archery zones" hunting is limited to bow and arrow. Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)

Chatham and Wake Counties--Shearon Harris Game Land
 Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands.
 Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.
 Chowan County--Chowan Game Land
 Cleveland County--Gardner-Webb Game Land
 Craven County--Neuse River Game Land
 Currituck County--North River Game Land
 Currituck County--Northwest River Marsh Game Land
 Dare County--Dare Game Land (No hunting on posted parts of bombing range.)
 Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land
 Davidson County--Linwood Game Land
 Davidson, Montgomery and Randolph Counties--Uwharrie Game Land
 Duplin and Pender Counties--Angola Bay Game Land
 Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)
 Gates County--Chowan Swamp Game Land
 Henderson, Polk and Rutherford Counties--Green River Game Lands
 Hyde County--Gull Rock Game Land

Hyde County--Pungo River Game Land
 Hyde and Tyrrell Counties--New Lake Game Land
 Jones and Onslow Counties--Hofmann Forest Game Land
 Lee County--Lee Game Land
 McDowell and Rutherford Counties--Dysartsville Game Lands
 Moore County--Moore Game Land
 New Hanover County--Sutton Lake Game Land
 Person County--Person Game Land
 Transylvania County--Toxaway Game Land (Deer of either sex may be taken with a bow and arrow on the Saturday prior to the first segment of the Western bow and arrow season by participants of the Disabled Sportsman Program.)
 Tyrrell and Washington Counties--Lantern Acres Game Land
 Vance County--Vance Game Land. (The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract of Vance Game Lands.)
 Wilkes County--Thurmond Chatham Game Land (Deer of either sex may be taken with bow and arrow on the Saturday prior to Northwestern bow and arrow season by participants of the Disabled Sportsman Program.)

(4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:
 Friday and Saturday of the first week after Thanksgiving Week:
 Uwharrie and Alcoa southeast of NC 49
 Thursday and Friday of the week before Thanksgiving Week:
 Sandhills east of US 1
 Sandhills west of US 1
 Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must

be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

- (5) The following game lands and Federal Wildlife Refuge are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission: Bertie, Halifax and Martin Counties--Roanoke River Wetlands;

Bertie County--Roanoke River National Wildlife Refuge.

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davie--Hunting Creek Swamp Waterfowl Refuge

Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge.

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10J .0003 and .0004.

The proposed effective date of this action is September 1, 1994.

The public hearing will be conducted at 10:00 a.m. on June 30, 1994 at the Wildlife Resources Commission, Archdale Building, Conference Room, 3rd Floor, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action:

15A NCAC 10J .0003 - To regulate/prohibit hunting on game lands.

15A NCAC 10J .0004 - To regulate/prohibit fishing on wildlife conservation areas.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 15, 1994 to July 15, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

SUBCHAPTER 10J - WILDLIFE CONSERVATION AREA REGULATIONS

.0003 HUNTING ON WILDLIFE CONSERVATION AREAS

(a) Safety Requirements. No person while hunting on any area designated and posted as a wildlife conservation area shall be under the influence of alcohol or any narcotic drug.

(b) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any area designated and posted as a wildlife conservation area. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(c) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on areas designated and posted as wildlife conservation areas is permitted during the open season for the game or furbearing species being hunted. Waterfowl hunters shall not enter the areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each date. No person shall operate any vessel or vehicle powered by an internal combustion engine on the waters of any area designated and posted as a wildlife conservation area. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any area designated and posted as a wildlife conservation area, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent and no person shall take or attempt to take any game birds or game animals attracted to such foods. No person shall use an electronic calling device for the purpose of attracting wild birds or wild animals. No live wild animals or

wild birds shall be removed from any designated wildlife conservation area except with the written permission of the landowner.

(d) Hunting Dates:

- (1) Any game may be taken during the open seasons on the following wildlife conservation areas and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

NO WILDLIFE CONSERVATION AREAS LISTED FOR HUNTING AT THIS TIME

- (2) ~~Except as otherwise indicated, the following designated wildlife conservation areas or indicated portions thereof are closed to all hunting: Richmond County - Nona Pitt Hinson Cohen Wildlife Conservation Area.~~ Except as otherwise indicated, the following designated wildlife conservation areas or indicated portions thereof are closed to all hunting:
 - (A) Nona Pitt Hinson Cohen Wildlife Conservation Area - Richmond County.
 - (B) John D. Lewis Wildlife Conservation Area - Wayne County.

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

.0004 FISHING ON WILDLIFE CONSERVATION AREAS

(a) Generally. Except as otherwise indicated herein, fishing on designated wildlife conservation areas which are open to fishing shall be in accordance with the statewide regulations. All designated wildlife conservation areas are open to public fishing except restocked ponds when posted against fishing. No trotline or set-hook nor any net, trap, gig or other special fishing device of a type mentioned in 15 NCAC 10C .0403 except bow and arrow may be used in any of the impounded waters or free-running streams located on designat-

ed wildlife conservation areas. Except as otherwise indicated, the following designated wildlife conservation areas or indicated portions thereof are closed to all fishing, except for special fishing clinics authorized or conducted by the Commission: John D. Lewis Wildlife Conservation Area - Wayne County.

(b) Designated Public Mountain Trout Waters: Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any designated wildlife conservation area from one-half hour after sunset to one-half hour before sunrise.

Statutory Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Solid Waste Management intends to amend rule cited as 15A NCAC 13B .1603.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 10:00 a.m. on July 6, 1994 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.

Reason for Proposed Action: Amendment of Rule .1603 is necessary to further delineate circumstances requiring owners and operators of municipal solid waste landfill facilities (MSWLFs) to submit a permit application.

Comment Procedures: Any person requiring information may contact Mr. Brad Rutledge, Division of Solid Waste Management, Solid Waste Section, Post Office Box 27687, Raleigh, NC 27611-7687, Telephone (919) 733-0692. Written comments may be submitted to the above address no later than July 15, 1994. Notice of an oral presentation may be given to the above address at least 3 days prior to the public hearing.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

**SECTION .1600 - REQUIREMENT
FOR MUNICIPAL SOLID WASTE
LANDFILL FACILITIES (MSWLFs)**

**.1603 GENERAL APPLICATION
REQUIREMENTS AND PROCESSING**

(a) Applicability. An owner and operator of a proposed or existing facility shall submit an application document as detailed in Rule .1617 of this Section according to the criteria and scheduling requirements set forth in this Paragraph.

(1) New facility. An owner and operator proposing to establish a MSWLF facility according to the following criteria shall submit a Site Study and subsequently, an application for a permit to construct as set forth in Paragraph (a) of Rule .1617.

(A) The owner and operator proposes to establish a new facility not previously permitted by the Division.

(B) The owner or operator proposes expanding the landfill facility in order to expand the MSWLF unit boundary approved in accordance with Subparagraph (a)(1) of Rule .1618.

(C) The owner or operator of an existing facility is scheduled to close an existing MSWLF unit not constructed with a base liner system and proposes to establish a new MSWLF unit.

(D) A transfer of facility ownership is proposed.

(E) The owner or operator proposes to A substantial change to the waste stream defined in the effective permit the service area of an existing MSWLF unit, if an increase in permitted capacity would also be required.

(F) The owner or operator of an unlined existing MSWLF unit proposes to receive waste from generators whose waste is currently being disposed in a lined MSWLF unit.

(2) Amendment to the permit. A permit to construct issued in accordance with Paragraph (c) of this Rule approves a facility plan for the life of the MSWLF facility and a set of plans for the initial phase of landfill development. The owner and operator shall prepare an application to amend the permit to construct for any subsequent phase of landfill development in accordance with

Paragraph (b) of Rule .1617 and submit the application:

(A) At least 180 days prior to the date scheduled for commencing construction; or

(B) Five years from the issuance date of the initial permit to construct or the most recent amendment, whichever occurs first.

(3) Modifications to the permit. An owner or operator proposing changes to the plans approved in the permit shall request prior approval from the Division in accordance with Paragraph (c) of Rule .1617.

(4) Transition for existing facilities.

(A) Existing MSWLF units. The owner and operator of an existing MSWLF unit shall submit an application for continuing operation and closing the MSWLF unit. The application shall be prepared in accordance with Paragraph (d) of Rule .1617 and shall be submitted on or before April 9, 1994. The operation plan required in the transition application shall be prepared and submitted according to Rule .1625 of this Section.

(B) Lateral expansion and new MSWLF units. Construction of a lateral expansion of an existing MSWLF unit or a new MSWLF unit is subject to the application requirements for permit renewal set forth in Subparagraph (5) of this Paragraph, unless the criteria set forth in Part (1)(C) of this Paragraph is applicable.

(5) Permit renewal. The owner and operator shall prepare and submit an application for permit renewal in accordance with Paragraph (e) of Rule .1617 and the following:

(A) The following criteria is established for the scheduling permit renewal:

(i) Location of the MSWLF unit conforms to the requirements set forth in Items (1), (2), (3), (4), (5), and (6) of Rule .1622;

(ii) Construction of the MSWLF unit is approved by the effective permit and conforms to the requirements of Subparagraph (b)(1) of Rule .1624; and

(iii) Updated operation, closure and post-closure, and monitoring plans

meet the requirements set forth in this Section.

- (B) An owner or operator that demonstrates compliance with the criteria set forth in Part (A) of this Subparagraph shall submit an application five years from the issuance date of the original permit to construct or at least 180 days prior to the date scheduled for constructing a phase of landfill development not approved in the effective permit to construct, whichever occurs first.
 - (C) An owner or operator that cannot demonstrate compliance with the criteria set forth in Part (A) of this Subparagraph shall submit an application at least 180 days prior to the date scheduled for commencing construction of the base liner system.
- (b) Application format guidelines. All applications and plans required by this Section shall be prepared in accordance with the following guidelines:
- (1) The initial application shall:
 - (A) Contain a cover sheet, stating the project title and location, the applicant's name, and the engineer's name, address, signature, date of signature and seal; and
 - (B) Contain a statement defining the purpose of the submittal signed and dated by the applicant.
 - (2) The text of the application shall:
 - (A) Be submitted in a three ring binder;
 - (B) Contain a table of contents or index outlining the body of the application and the appendices;
 - (C) Be paginated consecutively; and
 - (D) Identify revised text by noting the date of revision on the page.
 - (3) Drawings. The engineering drawings for all landfill facilities shall be submitted using the following format:
 - (A) The sheet size with title blocks shall be at least 22 inches by 34 inches.
 - (B) The cover sheet shall include the project title, applicant's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal.
 - (C) Where the requirements do not explicitly specify a minimum scale, maps and drawings shall be prepared at a

scale which adequately illustrates the subject requirement(s).

- (4) Number of copies. An applicant shall submit a minimum of five copies of each original application document and any revisions to the Division. The Division may request additional copies as necessary.
- (c) Permitting and public information procedures.
 - (1) Purpose, Scope and Applicability.
 - (A) Purpose. The permitting process shall provide for public review of and input to permit documents containing the applicable design and operating conditions and shall provide for consideration of comments received and notification to the public of the final permit design.
 - (B) Scope. Public participation in the permitting process shall ensure that the public is informed regarding decisions affecting the management of MSWLFs located in their community. Public comment regarding permit renewals for existing facilities shall be limited to new information pertinent to the permit to construct a lateral expansion or a new MSWLF unit.
 - (C) Applicability. Applications for Permit to Construct a new facility or permit renewals for an existing facility or a modification to the permit involving corrective remedy selection required by Rule .1636 of this Section shall be subject to the requirements of this Paragraph. Applications submitted in accordance with Subparagraphs (a)(2), (a)(3), and (a)(4)(A) of this Rule are not subject to the requirements of this Paragraph.
 - (2) Draft Permits.
 - (A) Once an application is complete, the Division shall tentatively decide whether the permit should be issued or denied.
 - (B) If the Division decides the permit should be denied, a notice to deny shall be sent to the applicant. Reasons for permit denial shall be in accordance with Rule .0203(e) of this Subchapter.
 - (C) If the Division tentatively decides the permit should be issued, a draft permit shall be prepared.

- (D) A draft permit shall contain (either expressly or by reference) all applicable terms and conditions for the permit.
- (E) All draft permits shall be subject to the procedures of Subparagraphs (3), (4), (5), (6), (7) and (8) of this Paragraph, unless otherwise specified in those Subparagraphs.
- (3) Fact Sheets.
 - (A) A fact sheet shall be prepared for every draft permit or notice to deny the permit.
 - (B) The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit to include, when applicable:
 - (i) A brief description of the type of facility or activity which is the subject of the draft permit;
 - (ii) The type and quantity of wastes which are proposed to be or are being disposed of;
 - (iii) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the permit application;
 - (iv) A description of the procedures for reaching a final decision on the draft permit, including:
 - (I) The beginning and ending dates of the comment period under Subparagraph (4) of this Paragraph and the address where comments will be received;
 - (II) Procedures for requesting a public hearing; and
 - (III) Any other procedures by which the public may participate in the final decision; and
 - (v) Name and telephone number of a person to contact for additional information.
 - (C) The Division shall send this fact sheet to the applicant and, upon request to any other person.
- (4) Public Notice of Permit Actions and Public Comment Period.
 - (A) Scope.
 - (i) The Division shall give public notice that the following actions have occurred:
 - (I) A draft permit has been prepared; or
 - (II) A public hearing has been scheduled under Subparagraph (6) of this Paragraph; or
 - (III) A notice of intent to deny a permit has been prepared under Part (2)(B) of this Paragraph.
 - (ii) No public notice is required when a request for a permit modification is denied.
 - (iii) Written notice of denial shall be given to the permittee.
 - (iv) Public notices may describe more than one permit or permit action.
 - (B) Timing.
 - (i) Public notice of the preparation of a draft permit or a notice of intent to deny a permit shall allow at least 45 days for public comment.
 - (ii) Public notice of a public hearing shall be given at least 15 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)
 - (C) Methods. Public notice of activities described in Subpart (A)(i) of this Subparagraph shall be given by the following:
 - (i) By posting in the post office and public places of the municipalities nearest the site under consideration; or
 - (ii) By publication of a notice in a daily or weekly local newspaper of general circulation; and
 - (iii) By any other method deemed necessary or appropriate by the Division to give actual notice of the activities to persons potentially affected.
 - (D) Contents.
 - (i) General Public Notices. All public notices issued under this Part shall contain the following minimum information:
 - (I) Name, address and phone number of the office process-

- ing the permit action for which notice is being given;
- (II) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
- (III) A brief description of the business conducted at the facility or activity described in the permit application including the size and location of the facility and type of waste accepted;
- (IV) A brief description of the comment procedures required by Subparagraphs (5) and (6) of this Paragraph, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled), and other procedures by which the public may participate in the final permit decision;
- (V) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of draft permits and fact sheets;
- (VI) A description of the time frame and procedure for making a final determination on this facility application approval or disapproval;
- (VII) Any additional information considered necessary or proper as required by the Division.
- (ii) Public Notices for Public Hearing. In addition to the general public notice described in Subpart (i) of this Part, the public notice of a public hearing shall contain the following information:
 - (I) Reference to the dates of previous public notices relating to the permit action;
 - (II) Date, time, and place of the public hearing; and
 - (III) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and
 - (IV) A concise statement of the issues raised by the persons requesting the hearing.
- (5) Public Comments and Requests for Public Hearings. During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Subparagraph (9) of this Paragraph.
- (6) Public Hearings.
 - (A) Public Hearing Criteria.
 - (i) The Division shall hold a public hearing whenever on the basis of requests, a significant degree of public interest in a draft permit(s) is determined.
 - (ii) The Division may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the permit decision.
 - (iii) Public hearings held pursuant to this Rule shall be at a location convenient to the nearest population center to the subject facility.
 - (iv) Public notice of the hearing shall be given as specified in Subparagraph (4) of this Paragraph.
 - (B) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Subparagraph (4) of this Paragraph shall automatically be extended to the close of any public hearing under this Subparagraph. The hearing officer may also extend the comment period by so stating at the hearing.
 - (C) A tape recording or written transcript of the hearing shall be made available to the public.
- (7) Reopening of the Public Comment Period.

- (A) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit action, the Division may take one or more of the following actions:
 - (i) Prepare a new draft permit, appropriately modified, under Subparagraph (2) of this Paragraph;
 - (ii) Prepare a fact sheet or revised fact sheet under Subparagraph (3) of this Paragraph and reopen the comment period under Subparagraph (4) of this Paragraph; or
 - (iii) Reopen or extend the comment period under Subparagraph (4) of this Paragraph to give interested persons an opportunity to comment on the information or arguments submitted.
 - (B) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Subparagraph (4) of this Paragraph shall define the scope of the reopening.
 - (C) Public notice of any of the actions of this Subparagraph shall be issued under Subparagraph (4) of this Paragraph.
- (8) Final Permit Decision.
- (A) After the close of the public comment period under Subparagraph (4) of this Paragraph on a draft permit or a notice of intent to deny a permit, the Division shall issue a final permit decision. The Division shall notify the applicant and each person who has submitted a written request for notice of the final permit decision. For the purposes of this Subparagraph, a final permit decision means a final decision to issue, deny or modify a permit.
 - (B) A final permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.
- (9) Response to Comments.
- (A) At the time that a final permit decision is issued under Subparagraph (8) of this Paragraph, the Division shall issue a response to comments. This response shall:
 - (i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.
 - (B) The response to comments shall be made available to the public.
- (d) Permit approval or denial.
- (1) The Division shall review all permit applications in accordance with Rule .0203 of Section .0200.
 - (2) Transition for existing facilities. The Division shall review applications submitted in accordance with Paragraph (d) of Rule .1617 according to the following schedule and criteria.
 - (A) The Division shall establish a review schedule for the plans which determines the adequacy of 50 percent of the plans by October 9, 1994 and 100 percent of the plans by October 9, 1996.
 - (B) The Division may issue partial approval for specific parts of an application.
 - (C) The Division shall determine the schedule for closing an existing MSWLF unit based on its review of the complete transition application and the following factors:
 - (i) Proximity of human and environmental receptors;
 - (ii) Design of the MSWLF unit;
 - (iii) Age of the MSWLF unit;
 - (iv) The size of the MSWLF unit;
 - (v) Type and quantities of waste disposed including sewage sludge;
 - (vi) Compliance record of the owner and operator;
 - (vii) A schedule for fulfilling the intent of the landfill design standards set forth in Rule .1624 of this Section; and
 - (viii) Resource value of the underlying aquifer, including; current and future uses; proximity and withdrawal rate of users; and ground-water quality and quantity.

Statutory Authority G.S. 130A-294.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 24A .0201 - .0203, .0301, .0404 and .0502 - .0503.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 1:30 p.m. on July 21, 1994 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.

Reason for Proposed Action:

15A NCAC 24A .0201 - The existing rule does not address the residency status of applicants from other countries who are living in North Carolina, or military families from other states who are stationed in North Carolina. The proposed amendment covers those categories and establishes in rule what our practice by policy has been.

15A NCAC 24A .0202 - This amendment allows HIV Medications Program applicants who have been determined financially eligible for program coverage during the last quarter of a fiscal year to remain on the program through the end of the next fiscal year. This allows the patient's financial eligibility period to correspond to the program's authorization period for medications and allows time to process eligibility applications before the beginning of the authorization period.

15A NCAC 24A .0203 - This amendment defines "unemployment" to mean that unemployment has occurred for at least 30 consecutive days. Under the current rule, which does not define unemployment, some applicants claimed to have been unemployed when there were only a few days between the end of one job and the beginning of another. That situation violated the intent of the rule.

15A NCAC 24A .0301 - This amendment expands the definition of "earned income" to include self-employment income, as well as salaries and wages.

15A NCAC 24A .0404 - This proposed amendment establishes a departmental reimbursement rate for items of durable medical equipment (DME) which do not have Medicaid rates. This includes all mobility systems, including power and manual

wheelchairs, transporter systems; environmental control units and custom seating systems.

15A NCAC 24A .0502 - .0503 - This amendment is proposed for the purpose of broadening the scope of the rule to cover termination of all types of eligibility (not just financial eligibility). This amendment also brings the rule into compliance with recent changes in G.S. 130A-24(a.1.) regarding notice of termination of benefits and the appeals period.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by August 1, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

**CHAPTER 24 - GENERAL PROCEDURES
FOR PUBLIC HEALTH PROGRAMS**

**SUBCHAPTER 24A - PAYMENT
PROGRAMS**

**SECTION .0200 - ELIGIBILITY
DETERMINATIONS**

.0201 RESIDENCY REQUIREMENT

(a) A person must be a permanent resident of North Carolina to be eligible for benefits provided by any of the payment programs, except as provided in Paragraph (e) (d) of this Rule.

(b) For the purposes of this Rule, all determinations of residency shall be governed by the following rules:

(1) In order to be a resident of North Carolina, a person must: ~~not only live in the State but also have the intention of making his permanent home in this State to which, whenever absent, he intends to return.~~

(A) live in this State, except as provided in Subparagraph (b)(6) of this Rule,

(B) pay North Carolina income tax if state income tax liability exists,

(C) have the intention of making his permanent home in this State, and

(D) intend to return to this State whenever absent.

(2) An unemancipated minor has the residence of the parent or other relative with whom he resides. If the minor does not reside with a parent or other relative, then the minor has the residence of the adult with whom he resides. Any other minor is a resident of North Carolina if he is present in the State and either of his parents are residents of North Carolina; if the residence of the minor's mother and father is not known, the minor has the residence of the place in which he is found.

(3) Migrant ~~workers~~ farmworkers and their families who are migrants as defined in rules of the Migrant Program or its successor are considered residents of North Carolina while present in North Carolina for employment purposes.

(4) ~~Residence continues until a new one is acquired. When a new residence is acquired, all former residences terminate.~~ Applicants who are citizens of other countries are considered residents of the State if they live in North Carolina and can document their intention to make North Carolina their permanent home with a visa allowing them to remain permanently or an application for a resident visa or for citizenship.

(5) Individuals in the military who were residents of other states and are stationed in North Carolina are residents

of North Carolina if they have formally declared North Carolina as their residence where they intend to pay income taxes.

(6) North Carolina residents who are temporarily living in another state while attending school are for purposes of this Rule considered to be residents of North Carolina if they have not formally changed their resident status to another state.

(c) The state of residence continues until a new one is acquired. When a new state of residence is acquired, all former residences terminate.

(d) The Director of a payment program may, in his discretion, make exceptions to the requirement of Paragraph (a) of this Rule in order to protect the public health when a communicable disease is involved.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

.0202 DETERMINATION OF FINANCIAL ELIGIBILITY

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by the payment programs. Financial eligibility shall be determined through application of income scales. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this Subchapter shall be used in applying the income scales.

(b) A person shall be financially eligible for inpatient services under the Sickle Cell Program, and for inpatient services under Children's Special Health Services if the person is age 8-20 if the net family income is at or below the following scale: Family Size 1: \$4,200; Family Size 2: \$5,300; Family Size 3: \$6,400; Family Size 4: \$7,500; Family Size 5 and over: add \$500 per family member.

(c) A person shall be financially eligible for the Cancer Program, for outpatient services under the Sickle Cell Program, for outpatient services under Children's Special Health Services, and for inpatient services under Children's Special Health Services if the person is age 0-7, if the net family income is at or below the federal poverty level in effect on July 1 of each fiscal year.

(d) A person shall be financially eligible for the HIV Medications Program if the net family income is at or below 85 percent of the federal poverty level in effect on April 1 of each fiscal year.

(e) A person shall be financially eligible for the Kidney Program if the net family income is at or below the following scale: Family Size 1: \$6,400; Family Size 2: \$8,000; Family Size 3: \$9,600; Family Size 4: \$11,000; Family Size 5: \$12,000; Family Size 6 and over: add \$800 per family member.

(f) The financial eligibility requirements of this Subchapter shall not apply to:

- (1) Migrant Health Program;
- (2) Children's Special Health Services when the requirements of 15A NCAC 21F .0800 are met;
- (3) School Health Program financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;
- (4) Prenatal outpatient services sponsored through local health department delivery funds, 15A NCAC 21C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 15A NCAC 21C .0300;
- (5) Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

(g) Except as provided in Paragraph (h) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual shall remain financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

(h) For purposes of the Kidney Program and HIV Medications Program, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual shall remain financially eligible for benefits ~~under the Kidney Program~~ until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

(i) If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an Authorization Request for payment for drugs was received,

the Authorization Request may be approved so long as the Authorization Request is received less than 30 days prior to the expiration of financial eligibility and the authorized service does not extend more than 30 days after the expiration of financial eligibility.

Statutory Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.

.0203 ANNUAL NET FAMILY INCOME

(a) Annual net family income shall be computed by subtracting the deductions allowed in Paragraph (d) of this Rule, from the gross family income as computed in Paragraph (c) of this Rule.

(b) The time period to be used as the basis for computing annual net family income is the 12-month period immediately preceding the date a patient or his representative makes application for eligibility to a particular payment program. However, if any of the ~~family's wage earners~~ family members were unemployed ~~at any time for at least 30 consecutive days~~ during this 12-month period or are currently unemployed at the time the application is completed, that ~~wage-earner's~~ person's portion of the annual net family income shall be computed on the basis of income and deductions for the six month period immediately preceding the date of application plus a projection of income and deductions (excluding medical expenses) for the six month period immediately succeeding the date of application based upon the current employment or benefit situation. Medical expenses from the 12-month period immediately preceding the date of application may be deducted from income.

(c) Gross Family Income:

(1) Gross family income shall mean the combined gross cash income received by the patient's family from the following sources:

- (A) Salaries and wages;
- (B) Earnings from self-employment;
- (C) Investment income, stocks, bonds, savings account interest, rentals, and all other investment income;
- (D) Periodic trust fund payments;
- (E) Public assistance money;
- (F) Unemployment compensation;
- (G) Alimony and child support payments received;
- (H) Military allotments;
- (I) Social Security benefits;
- (J) Veteran's Administration benefits;
- (K) Retirement and pension payments;

- (L) Worker's compensation;
 - (M) Educational stipends in excess of the cost of tuition and books;
 - (N) Allowances paid for basic living expenses such as housing and utilities; and
 - (O) All other sources of cash income except those specifically excluded.
- (2) Gross family income does not include:
- (A) Irregular, incidental income that a child may earn from babysitting, lawn mowing, or other similar tasks;
 - (B) Supplemental security income benefits;
 - (C) Proceeds from the sale of an asset;
 - (D) Withdrawals from a bank account;
 - (E) Gifts;
 - (F) Inheritances;
 - (G) Life insurance proceeds or other one time insurance settlements.
- (d) Any of the following expenses which are paid or incurred by a member of the patient's family shall be allowed as deductions in determining annual net family income:
- (1) state, federal, and social security taxes owed on annual income (i.e. taxes withheld minus taxes refunded) and any deductions from pay required as a condition of employment such as mandatory retirement contributions;
 - (2) work related expenses incurred by the individual which are required by the employer as a condition of employment, but excluding the purchase or lease of an automobile, transportation to and from work, personal clothing and cleaning costs, food expenses, and all other items not required to perform the duties of employment;
 - (3) medical and dental expenses not covered by a third party payor, including the reasonable costs of transportation required to obtain the medical and dental services;
 - (4) health insurance premiums;
 - (5) child care expenses for any child 14 years of age and under and any handicapped child 15 years of age and over if both parents of a two parent family or a single parent work or are disabled or are out of the home attending school;
 - (6) expenses for the care of ~~a spouse~~ any family member who is physically or mentally unable to take care of himself or herself while ~~the other spouse is at~~

work family members are out of the home working or attending school;

- (7) child support and alimony payments paid to support someone outside of the family household; and
- (8) educational expenses incurred for the purpose of managing the disability of any member of the patient's family.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

SECTION .0300 - ELIGIBILITY PROCEDURES

.0301 INCOME DOCUMENTATION

(a) Documentation of earned income of the patient's family is required before services can be authorized in the following circumstances:

- (1) Whenever the applicant is requesting payment program benefits for inpatient services, even when outpatient services have been previously authorized.
- (2) Whenever medical expense deductions from income exceed three thousand dollars (\$3,000).
- (3) Whenever eligibility personnel have reason to believe information given may be inaccurate.
- (4) Whenever the Department requests documentation for quality control purposes.

(b) For purposes of this Rule, earned income means salaries, ~~and~~ wages, and self-employment income.

(c) Eligibility personnel are authorized to require documentation of any component used in computing a patient's annual net family income.

(d) Notwithstanding the provisions of Subparagraph (a)(2), eligibility personnel are not required to demand documentation of information concerning the earned income of the patient's family when reimbursement for inpatient services is requested through local health department delivery funds, 15A NCAC 21C .0200 or perinatal program high risk maternity clinic reimbursement funds, 15A NCAC 21C .0300.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

SECTION .0400 - REIMBURSEMENT

.0404 REIMBURSEMENT FOR SERVICES NOT COVERED BY MEDICAID

(a) The Department shall reimburse providers of authorized services for which ~~the Medicaid program does not have a reimbursement rate~~ there are no Medicaid reimbursement rates according to a schedule of payments developed by the Department except as provided in Paragraph (b) of this Rule. Copies of this schedule may be inspected at or obtained from the ~~Office of~~ Purchase of Medical Care Services Section.

(b) The Department shall reimburse providers of all mobility systems (including components and accessories), environmental control units, and custom seating systems for which there are no Medicaid reimbursement rates at the manufacturer's catalog price less 15 percent.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

SECTION .0500 - QUALITY CONTROL

.0502 TERMINATION OF ELIGIBILITY

The Department shall take the following steps in order to terminate a person's ~~financial~~ eligibility for program benefits which is based ~~upon~~ on incorrect information or information that has changed since the eligibility applications were completed:

- (1) Notice shall be given to the applicant and the ~~financial~~ eligibility interviewer that: ~~the Department believes that the financial eligibility form contains incorrect information that materially affected the person's financial eligibility. The applicant and the interviewer shall be given 15 days to show why financial eligibility should not be terminated.~~
 - (a) the Department has determined that eligibility was established based on incorrect information or information that has changed since the program eligibility applications were completed.
 - (b) the applicant is not eligible for program benefits, and
 - (c) the Department has made a tentative decision to terminate eligibility.
- (2) ~~After the 15 day period, if the Department determines that financial eligibility shall be terminated, notice shall be given to the applicant, the interviewer and the provider that the Department has made a tentative decision to terminate financial eligibility. The applicant shall be given 15 days to request an appeal. The appli-~~

cant shall be given 30 days from the date of the notice of tentative decision to terminate eligibility to provide additional information or to file an appeal. If the applicant does not appeal or submit written information which proves that he is eligible, eligibility for program benefits shall be terminated. The applicant may reapply for eligibility at any time if there is a change in family size, income, deductions, or residency status.

- (3) ~~If no appeal is made within 15 days, financial eligibility shall be terminated. However, the applicant may reapply for financial eligibility at any time if there is a change in family size, income, or deductions.~~

Statutory Authority G.S. 130A-5(3); 130A-24(a1); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

.0503 EFFECT ON AUTHORIZATIONS AND AUTHORIZATION REQUESTS

(a) All authorizations will be honored by the Department, except that an authorization may be cancelled after a final decision to terminate ~~financial~~ eligibility if:

- (1) The applicant and the provider are notified of the authorization cancellation prior to the provision of the service. Authorizations may be cancelled in part when only some of the services have been provided; and
- (2) The provider has not made financial commitments based upon the authorization.

(b) ~~Authorization requests for services to be provided after the 15 day appeal period which are received by the Department after a tentative decision to terminate financial eligibility and prior to a final decision in the matter will be held until a final decision is made received during the period of time that the eligibility is under review or is being appealed will be held until a final decision in the matter is made.~~

Statutory Authority G.S. 130A-5(3); 130A-24A(a1); 130A-124; 130A-127; 130A-177; 130A-205; 143B-193.

**TITLE 16 - DEPARTMENT OF
PUBLIC EDUCATION**

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rule cited as 16 NCAC 6E .0202.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 10:00 a.m. on July 19, 1994 at the Education Bldg., Room 224 South, 301 N. Wilmington Street, Raleigh, NC 27610-2825.

Reason for Proposed Action: Amendment clarifies age requirements for participants in interscholastic athletics.

Comment Procedures: Any interested party may present views and comments either orally at the hearing or in writing before or at the hearing.

**CHAPTER 6 - ELEMENTARY AND
SECONDARY EDUCATION**

SUBCHAPTER 6E - STUDENTS

**SECTION .0200 - SCHOOL ATHLETICS
AND SPORTS MEDICINE**

.0202 INTERSCHOLASTIC ATHLETICS

(a) Only students in grades 7-12 may participate in interscholastic athletic competition. In order to qualify for public school participation, a student must meet the following requirements:

- (1) The student must meet the residence criteria of G.S. 115C-366(a). The student may participate only at the school to which the student is assigned by the LEA or, if over the age requirements, the school to which the student would be assigned at the next higher grade level.
- (2) The student must meet age requirements at each grade level to participate. The principal must have evidence of the legal birth date of the student. ~~The age limits for as of October 16 of each year are:~~ A student who is ineligible to participate at one grade level due to age is eligible to participate at the next

higher grade level only. However, no student may participate at the high school level for more than eight consecutive semesters, beginning with the student's first entry into grade nine or participation on a high school team, whichever occurs first.

- (A) ~~no older than age 18 for high school;~~ A student is eligible to participate in high school athletic contests during a school year if the student does not reach the 19th birthday on or before October 16 of that school year.
- (B) ~~no older than age 16 for ninth grade or junior high school; and~~ A student shall not participate on a ninth grade junior high school team if the student becomes 16 years of age on or before October 16 of that school year.
- (C) ~~no older than age 15 for seventh or eighth grade.~~ A student shall not participate on a seventh or eighth grade team if the student becomes 15 years of age on or before October 16 of that school year.
- (3) In grades 9-12, the student must pass at least five courses each semester and meet promotion standards established by the LEA. In grades 7 and 8, the student must meet state and local promotion standards and maintain passing grades each semester. Regardless of the school organization pattern, a student who is promoted from the eighth to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade.
- (4) The student must receive a medical examination by a licensed medical doctor each year (365 days).
- (5) The student may not participate after any of the following:
 - (A) graduation;
 - (B) becoming eligible to graduate;
 - (C) signing a professional athletic contract;
 - (D) receiving remuneration as a participant in an athletic contest; or
 - (E) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.

~~(6) A high school student may participate only during the eight consecutive semesters beginning with the student's first entry into grade nine.~~

(b) Each principal of a school which participates in interscholastic athletics must certify a list of eligible students for each sport.

(c) Any student-athlete, coach or school official in grades 7-12 who is ejected from any athletic contest shall be penalized as follows:

- (1) for the first offense, the person shall be reprimanded and suspended for the next game at that level of play (varsity or junior varsity) and for any intervening games at either level;
- (2) for a second offense, the person shall be placed on probation and suspended for the next two games at that level of play (varsity or junior varsity) and for any intervening games at either level.
- (3) for a third offense, the person shall be suspended for one calendar year.
- (4) A coach who is suspended at any level of grades 7-12 (middle school, junior high or high school) may not coach in any other grade level in grades 7-12 during the period of suspension.
- (5) Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

(d) LEAs may allow their schools to belong to a statewide athletic association as long as the association establishes at a minimum the rules adopted by the SBE.

(e) The LEA which has jurisdiction over the school may impose additional penalties. LEAs or conferences may adopt and impose penalties at the middle and junior high school levels.

(f) The North Carolina High School Athletic Association (NCHSAA) may enforce penalties for the violation of this Rule at the high school level.

Statutory Authority G.S. 115C-47(4).

TITLE 21 - OCCUPATIONAL LICENSING BOARD

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Chiropractic Examiners intends to adopt rule cited as 21 NCAC 10 .0303, with changes from the proposed text noticed in the Register, Volume 8, Issue 18, pages 1806 - 1807.

The proposed effective date of this action is September 1, 1994.

Reason for Proposed Action: To enlarge the Rules of Ethics of Advertising and Publicity so as to regulate the manner in which chiropractors may solicit persons injured in automobile accidents.

Comment Procedures: Written comments on the rule as revised may be sent to the Board for 30 days after publication. The Board's mailing address is P.O. Box 312, Concord, NC 28025.

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

SECTION .0300 - RULES OF UNETHICAL CONDUCT

.0303 SOLICITATION OF AUTO ACCIDENT VICTIMS

(a) In-person and Telephone solicitation of Auto Accident Victims. In order to protect the public from misrepresentation, coercion or undue influence, it shall be unlawful for a doctor of chiropractic, or the doctor's employee, to initiate direct personal contact or telephone contact with any person who has been injured in a motor vehicle collision, or with any person residing in the injured person's household, for a period of 45 days following the collision, if the purpose of initiating contact is, in whole or part, to solicit the injured person to become a patient of the doctor.

(b) Acceptance of Referrals From Runners. It shall be unlawful for a doctor of chiropractic to accept as a patient any person injured in an automobile accident who was referred by a runner. As used in this Rule, the term "runner" means any person, firm or corporation that routinely obtains the names of injured persons from motor vehicle

accident reports or other public records and then contacts those persons to induce them to seek medical or chiropractic treatment or pursue legal claims.

(c) Solicitation of Auto Accident Victims by Mail. A doctor of chiropractic may solicit persons injured in motor vehicle collisions at any time through the use of posted communications such as letters, brochures, information packages and sound or video recordings. The words, "This is an advertisement for chiropractic services" must appear on the communication's envelope or mailing container in print large enough to be easily read.

(d) Nonconforming Solicitation Deemed Unethical Conduct. Any solicitation of automobile accident victims which does not conform to the requirements of this Rule shall be considered a violation of the Rules of Ethics of Advertising and Publicity pursuant to G.S. 90-154.2(5).

Statutory Authority G.S. 90-142; 90-154; 90-154.2.

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

Citation = Title, Chapter, Subchapter and Rule(s)

AD = Adopt

AM = Amend

RP = Repeal

With Chgs = Final text differs from proposed text

Corr = Typographical errors or changes that requires no rulemaking

Eff. Date = Date rule becomes effective

Temp. Expires = Rule was filed as a temporary rule and expires on this date or 180 days

NORTH CAROLINA ADMINISTRATIVE CODE

MAY 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	18	Secretary of State
4	Commerce	20	State Treasurer
10	Human Resources	21	Occupational Licensing Boards
11	Insurance		8 - Certified Public Accountant Examiners
12	Justice		10 - Chiropractic Examiners
13	Labor		12 - General Contractors
15A	Environment, Health, and Natural Resources		14 - Cosmetic Art Examiners
16	Education		32 - Medical Examiners
17	Revenue		34 - Mortuary Science
			58 - Real Estate Commission
		25	State Personnel

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2	NCAC	38	.0401		✓		✓		06/01/94	
		43L	.0113		✓		✓		06/01/94	
			.0202		✓				06/01/94	
			.0304		✓		✓		06/01/94	
			.0305		✓				06/01/94	
			.0306	✓			✓		06/01/94	
			.0307	✓					06/01/94	
			.0308 - .0311	✓			✓		06/01/94	
			.0312 - .0314	✓					06/01/94	
			.0315 - .0316	✓			✓		06/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2	NCAC	43L	.0317	✓					06/01/94	
			.0318	✓			✓		06/01/94	
			.0319	✓					06/01/94	
			.0320	✓			✓		06/01/94	
			.0321	✓					06/01/94	
			.0322	✓			✓		06/01/94	
			.0323	✓					06/01/94	
			.0324 - .0332	✓			✓		06/01/94	
			.0333	✓					06/01/94	
			.0334	✓			✓		06/01/94	
			.0335	✓					06/01/94	
			.0336 - .0337	✓			✓		06/01/94	
			.0338	✓					06/01/94	
	48A		.1702 - .1703		✓		✓		06/01/94	
	48B		.0113		✓				06/01/94	
			.0119		✓		✓		06/01/94	
			.0121		✓				06/01/94	
	53		.0001	✓					06/01/94	
4	NCAC	19L	.0104		✓				06/01/94	
			.0401		✓		✓		06/01/94	
			.0403 - .0404		✓				06/01/94	
			.0407		✓				06/01/94	
			.0501 - .0502		✓				06/01/94	
			.0901		✓		✓		06/01/94	
			.0906		✓		✓		06/01/94	
			.0912		✓				06/01/94	
			.1011		✓		✓		06/01/94	
			.1202		✓				06/01/94	
			.1302		✓		✓		06/01/94	
			.1303		✓				06/01/94	
			.1501 - .1505			✓			06/01/94	
			.1601 - .1604			✓			06/01/94	
10	NCAC	3M	.0102 - .0103		✓				06/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3M	.0105		✓				06/01/94	
			.0107		✓				06/01/94	
		50B	.0406		✓				06/01/94	
11	NCAC		SOC					✓		
		12	TOC					✓		
12	NCAC	1	.0212			✓			06/01/94	
		7D	.0701		✓		✓		06/01/94	
13	NCAC	7A	.0302		✓				06/01/94	
		7F	.0101					✓		
			.0201		✓				06/01/94	
15A	NCAC	1-2	SOC					✓		
		2	TOC					✓		
		2B	.0216		✓		✓		06/01/94	
			.0311		✓		✓		06/01/94	
		7H	.2101	✓					06/01/94	
			.2102	✓			✓		06/01/94	
			.2103	✓					06/01/94	
			.2105	✓					06/01/94	
		18A	.2508		✓				06/01/94	180 DAYS
			.2539	✓					06/01/94	180 DAYS
16	NCAC	6B	.0007		✓		✓		07/01/94	
		6C	.0307		✓		✓		07/01/94	
			.0310		✓				07/01/94	
			.0401		✓		✓		07/01/94	
			.0402		✓				07/01/94	
		6E	.0202		✓				07/01/94	
		6G	.0302		✓		✓		07/01/94	
17	NCAC	6B	.4006		✓				06/01/94	
		7B	.1101		✓				07/01/94	
			.5405		✓				07/01/94	
			.5410		✓				07/01/94	
			.5463	✓					07/01/94	
18	NCAC	6	.1510	✓					05/31/94	180 DAYS

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
20	NCAC	7	.0102					✓		
			.0104 - .0105					✓		
			.0201 - .0203					✓		
			.0304					✓		
			.0402 - .0403					✓		
			.0603					✓		
21	NCAC	8A	.0301					✓		
		8M	.0304		✓				06/01/94	
		10	.0103		✓		✓		06/01/94	
		12	.0202		✓				06/01/94	
			.0205		✓		✓		06/01/94	
			.0306		✓				06/01/94	
			.0402		✓				06/01/94	
		14H	.0005		✓		✓		06/01/94	
			.0008		✓		✓		06/01/94	
			.0010		✓				06/01/94	
			.0011 - .0013		✓		✓		06/01/94	
			.0018		✓		✓		06/01/94	
		14J	.0501		✓				06/01/94	
		14N	.0201		✓				06/01/94	
			.0301		✓				06/01/94	
			.0401		✓				06/01/94	
			.0501		✓				06/01/94	
		32L	.0001 - .0012			✓			06/01/94	
		32O	.0001 - .0007	✓			✓		06/01/94	
			.0008	✓					06/01/94	
			.0009 - .0014	✓			✓		06/01/94	
			.0015	✓					06/01/94	
			.0016 - .0021	✓			✓		06/01/94	
		32P	.0001	✓			✓		06/01/94	
			.0002 - .0004	✓					06/01/94	
			.0005	✓			✓		06/01/94	
			.0006	✓					06/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	32Q	.0101	✓			✓		06/01/94	
			.0102 - .0104	✓					06/01/94	
			.0201	✓					06/01/94	
			.0202	✓			✓		06/01/94	
			.0203	✓					06/01/94	
			.0204 - .0205	✓			✓		06/01/94	
			.0206 - .0207	✓					06/01/94	
	34B		.0103		✓				06/01/94	
			.0110		✓				06/01/94	
			.0120		✓				06/01/94	
			.0126	✓					06/01/94	
	34D		.0202		✓				06/01/94	
	58A		.0110		✓				07/01/94	
			.0502 - .0504		✓		✓		07/01/94	
			.0505		✓				07/01/94	
			.1701	✓					07/01/94	
			.1702 - .1705	✓			✓		07/01/94	
			.1706 - .1707	✓					07/01/94	
			.1708 - .1711	✓			✓		07/01/94	
	58C		.0101		✓		✓		07/01/94	
			.0102 - .0103		✓				07/01/94	
			.0104 - .0105		✓		✓		07/01/94	
			.0107		✓				07/01/94	
			.0202 - .0204		✓				07/01/94	
			.0214		✓				07/01/94	
			.0218		✓		✓		07/01/94	
			.0301 - .0302		✓		✓		07/01/94	
			.0303		✓				07/01/94	
			.0305		✓				07/01/94	
			.0308			✓			07/01/94	
			.0309		✓		✓		07/01/94	
			.0401 - .0407			✓			07/01/94	
			.0501 - .0512			✓			07/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	58D	.0101 - .0102			✓			07/01/94	
			.0201 - .0210			✓			07/01/94	
			.0301 - .0306			✓			07/01/94	
			.0401 - .0409			✓			07/01/94	
			.0501			✓			07/01/94	
			.0601 - .0606			✓			07/01/94	
			.0701			✓			07/01/94	
	58E		.0101	✓					07/01/94	
			.0102	✓			✓		07/01/94	
			.0103	✓					07/01/94	
			.0104 - .0105	✓			✓		07/01/94	
			.0201 - .0202	✓					07/01/94	
			.0203	✓			✓		07/01/94	
			.0204 - .0205	✓					07/01/94	
			.0206	✓			✓		07/01/94	
			.0301 - .0302	✓					07/01/94	
			.0303 - .0304	✓			✓		07/01/94	
			.0305	✓					07/01/94	
			.0306 - .0308	✓			✓		07/01/94	
			.0309	✓					07/01/94	
			.0401	✓					07/01/94	
			.0402	✓			✓		07/01/94	
			.0403 - .0405	✓					07/01/94	
			.0406 - .0407	✓			✓		07/01/94	
			.0408 - .0410	✓					07/01/94	
			.0411	✓			✓		07/01/94	
			.0412	✓					07/01/94	
			.0501 - .0503	✓					07/01/94	
			.0504	✓			✓		07/01/94	
			.0505 - .0509	✓					07/01/94	
			.0510	✓			✓		07/01/94	
			.0511 - .0514	✓					07/01/94	
25	NCAC	1C	.0412		✓		✓		06/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
25	NCAC	1D	.1122 - .1128			✓			06/01/94	
			.2501 - .2513	✓			✓		06/01/94	
			.2514	✓					06/01/94	
			.2515	✓			✓		06/01/94	

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

Markets

2 NCAC 43L .0113 - Gate Fees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0304 - Horse Facility	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0320 - Dress of Lessees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0322 - Display or Sale of Weapons	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0331 - Premiums and Awards	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 48A .1702 - Noxious Weeds	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

COMMERCE

Community Assistance

4 NCAC 19L .0502 - Eligibility Requirements	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
4 NCAC 19L .0901 - Grant Agreement	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
4 NCAC 19L .1302 - Eligibility Requirements	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .1104 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .1204 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .1304 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .1404 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .1504 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .1604 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .1704 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94

RRC OBJECTIONS

15A NCAC 7H .1804 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .1904 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
15A NCAC 7H .2104 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94

HUMAN RESOURCES

Children's Services

10 NCAC 41F .0704 - Physical Facility	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94

Facility Services

10 NCAC 3L .0906 - Compliance with Laws		
Rule Withdrawn by Agency		04/21/94

INSURANCE

Agent Services Division

11 NCAC 6A .0802 - Licensee Requirements		
Rule Withdrawn by Agency		05/19/94

JUSTICE

Departmental Rules

12 NCAC 1 .0212 - Grievance Procedure	RRC Objection	05/19/94
Agency Repealed Rule	Obj. Removed	05/19/94

LABOR

OSHA

13 NCAC 7A .0707 - Variances and Other Relief Under Section 95-132(a)	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94
13 NCAC 7A .0708 - Variances and Other Relief Under Section 95-132(b)	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94
13 NCAC 7A .0709 - Modification: Revocation: and Renewal of Rules or Orders	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94
13 NCAC 7A .0710 - Action on Applications	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94
13 NCAC 7A .0711 - Request for Hearings on Applications	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94

LICENSING BOARDS AND COMMISSIONS

Chiropractic Examiners

21 NCAC 10 .0303 - Solicitation of Auto Accident Victims		
Agency Withdrew Rule		05/19/94

Cosmetic Art Examiners

21 NCAC 14H .0008 - Floor Coverings	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 14H .0011 - Cleanliness of Operators	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 14H .0018 - Systems of Grading Beauty Establishments	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

Dental Examiners

21 NCAC 16I .0003 - License Void Upon Failure to Renew	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94
21 NCAC 16R .0002 - Approved Courses and Sponsors	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94

General Contractors

21 NCAC 12 .0205 - Filing Deadline/APP Seeking Qual/Emp/Another	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

Medical Examiners

21 NCAC 32P .0001 - Name of Limited Liability Company	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0001 - Definitions	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0002 - Qualifications for License	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0003 - Temporary License	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0005 - Annual Registration	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0007 - Exemption from License	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0015 - Assumption of Professional Liability	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0017 - Disciplinary Authority	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32O .0021 - Fees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32Q .0101 - Definitions	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32Q .0208 - Confidentiality		
Rule Withdrawn by Agency		05/19/94

Real Estate Commission

21 NCAC 58A .1711 - Continuing Education Required of Nonresident Licensees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0104 - Scope: Duration and Renewal of Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

RRC OBJECTIONS

21 NCAC 58C .0105 - Withdrawal or Denial of Approval Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58C .0218 - Licensing Exam Confidentiality: School Perform./Lic Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58C .0309 - Certification of Course Completion Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0102 - Update Course Component Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0104 - Criteria for Approval of Update Course Sponsor Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0203 - Application and Criteria for Original Approval Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0206 - Request for Videotape Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0304 - Criteria for Elective Course Approval Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0306 - Elective Course Instructors Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0308 - Request for Videotape Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0402 - Sponsor Eligibility Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0406 - Course Rosters, Completion Certificated and Evaluations Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94
21 NCAC 58E .0510 - Monitoring Attendance Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0307 - Certificate Renewal Agency Revised Rule	RRC Objection RRC Objection	04/21/94 04/21/94
16 NCAC 6E .0202 - Interscholastic Athletics Agency Revised Rule	Obj. Removed RRC Objection	05/19/94 04/21/94
	Obj. Removed	05/19/94

REVENUE

Sales and Use Tax

17 NCAC 7B .2608 - Plumbing: Heating: Air Cond/Elec Contractors: Purchases	RRC Objection	05/19/94
17 NCAC 7B .2609 - Plumbing: Heating: Air Cond/Elec Contractors: Sales	RRC Objection	05/19/94
17 NCAC 7B .5462 - White Goods Disposal Tax Report Form: E-500W	RRC Objection	05/19/94
17 NCAC 7B .5464 - Ice Certificate Form: E-599Y	RRC Objection	05/19/94

STATE PERSONNEL

Office of State Personnel

25 NCAC 1D .2401 - Career Growth Recognition Award Rule Withdrawn by Agency		05/19/94
25 NCAC 1D .2403 - Employees Eligible/Career Growth Recognition Award Agency Revised Rule	RRC Objection Obj. Removed	05/19/94 05/19/94

RRC OBJECTIONS

*25 NCAC 1D .2408 - Effective Date of Cost-of-Living Adjustment
Agency Revised Rule*

*25 NCAC 1D .2411 - Employees Eligible For Performance Bonus
Agency Revised Rule*

RRC Objection 05/19/94
Obj. Removed 05/19/94

RRC Objection 05/19/94
Obj. Removed 05/19/94

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.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Coastal Management				
Roger Fuller v. EHNR, Divs. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378 ^{*2}	Gray	04/07/94	
Roger Fuller v. EHNR, Divs. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017 ^{*2}	Gray	04/07/94	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Environmental Health				
Jane C. O'Malley, Melvin L. Cartwright v. EHNR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	
Environmental Management				
David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
Marine Fisheries				
Robert I. Swinson, Virginia S. Swinson v. EHNR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Solid Waste Management				
Roger Sessoms v. EHNR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
HUMAN RESOURCES				
Division of Child Development				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit	93 DHR 0973	Morrison	03/08/94	
DHR, Division of Child Development v. Joyce Gale	93 DHR 1344	Gray	04/28/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1797	Nesnow	03/21/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
Facility Services				
Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Cert of Need Section, Div of Facility Svcs, DHR, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D.	93 DHR 0746	Morgan	04/11/94	
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
Lowell Stafford v. Department of Human Resources	93 DHR 1381	Gray	04/15/94	
Division of Medical Assistance				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
David Yott v. Department of Human Resources	93 DHR 1113	Gray	04/05/94	
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
Division of Social Services				
Evelyn Moore v. Department of Human Resources	94 DHR 0293	Reilly	04/15/94	

* Consolidated Cases.

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Child Support Enforcement Section</i>				
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Luther Hatcher v. Department of Human Resources	93 CSE 1082	Mann	05/24/94	
Bryan Jeffrey Cole v. Department of Human Resources	93 CSE 1091	Becton	03/30/94	
Dexter L. Chambers v. Department of Human Resources	93 CSE 1124	West	03/28/94	
Ronald E. Johnson v. Department of Human Resources	93 CSE 1125	Becton	03/30/94	
Roger Moore v. Department of Human Resources	93 CSE 1127	Becton	04/14/94	
Alvin Lee Martin v. Department of Human Resources	93 CSE 1128	Nesnow	04/04/94	
Robert Young v. Department of Human Resources	93 CSE 1133	Reilly	04/18/94	
Antonio Townsend v. Department of Human Resources	93 CSE 1139	Becton	03/30/94	
Troy E. Pinkney v. Department of Human Resources	93 CSE 1148	Mann	03/29/94	
Anthony A. Macon v. Department of Human Resources	93 CSE 1149	Gray	04/26/94	
Walter Lee Corbett v. Department of Human Resources	93 CSE 1150	Reilly	03/30/94	
Joe Louis Mayo v. Department of Human Resources	93 CSE 1161	West	04/19/94	
Nash Andrew Newsome v. Department of Human Resources	93 CSE 1170	Mann	03/17/94	
James E. Watson v. Department of Human Resources	93 CSE 1171	Gray	04/26/94	
Robert Lee Barrett v. Department of Human Resources	93 CSE 1172	Morrison	04/20/94	
Betty A. Williams, Fred E. Jones v. Department of Human Resources	93 CSE 1178	Nesnow	04/20/94	
Eric G. Sykes v. Department of Human Resources	93 CSE 1181	Becton	04/20/94	
Willie C. Hollis v. Department of Human Resources	93 CSE 1191	Becton	05/09/94	
Bernadette Cook v. Department of Human Resources	93 CSE 1202	Gray	04/27/94	
Dennis W. Nolan v. Department of Human Resources	93 CSE 1254	Morrison	04/27/94	
Robert Calvin Connor v. Department of Human Resources	93 CSE 1258	West	04/19/94	
James D. Williams v. Department of Human Resources	93 CSE 1259	West	04/19/94	
Vaughn D. Pearsall v. Department of Human Resources	93 CSE 1267	Becton	04/20/94	
King D. Graham v. Department of Human Resources	93 CSE 1275	Becton	05/18/94	
Sidney Ray Tuggle Jr. v. Department of Human Resources	93 CSE 1307	West	04/25/94	
George Aaron Collins v. Department of Human Resources	93 CSE 1331	West	04/25/94	
Samuel L. Dodd v. Department of Human Resources	93 CSE 1357	Gray	03/31/94	
William A. Sellers v. Department of Human Resources	93 CSE 1359	Morrison	04/20/94	
Kenneth W. Cooper v. Department of Human Resources	93 CSE 1364	West	04/27/94	
David L. Terry v. Department of Human Resources	93 CSE 1386	Mann	05/18/94	
Steven A. Elmquist v. Department of Human Resources	93 CSE 1392	Reilly	04/29/94	
Dennis E. Fountain Jr. v. Department of Human Resources	93 CSE 1414	Chess	05/13/94	
Mark E. Rogers v. Department of Human Resources	93 CSE 1415	Mann	05/03/94	
Daniel Thomas Hefele v. Department of Human Resources	93 CSE 1432	Morrison	04/28/94	
Gilbert J. Gutierrez v. Department of Human Resources	93 CSE 1433	Morrison	05/13/94	
Alton D. Johnson v. Department of Human Resources	93 CSE 1434	Reilly	04/29/94	
Chester Sanders v. Department of Human Resources	93 CSE 1437	West	04/19/94	
Rodney Guyton v. Department of Human Resources	93 CSE 1439	West	04/21/94	
Donald W. Clark v. Department of Human Resources	93 CSE 1441	Nesnow	05/13/94	
William E. David Jr. v. Department of Human Resources	93 CSE 1442	Nesnow	05/02/94	
John J. Gabriel v. Department of Human Resources	93 CSE 1452	Chess	05/16/94	
Timothy D. Evans v. Department of Human Resources	93 CSE 1460	Reilly	04/28/94	
Billy Edward Smith v. Department of Human Resources	93 CSE 1461	West	04/19/94	
Allen D. Terrell v. Department of Human Resources	93 CSE 1463	Nesnow	05/02/94	
Ray C. Moses v. Department of Human Resources	93 CSE 1464	Nesnow	04/28/94	
Mickey Bridgett v. Department of Human Resources	93 CSE 1468	Becton	05/24/94	
Bart Ransom v. Department of Human Resources	93 CSE 1495	Morrison	04/29/94	
William H. Simpson Sr. v. Department of Human Resources	93 CSE 1497	West	04/19/94	
James D. McClure Jr. v. Department of Human Resources	93 CSE 1500	Becton	05/13/94	
Douglas L. Cherrix v. Department of Human Resources	93 CSE 1512	Gray	05/13/94	
Dwayne Lamont Thompson v. Department of Human Resources	93 CSE 1515	Morrison	04/21/94	
Horace Lee Bass v. Department of Human Resources	93 CSE 1520	Morrison	05/13/94	
Michael Wilder v. Department of Human Resources	93 CSE 1521	Reilly	04/28/94	
James A. Cephas v. Department of Human Resources	93 CSE 1523	Reilly	05/13/94	
Mark E. Campbell v. Department of Human Resources	93 CSE 1537	Nesnow	05/19/94	
Barriett Easterling v. Department of Human Resources	93 CSE 1560	Mann	05/18/94	
Wade A. Burgess v. Department of Human Resources	93 CSE 1568	Morrison	04/28/94	
Billy Dale Beaney v. Department of Human Resources	93 CSE 1569	Morrison	05/13/94	
James E. Wiggins Sr. v. Department of Human Resources	93 CSE 1571	Morrison	05/13/94	
Timothy J. Jones v. Department of Human Resources	93 CSE 1576	West	04/19/94	
Randall E. Hunter v. Department of Human Resources	93 CSE 1579	West	04/19/94	
Alton E. Simpson Jr. v. Department of Human Resources	93 CSE 1591	Becton	04/20/94	
Johnny T. Usher v. Department of Human Resources	93 CSE 1592	Chess	05/19/94	
John William Vance Jr. v. Department of Human Resources	93 CSE 1597	Becton	05/13/94	
Brian Gilmore v. Department of Human Resources	93 CSE 1615	Chess	05/13/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Benjamin J. Stroud v. Department of Human Resources	93 CSE 1648	Becton	05/19/94	
Tony A. Miles v. Department of Human Resources	93 CSE 1654	Mann	05/24/94	
Dwayne L. Allen v. Department of Human Resources	93 CSE 1655	Mann	05/17/94	
Joe C. Dean v. Department of Human Resources	93 CSE 1715	Gray	05/23/94	
Royston D. Blandford III v. Department of Human Resources	94 CSE 0095	West	04/19/94	
JUSTICE				
<i>Alarm Systems Licensing Board</i>				
Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94	
<i>Private Protective Services Board</i>				
Larry C. Hopkins v. Private Protective Services Board	93 DOJ 1618	Morrison	03/07/94	
Stephen M. Rose v. Private Protective Services Board	94 DOJ 0359	Nesnow	05/19/94	
Lemuel Lee Clark Jr. v. Private Protective Services Board	94 DOJ 0360	Nesnow	05/19/94	
<i>Training and Standards Division</i>				
Curtiss Lance Poteat v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0231	Chess	03/28/94	
Willie David Moore v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1071	Nesnow	04/11/94	9:3 NCR 218
Glenn Travis Stout v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1409	Gray	03/03/94	
Gregory Blake Manning v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0048	Gray	03/29/94	
MORTUARY SCIENCE				
Mortuary Science v. Perry J. Brown, & Brown's Funeral Directors	93 BMS 0532	Chess	03/28/94	
PUBLIC EDUCATION				
Nancy Watson v. Board of Education	93 EDC 0234	Chess	02/28/94	9:2 NCR 108
Janet L. Wilcox v. Carteret County Board of Education	93 EDC 0451	Mann	02/21/94	
STATE HEALTH BENEFITS OFFICE				
Linda C. Campbell v. Teachers & St Emp Major Medical Plan	93 INS 0410	Becton	04/22/94	
Timothy L. Coggins v. Teachers' & St Emp Comp Major Med Plan	93 INS 0929	Morrison	03/04/94	
STATE PERSONNEL				
<i>Agricultural and Technical State University</i>				
Linda D. Williams v. Agricultural and Technical State University	93 OSP 0089	Chess	03/23/94	
Juanita D. Murphy v. Agricultural and Technical State University	93 OSP 0708	Morrison	03/16/94	
Thomas M. Simpson v. Agricultural and Technical State University	93 OSP 1393	Gray	03/24/94	
<i>Department of Agriculture</i>				
Donald H. Crawford v. Department of Agriculture	94 OSP 0108	Reilly	05/23/94	
<i>Catawba County</i>				
Sandra J. Cunningham v. Catawba County	93 OSP 1097	Reilly	04/29/94	9:4 NCR 292
<i>North Carolina Central University</i>				
Ha-Yilyah Ha-She'B v. NCCU	93 OSP 0875	Becton	04/13/94	9:3 NCR 211
<i>Department of Commerce</i>				
Ruth Daniel-Perry v. Department of Commerce	93 OSP 0725	Chess	03/04/94	9:1 NCR 63
<i>Department of Correction</i>				
Leland K. Williams v. Department of Correction	91 OSP 1287	Chess	02/22/94	
Elroy Lewis v. North Central Area - Dept of Correction, Robert Lewis	92 OSP 1770	Becton	05/24/94	9:6 NCR 395
Bert Esworthy v. Department of Correction	93 OSP 0711	Chess	04/21/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Alfred B. Hunt v. Department of Correction	94 OSP 0243	Reilly	04/20/94	
Adrian E. Graham v. Intensive Probation/Parole	94 OSP 0261	Morrison	04/26/94	
<i>Department of Crime Control and Public Safety</i>				
Don R. Massenburg v. Department of Crime Control & Public Safety	90 OSP 0239	Chess	04/28/94	
Fred L. Kearney v. Department of Crime Control & Public Safety	91 OSP 0401	West	03/18/94	
Sylvia Nance v. Department of Crime Control & Public Safety	92 OSP 1463	Reilly	03/21/94	
<i>Durham County Health Department</i>				
Lylla Denell Stockton v. Durham County Health Department	93 OSP 1780	Gray	05/25/94	
<i>Employment Security Commission of North Carolina</i>				
Rejeanne B. LeFrancois v. Employment Security Commission of N.C.	93 OSP 1069	West	04/08/94	
<i>Department of Environment, Health, and Natural Resources</i>				
<i>Division of Marine Fisheries</i>				
William D. Nicely v. Environment, Health, & Natural Resources	92 OSP 1454	Becton	05/04/94	9:5 NCR 333
<i>Department of Human Resources</i>				
Inez Latta v. Department of Human Resources	93 OSP 0830	Becton	03/28/94	
Charla S. Davis v. Department of Human Resources	93 OSP 1762	Gray	03/03/94	
Rose Mary Taylor v. Department of Human Resources, Murdoch Center	93 OSP 0047	Gray	05/06/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
<i>Durham County Department of Social Services</i>				
Belinda F. Jones v. Daniel Hudgins, Durham Cty Dept of Social Svcs	93 OSP 0728	Chess	04/11/94	
<i>Mental Health/Mental Retardation</i>				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Wake County Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
Julia Morgan Brannon v. Wake County MD/DD/SAS	94 OSP 0214	Reilly	04/14/94	
<i>Department of Transportation</i>				
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y Dept of Transportation	93 OSP 0297 [#]	Morrison	03/10/94	9:1 NCR 60
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y Dept of Transportation	93 OSP 0500 [#]	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
Henry C. Puegh v. Department of Transportation	93 OSP 1710	Nesnow	05/24/94	
<i>University of North Carolina at Chapel Hill</i>				
Eric W. Browning v. UNC-Chapel Hill	93 OSP 0925	Morrison	05/03/94	9:5 NCR 342
STATE TREASURER				
<i>Retirement Systems Division</i>				
Molly Wiebenson v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0015	Morgan	05/26/94	9:6 NCR 403
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys.	93 DST 1474	Nesnow	03/28/94	
Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 1731	Becton	05/25/94	

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 OSP 1770

ELROY LEWIS,
Petitioner,

V.

**NORTH CENTRAL AREA - DEPT. OF
CORRECTION, MR. ROBERT LEWIS,
Respondents.**

RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, on March 22 and 23, 1994, in Raleigh, North Carolina. At the conclusion of the hearing, the parties were afforded an opportunity to file written post-hearing submissions. The record was closed on April 22, 1994.

APPEARANCES

Petitioner: Abraham Penn Jones, Attorney at Law, Raleigh, North Carolina.

Respondent: Neil Dalton, Assistant Attorney General, N.C. Department of Justice, Raleigh, North Carolina.

BACKGROUND

The petition for a contested case hearing was filed in the Office of Administrative Hearings on December 16, 1992, alleging that the Petitioner was discharged from his position as a Clinical Chaplain with the North Central Area of the North Carolina Department of Correction due to "prejudice" and that the decision was based upon erroneous material.

The Petitioner asserted in his Prehearing Statement that his dismissal was "due to illegal political discrimination based upon the Petitioner's status as a chaplain and certain political activity in violation of G.S. 126-36."

The Respondent asserted in its Prehearing Statement that the Petitioner was discharged due to poor timekeeping practices amounting to falsification of employee time reports as outlined in the letter of discharge to the Petitioner dated August 7, 1992, which listed nine dates when the Petitioner allegedly reported to work late and/or left early without adequate explanation and in which the Petitioner allegedly over-reported time actually worked on his employee time reports.

ISSUES

1. Whether the Petitioner was dismissed from his position as Clinical Chaplain II in the North Central Area Office of the North Carolina Department of Correction, pay grade 70, effective July 9, 1992 due to illegal political discrimination based on the Petitioner's status as a chaplain and certain political activity, in violation of North Carolina General Statutes section 126-36.
2. Whether the Petitioner should have removed from his personnel file certain inaccurate and unsubstantiated material, pursuant to North Carolina General Statutes section 126-25, the same material which gave rise to his dismissal on or about July 9, 1992.

3. Whether the Petitioner has exhausted his administrative remedies and complied with North Carolina General Statutes section 126-34 as it relates to the Petitioner's claim of erroneous and misleading information in his personnel file per North Carolina General Statutes section 126-25.
4. If it is determined that inaccurate and misleading material was the basis for the Petitioner's dismissal, whether the Petitioner should then be reinstated to his position.

STATUTES AND RULES INVOLVED

N.C. Gen. Stat. §§126-16, -25, -34, -36
N.C. Dept. of Correction Personnel Manual
Office of State Personnel's Personnel Manual

EXHIBITS

The exhibits listing was omitted from this publication. If you would like a copy please contact the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678.

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. The Petitioner was discharged from his position as a Clinical Chaplain with the North Central Area of the North Carolina Department of Correction, Division of Prisons, effective July 9, 1992 in a dismissal letter dated August 7, 1992 for alleged unacceptable misconduct.
2. At the time of the Petitioner's discharge, he did not have forty-eight months of continuous service as a State employee.
3. The Petitioner contends that his dismissal was based on erroneous and misleading information in his personnel file and that this information should be deleted from his file pursuant to North Carolina General Statutes section 126-34.
4. The Petitioner also contends that his dismissal was based on political bias and discrimination as a result of his relationship with former Secretary of Correction Aaron Johnson, his political activity, and general bias against him as a chaplain; therefore the Petitioner asserts that his activity was protected by, and his dismissal was in violation of, North Carolina General Statutes section 126-36.
5. The Petitioner was suspended without pay on July 9, 1992. At the time of his suspension, the Petitioner was accused of poor timekeeping practices relative to three dates: May 26, 1992; June 1, 1992; and June 8, 1992.
6. Robert C. Lewis, the Area Administrator for the North Central Area testified that prior to May, 1992, he had received complaints and information that the Petitioner was not working all of the time he was supposed to be working when he was out of the office purportedly at various prison units in the North Central Area.
7. On May 8, 1992, the Petitioner left the North Central Area Office in Raleigh purportedly heading for Warren Correctional Center. Approximately an hour later, Robert Lewis left the North Central Area office headed for Vance Correctional Center. While proceeding north on U.S. 1, the Petitioner, who was driving a State car, passed Mr. Lewis at a high rate of speed. Due to this incident and the other complaints he had received, Mr. Lewis decided to investigate the Petitioner's timekeeping.

8. Robert Lewis devoted the three days of May 26, 1992, June 1, 1992, and July 8, 1992, to investigating the Petitioner's timekeeping. The Petitioner was scheduled to visit Durham Correctional Center during the morning on May 26, 1992 and June 8, 1992, and Person Correctional Center during the afternoon; on June 1, 1992, the Petitioner was scheduled to visit Person Correctional Center in the morning.
9. At the time of his dismissal, the Petitioner had worked for the Respondent since December 4, 1990. When he was brought aboard, he was told by his supervisor, Mr. Louis Powell that "We are professionals in this office and do not walk around looking at a watch keeping time."
10. The nature of the Petitioner's work as a chaplain was very demanding and involved community work; recruitment of chaplains for correctional centers; scheduling religious services for volunteers; visitation of inmates' relatives at hospitals, visitation of staff members in hospitals and homes when they were ill, visitation of staff members' families when they were hospitalized; attending funerals and sometimes conducting funerals of inmates and staff; and presenting the chaplaincy program to ministerial alliances and university students in an effort to recruit persons to volunteer their time and/or consider prison ministry as a profession.
11. The Petitioner's working hours were from 8:30 a.m. to 5:30 p.m. There were often occasions when the Petitioner's work day actually extended late into the evenings.
12. Mr. Robert Lewis testified that on the occasions when the Petitioner began his work day somewhere other than the Area Office, he was expected to arrive at that site by 8:30 a.m. and continue working until 5:30 p.m.
13. The Petitioner testified that he thought travel time could be counted toward the hours worked.
14. The Petitioner was allowed to drive a State vehicle to conduct State business. If the Petitioner was planning to use a State vehicle, he was expected to arrive at the North Central Area Office at 8:30 a.m. to pick up the State vehicle. Robert Lewis knew that it was the Petitioner's frequent practice to drive his personal vehicle when he visited both the Person and Durham Correctional Centers in the same day. The Petitioner was allowed to drive his personal vehicle on State business; however, this was his personal choice, not a requirement.
15. On May 26, 1992, Robert Lewis first went to the North Central Area Office to see if the Petitioner was going to pick up a State vehicle that day. Sometime after 8:30 a.m., when the Petitioner had not arrived to pick up a State vehicle, Robert Lewis drove to the Durham Correctional Center to see if the Petitioner was there. Robert Lewis drove through the parking lot of the Durham Correctional Center and did not see the Petitioner's car. He left the Durham Correctional Center and went to a pay phone where he called the Durham Correctional Center to see if the Petitioner was inside the Center. After being informed that the Petitioner was not at the prison unit, Mr. Lewis called back to the North Central Area Office to see if the Petitioner was there or had been there to pick up a State vehicle. After determining that neither the Durham Correctional Center or the North Central Area Office had heard from the Petitioner, Mr. Lewis drove back to the Durham Correctional Center and looked for the Petitioner's car in the parking lot. When he could not locate the Petitioner's car, Mr. Lewis then drove to Person Correctional Center to see if the Petitioner was there. The Petitioner's car was not at the Person Correctional Center either.
16. On May 26, 1992, the Petitioner drove his personal car from his home to the Durham Correctional Center. He left his home in Orange County at approximately 8:30 a.m. and signed the visitor's log at Durham Correctional Center at 9:40 a.m. Prior to signing the visitor's log, the Petitioner spent some time speaking with the superintendent about inmates and the divinity student who was placed at the center. The Petitioner spent approximately fifty minutes counselling with inmates. He signed out on the visitor's log at 10:30 a.m. After signing out, the Petitioner spent some time writing up

- his "verbatim" and then drove to the Person Correctional Center. He signed in on the visitor's log at Person Correctional Center at 12:20 p.m. and signed out at 2:40 p.m.
17. The Petitioner testified that although he signed out on the visitor's log at 2:40 p.m., he did not actually leave center until approximately 3:10 p.m.
 18. The Petitioner went to lunch after he left the Person Correctional Center. At approximately 4:30 p.m., he began driving home and arrived there at approximately 5:30 p.m.
 19. On June 1, 1992, Robert Lewis again looked for the Petitioner at the Durham and Person Correctional Centers after leaving the North Central Area Office sometime after 8:30 a.m. He was unable to locate the Petitioner.
 20. The Petitioner drove his personal car to the Person Correctional Center on June 1, 1992. Prior to going on the yard and signing the visitor's log, the Petitioner spent some time consulting with Assistant Superintendent Selma Townes.
 21. The Petitioner signed in on the visitor's log at the Person Correctional Center at 10:45 a.m. and he signed out 12:10 p.m.
 22. After the Petitioner left the Person Correctional Center, he spent approximately an hour trying to recruit an individual to serve as the chaplain for the Person Correctional Center. He then went to lunch. After lunch, he drove to the Durham Correctional Center.
 23. The Petitioner signed in on the visitor's log at the Durham Correctional Center at 3:30 p.m. He introduced the new student chaplain to the superintendent, the staff, and the inmates.
 24. The Petitioner signed out of the Durham Correctional Center at 5:00 p.m. He then attended a work related Prison Ministry Workshop conducted by Chuck Colson from 6:00 p.m. until 10:00 p.m.
 25. On June 8, 1992, soon after 8:30 a.m., Robert Lewis again left the North Central Area Office looking for the Petitioner at both the Person and Durham Correctional Centers. He did not locate the Petitioner at either prison.
 26. The Petitioner went to the Durham Correctional Center on June 8, 1992 to do an hour of supervision with the Duke University divinity student. The divinity student was not there, therefore the Petitioner did a number of counseling sessions with several inmates instead. The visitor's log at the Durham Correctional Center indicates that the Petitioner signed in at 10:05 a.m. and signed out at 11:35 a.m. He took four hours of leave that afternoon.
 27. On July 7 and July 8, 1992, Robert Lewis, and the Petitioner's immediate supervisor, Louis Powell, confronted the Petitioner regarding the hours he worked on May 26, 1992, June 1, 1992, and June 8, 1992. The Petitioner was accused of falsely reporting his time on the time reports, the DC-113's, handed into the Department.
 28. When he was first confronted with the issue of his time keeping, the Petitioner suggested that the dates in question may have been days that he went to the Area Office prior to travelling to the correctional centers. When told that Robert Lewis had verified that the Petitioner had not reported to the Area Office on those dates, the Petitioner did not provide any explanation other than that he did not always sign the visitor's log when he first arrived and he did not always leave the premises immediately after he signed out on the visitor's log. Furthermore, the Petitioner indicated that he felt that he given more than the requisite eight hour day's worth of work, but if the Respondent had some problem with his time keeping, then he would not object to the hours being deducted from his accumulated vacation and compensatory leave.

29. After the July 8, 1992 meeting with the Petitioner, Robert Lewis and Louis Powell began to further investigate the Petitioner's timekeeping. The investigation focused on days when the Petitioner was scheduled to work at both the Durham and Person Correctional Centers and the Respondent found several other dates where it was felt that there were discrepancies between the hours on the visitor's logs and the time the Petitioner reported on his monthly time reports.
30. During the course of his employment with the Respondent and up until July 8, 1992, the Petitioner was never told that the visitor's logs at the various units within the North Central Area were a legitimate official document for timekeeping.
31. Likewise, the Petitioner understood that his timesheets, which were turned in on a monthly basis by his supervisor, Louis Powell, could be corrected in case of errors based on recordkeeping, faulty memory or both.
32. The Petitioner did not have access to his time reports until just before they were turned in. It was Mr. Powell's practice to call the Petitioner into his office and ask him what sick and/or vacation time the Petitioner had taken during the month. Mr. Powell, himself, filled out the DC-113, Employee Time Report. He would then give it to the Petitioner to sign, at which time the Petitioner was able to review the time reports before they were turned in.
33. The Petitioner received a letter of suspension on July 9, 1992 which cited three dates, May 26, June 1, and June 8, 1992, as the basis for his suspension for unacceptable personal conduct.
34. The Petitioner wrote to Mr. Robert C. Lewis, the Area Administrator, appealing his suspension on the basis that the grounds for the suspension were untrue and he unequivocally denied that he had deliberately falsified his time reports.
35. Between July 9, 1992 and July 23, 1992 when the Petitioner was given a pre-dismissal conference and a letter dated July 23, 1992, the Petitioner was not allowed access to his records at the unit. In addition to the three original dates the Petitioner had been questioned about, the July 23, 1992 letter included six additional dates in April, May, and June of 1992 on which it was alleged that the Petitioner had misrepresented the hours he had worked on his time sheets.
36. The Petitioner received a letter terminating his employment on August 7, 1992.
37. At no time during the course of the investigation being conducted between July 9, 1992 and August 7, 1992, did the Petitioner have access to materials to respond to the allegations regarding his timekeeping with respect to dates from April 6, 1992 through June 29, 1992.
38. The Petitioner's fellow chaplains testified at the hearing that the Petitioner was a man of high moral character, had a strong reputation for truth and veracity, and had an excellent reputation as a worker within the prison system.
39. The Respondent's Division of Prisons did not have a set policy regarding the signing of visitor's logs at the correctional centers. The practice varied depending upon the correctional center and the prison official. Some of the Respondent's officials signed the logs regularly, both as they went in and when they were coming out. Others did not sign at all, and some signed when entering or exiting, but not both.
40. Mr. Louis Powell testified that he counselled the Petitioner on two occasions, April 1, 1992 and May 7, 1992, regarding the need for him to pay attention to his time as it related to being where his schedule indicated and being there on time. Apparently, however, if these counselling sessions occurred, they were not documented since the Respondent did not offer any documents from the Petitioner's personnel file, or elsewhere, verifying that these counselling sessions took place.

41. The Petitioner, like other chaplains, enjoyed a special relationship with Aaron Johnson who was himself a member of the clergy. The Petitioner testified that he felt that both Robert Lewis and Louis Powell had some resentment toward him due to his relationship with Secretary Johnson and that Mr. Powell had referred to the Petitioner at one point as a "celebrity" and Robert Lewis had told the Petitioner that "he was no better than anybody else."
42. The Petitioner was integrally involved with setting up a banquet and selling tickets for the banquet honoring outgoing Secretary of Correction Aaron Johnson. There was testimony that although this banquet was attended by some prison officials, there was some degree of anxiety or apprehension associated with participation in this event.
43. Assistant Secretary Lattie Baker, who is still employed by the Respondent, also co-sponsored the going away banquet for former Secretary Aaron Johnson.
44. Lattie Baker has not been terminated or suffered any other repercussions due to his co-sponsoring the banquet for former Secretary Johnson.
45. No evidence was presented at the hearing that anyone other than the Petitioner felt they had suffered any negative repercussions as a result of either sponsoring or attending the banquet for former Secretary Johnson.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Unless an employee is alleging discrimination, the employee must be a permanent or career State employee in order to avail himself or herself of the protection afforded by North Carolina General Statutes section 126-35 which provides for disciplinary action only on the basis of just cause.
2. The Petitioner, as pay grade 70 employee, needed to have been employed by the State for 48 months preceding his termination in order to qualify him as a permanent State employee for the purposes of just cause protection under North Carolina General Statutes section 126-35. Because the Petitioner had been employed by the State for less than 48 months, he was not a permanent State employee protected from wrongful discharge pursuant to North Carolina General Statutes sections 126-5, -35, -39.
3. The Petitioner, however, alleged that he had been discriminated against on the basis of his religion and political affiliation and the State Personnel Act does provide even a probationary employee a right to appeal grievances when allegations of discrimination are involved. N.C. Gen. Stat. §126-16.
4. The allegations of religious discrimination were disposed of by granting the Respondent's Motion to Dismiss regarding that issue. With regard to the political discrimination issue, the Petitioner is not a permanent State employee and the non-discrimination provisions of section 126-16 which are applicable to applicants for State employment do not include a prohibition against discrimination based upon political affiliation. The provisions of section 126-36, which do include a prohibition against discrimination on the basis of political affiliation, only apply to State employees or former State employees. The Petitioner, as a probationary employee, is not either a State employee or former State employee as that term is defined in the State Personnel Act. Thus, it is not clear that the Petitioner has a cause of action based upon political discrimination. Even if the Petitioner has such a cause of action, the Petitioner did not prove by the greater weight of the evidence that his dismissal was due to discrimination based upon political affiliation.

5. The Petitioner's contention that his personnel file contains false and misleading information is not appealable directly to the Personnel Commission. Such a claim must be appealed through the Respondent's Employee Grievance Procedure. N.C. Gen. Stat. §§126-34, 126-25.
6. The Respondent's grievance procedure provides that employee appeals from the Petitioner's area are to go first to the Area Administrator, then to the Geographical Command, and finally to Personnel.
7. The Petitioner's letter to his Area Administrator, Robert C. Lewis, in which he appealed his suspension on the grounds that the basis for his suspension was untrue was sufficient to be considered an appeal on the basis of inaccurate or misleading information in the Petitioner's personnel file and complied with the first step of the Respondent's internal grievance process. The fact that his grievance was forwarded on to personnel, skipping the second step of the internal grievance process, was not the Petitioner's fault. Consequently he should not be penalized for a so called failure to follow the internal grievance process when the Respondent's actions are the cause of the failure to move from the Area Administrator to the second level of the appeal process
8. The Petitioner did exhaust the internal administrative remedies regarding his contention that his personnel file contains erroneous and misleading materials. Having exhausted the internal grievance process, the Petitioner was entitled to appeal to the State Personnel Commission.
9. There is no evidence which establishes that prison officials are required to sign the visitor's log as soon as they arrive at the correctional centers or that they must leave the premises as soon as they sign out on the visitor's log. The Respondent did not present evidence that established that there were no work related duties that the Petitioner could have been performing during the times that he was neither at one of the correctional centers or at the area office. Therefore, all that the times and dates on the visitor logs establishes is that those are the times that the Petitioner signed the logs.
10. If it were the Petitioner's intention to deliberately defraud the Respondent by claiming to work when he had not, he could have done what many prison personnel do, not sign the visitor logs at all. Absent an intention to defraud the State, the discrepancies, if there are any, in the Petitioner's timekeeping fall under the category of performance and not personal conduct.
11. To the extent that the Petitioner has been accused of deliberately falsifying his time records, the Petitioner's personnel file contains inaccurate and misleading information.
12. Any materials in the Petitioner's personnel file alleging that he deliberately falsified his time reports should be removed as being inaccurate and erroneous.
13. If the Petitioner were a permanent State employee, he would be entitled to reinstatement since he did not receive the requisite number of progressive warnings which would justify a performance based dismissal. Since the Petitioner is not a permanent State employee, he does not have just cause protection and he is not entitled reinstatement.

RECOMMENDED DECISION

The State Personnel Commission will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and order the Respondent to remove all charges of and references to allegations of deliberately falsifying time records from the Petitioner's personnel file.

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 Statutes section 150B-36(b).

NOTICE

Before the State Personnel Commission makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) 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.

The agency is required by North Carolina General Statutes section 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.

This the 24th day of May, 1994.

Brenda B. Becton
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 DST 0015**

MOLLY WIEBENSON)	
Petitioner,)	
)	
v.)	
)	
BOARD OF TRUSTEES TEACHERS' AND)	
STATE EMPLOYEES' RETIREMENT SYSTEM)	
Respondent.)	
)	

RECOMMENDED DECISION

The above-captioned matter was initiated by the filing of the Petitioner's Petition for a Contested Case Hearing on January 10, 1992. In a document captioned "Stipulations" which was jointly filed by the Petitioner and the Respondent on March 19, 1992, the parties jointly moved for a Recommended Decision in this contested case on the basis of their submission of stipulations.

APPEARANCES

Mark C. Martin, Patla, Straus, Robinson and Moore, P.A., for the Petitioner.

Alexander McC. Peters, Assistant Attorney General, for the Respondent.

ISSUE

Whether the Petitioner is eligible for membership in the Teachers' and State Employees' Retirement System of North Carolina for the period of time in which she has shared a position of employment with another individual, with each person working six months per year, in the North Carolina Department of Human Resources.

STIPULATIONS

The parties submitted the following stipulations for consideration by the presiding administrative law judge, in lieu of evidentiary presentations at a contested case hearing, in order to dispose of this contested case:

1. Both Petitioner and Respondent are proper parties before this Court, and both parties are within the jurisdiction of this Court.
2. Petitioner is presently employed, and was employed at all material times, by the North Carolina Department of Human Resources in the Alcoholic Rehabilitation Center (hereinafter "Center") in Black Mountain, Buncombe County, North Carolina.
3. Petitioner is before this Court contesting the decision made by J. Marshall Barnes, III, Deputy Director, Retirement Systems Division, Department of State Treasurer, State of North Carolina, as set forth in his letter dated November 18, 1991. In this letter, Respondent ruled that Petitioner was not eligible for retirement and disability benefits for the period of her employment, which began in 1984. A true and correct copy of this November 18, 1991

letter is attached hereto and incorporated herein by reference as "Exhibit 1." Exhibit 1 is the document which constitutes the agency's action.

4. On or about January 18, 1984, Petitioner was advised by the Center, via a memorandum from Millard P. (Buddy) Hall, Jr., that she would be able to share with Ms. Evelyn Brank, on a six-month basis, the position of rehabilitation therapist, grade 62. Petitioner was further told in this January 18, 1984 memorandum that, by sharing this employment position, she would be able "to maintain the benefits afforded to employees of the State of North Carolina." Petitioner was also told that, "[d]uring the six months each of you work per year[,] your retirement, Insurance and other deductions you may have will be processed through the normal channels of deductions of payroll." A true and correct copy of the Center's January 18, 1984 memorandum is attached hereto and incorporated herein by reference as "Exhibit 2."
5. Petitioner relied upon the unequivocal representations set forth in Exhibit 2, which representations were made on behalf of the Department of Human Resources and the Center, and as a result thereof, Petitioner (among other things) did not obtain individual retirement or disability coverage.
6. On September 17, 1991, Petitioner wrote to Respondent requesting a decision on Petitioner's entitlement to retirement and disability benefits from the State of North Carolina. A true and correct copy of Petitioner's September 17, 1991 letter to the Respondent is attached hereto and incorporated herein by reference as "Exhibit 3."
7. In the November 18, 1991 letter (that is, Exhibit 1) Respondent declared Petitioner ineligible for retirement membership for the period of her employment, because Petitioner is not an "employee" within the meaning of N.C. Gen. Stat. §135-1(10).
8. Petitioner prays that this Court find that Petitioner is entitled to her retirement and disability benefits from the State of North Carolina for the period of her employment with the Center.
9. The parties stipulate that the caption in this contested case be amended, and that the words "THE BOARD OF TRUSTEES OF THE TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM" replace the words "RETIREMENT SYSTEMS DIVISION, DEPARTMENT OF STATE TREASURER."

CONCLUSIONS OF LAW

1. North Carolina General Statutes Section 135-3(1) states, in pertinent part, that the membership of the Teachers' and State Employees' Retirement System of North Carolina includes all persons who shall become State employees after the date as of which the Retirement System was established, and that on and after July 1, 1955, membership in the Retirement System shall begin immediately upon the employment of a "teacher or employee" as the terms are defined in Chapter 135 of the North Carolina General Statutes.
2. As an individual who was employed by the North Carolina Department of Human Resources beginning in 1984, the Petitioner was eligible for membership in the Teachers' and State Employees' Retirement System of North Carolina immediately upon her employment, subject to the definition of the term "employee" in Chapter 135 of the North Carolina General Statutes.
3. N.C.G.S. §135-1(10) states, in pertinent part, that the word "employee," as used in Chapter 135 of the North Carolina General Statutes, means a full-time employee of the State of North Carolina or any of its departments, bureaus and institutions other than educational. The statutory section also states that the term "employee" shall not include any part-time or temporary employee. N.C.G.S. §135-1(10) concludes, in pertinent part, with the provision that employees of State agencies,

departments and institutions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

4. Under the employment arrangement which the Petitioner and the North Carolina Department of Human Resources had devised as described in the January 18, 1984 memorandum to the Petitioner and Evelyn Brank from Millard P. (Buddy) Hall, Jr., the Petitioner is not an "employee" as the term is defined in N.C.G.S. §135-1(10) for the purpose of membership in the Teachers' and State Employees' Retirement System of North Carolina, because the Petitioner shared a Rehabilitation Therapist position with Brank in which the Petitioner worked six months out of each year rather than the minimum period of nine months per year which N.C.G.S. §135-1(10) requires an individual to work in order to be considered as an "employee."
5. The Petitioner is not eligible for membership in the Teachers' and State Employees' Retirement System of North Carolina for the period of time in which she has shared a position of employment with another individual, with each person working six months per year, in the North Carolina Department of Human Resources.

RECOMMENDATION

It is recommended that the Respondent's determination that the Petitioner is not eligible for membership in the Teachers' and State Employees' Retirement System of North Carolina for the period of time in which she has shared a position of State employment with another individual be upheld.

DISCUSSION

The statutory law of North Carolina requires, in the estimation of the undersigned administrative law judge, that the Respondent prevail in this contested case. Nonetheless, the undersigned is gravely concerned about the inequitable dilemma in which the Petitioner finds herself. In a memorandum dated January 18, 1984 which is a part of the contested case record, Millard P. (Buddy) Hall, Jr. of the North Carolina Department of Human Resources' Alcoholic Rehabilitation Center unequivocally represented that during the six months of each year that the Petitioner worked as a Rehabilitation Therapist, her retirement, insurance and other deductions would be processed through normal channels. Hall likewise represented in the memorandum that during the months that the Petitioner was on leave from her employment with the Alcoholic Rehabilitation Center, she would be able to "pay to the system" her portion of employee benefits and "be maintained within the Retirement Insurance and other benefit packages."

It turns out that both of these representations were incorrect, as stated in the November 18, 1991 letter to the Petitioner's retained law firm from Deputy Director J. Marshall Barnes, III of the Retirement Systems Division of the State of North Carolina Department of State Treasurer. This letter is also a part of the contested case record. While the Petitioner understandably relied upon these erroneous assertions which were made in writing on the letterhead stationery of her employer by someone of authority in the workplace, the Petitioner exercised this reliance to her unfortunate detriment.

The undersigned does not have jurisdiction in this contested case over the North Carolina Department of Human Resources, its institution the Alcoholic Rehabilitation Center, or any of its employees to recommend that any of these subjects be compelled to rectify the situation in which the Petitioner has been placed as a result of her reliance on misinformation which emanated from her employer which apparently prevents the Petitioner from receiving credit towards retirement for the time period in which she has shared a position of employment with another individual. Similarly, since it does not appear in the contested case record that the Respondent has any culpability for the erroneous information which was given to the Petitioner, the Respondent cannot be directed to act in any rehabilitative manner beyond that which it has already offered to do, which is to refund all of the retirement contributions made by the Petitioner, plus interest, during the time period in which the Petitioner was employed in the shared job position.

If there is some way that the Petitioner can be placed in a position that she can receive retirement credit for the time period that she shared the position of employment in the North Carolina Department of Human Resources with another individual, then that opportunity, should be explored and implemented. Otherwise, an individual employed by an agency of the State of North Carolina will be irreparably penalized for her faithful reliance upon misinformation which was provided to her by her employing agency after she had pursued proper channels for information which was presumably correct. This would, indeed, be an inappropriate and frightening message to send to employees of the State of North Carolina.

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).

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 Teachers' and State Employees' Retirement System of North Carolina.

This the 26th day of May, 1994.

Michael Rivers Morgan
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 CPS 1608

KAREN C. TILGHMAN,
Petitioner,

V.

**CRIME VICTIMS COMPENSATION
COMMISSION,
Respondent.**

RECOMMENDED DECISION

This matter came on for hearing before the undersigned administrative law judge on May 2, 1994, in Wilmington.

The petitioner appeared pro se. Mr. Robert T. Hargett represented the respondent. The facts were not disputed. The petitioner introduced one exhibit.

ISSUE

Did the respondent properly deny compensation because the claimant suffered no economic lost?

FINDINGS OF FACT

1. On July 23, 1992, the victim, a six-year-old child, told her mother, the petitioner and claimant, that a fourteen-year-old cousin had sexually abused her on three occasions. The petitioner immediately reported the matter to law enforcement officials and had her daughter examined at New Hanover Regional Medical Center.

2. The petitioner is the sole provider for her daughter and herself. As the result of the offender's actions, the petitioner was required to provide special care to her daughter. The petitioner took her daughter to medical appointments, made visits to school when required and otherwise was present to comfort her daughter.

3. The petitioner was, at this time, an hourly employee of Bedford Fair Industries, LTD, in Wilmington. Her hourly wage was \$5.75. As a result of the special care provided her daughter, the petitioner lost twenty-five days of work. She would have earned \$1,150.00.

CONCLUSIONS OF LAW

1. The petitioner is a claimant. See GS 15B-2(2).

2. The petitioner seeks compensation for economic loss sustained by her as a claimant. See GS 15B-7(6).

3. "Economic loss" includes "economic detriment consisting only of allowable expense. . . ."
See GS 15B-2(10).

4. "Allowable expense" means "reasonable charges incurred for reasonably needed . . . services." The petitioner provided services reasonably needed by the victim. The petitioner incurred a reasonable charge (lost wages) in providing the services.

5. There is substantial evidence that the requirements of GS Chapter 15B have been met and that the petitioner is entitled to an award of \$1,150.00 as compensation for criminally injurious conduct. See GS 15B-4.

RECOMMENDED DECISION

It is recommended that the respondent grant the petitioner an award of \$1,150.00.

NOTICE

The parties have the right to file exceptions and to present written arguments to the respondent. The final decision in this contested case shall be made by that agency. The agency will mail a copy of the final decision to the parties and the Office of Administrative Hearings.

This the 17th day of May, 1994.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
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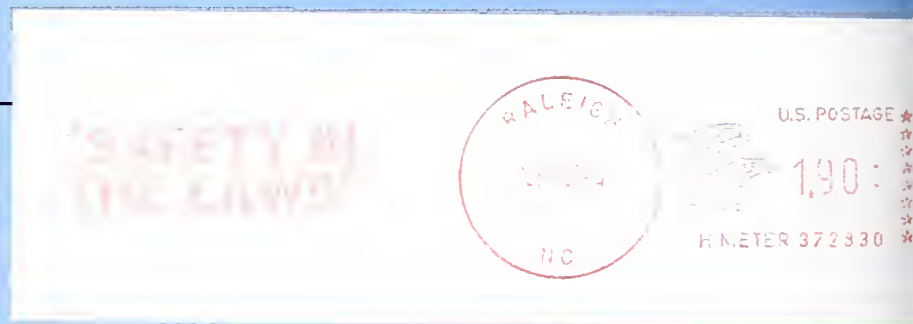
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