

# *The* **NORTH CAROLINA REGISTER**

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**PROPOSED RULES**

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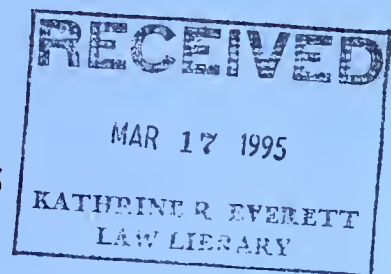
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**ISSUE DATE: March 15, 1995**



## **INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE**

### **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

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

### **ADOPTION, AMENDMENT, AND REPEAL OF RULES**

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

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

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

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

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

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

### **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule, pursuant to the provisions 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 may 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 ten dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions 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*

*(November 1994 - September 1995)*

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
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
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
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10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
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10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

*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 day of the next calendar month.*



*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:GS:TGL:emr

DJ 166-012-3

94-4659

February 21, 1995

David A. Holec, Esq.

City Attorney

P. O. Box 1388

Lumberton, North Carolina 28359

Dear Mr. Holec:

This refers to the procedures for conducting the March 7, 1995, special vacancy and bond elections of the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 22, 1994.

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

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

By:

Elizabeth Johnson  
Acting Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR-Secretary's Office intends to adopt rule cited as 10 NCAC 1B .0420.*

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

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Written demand for a public hearing may be directed to Jack Jenkins, General Counsel, N.C. Department of Human Resources, 101 Blair Drive, Raleigh, North Carolina 27603 on or before March 30, 1995.*

*Reason for Proposed Action: To assist local non-profit and/or for profit agencies and their auditors in determining if a grant or contract represents a purchase of service or if it represents financial assistance.*

*Comment Procedures: Written comments may be directed to Jack Jenkins, General Counsel, N.C. Department of Human Resources, 101 Blair Drive, Raleigh, North Carolina 27603 on or before April 17, 1995.*

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1B - PROCEDURE

SECTION .0400 - AUDITING PROCEDURES

**.0420 PURCHASE OF SERVICE VS. FINANCIAL ASSISTANCE**

(a) Non-profit and for profit agencies that receive State or Federal financial assistance either directly from DHR as a recipient or indirectly as a sub recipient through contractual agreements with local agencies funded by DHR are required to have a compliance audit performed in accordance with OMB Circular A-133; however, Circular A-133 does not apply to purchases of goods/services (vendors).

(b) A recipient/sub recipient is distinguished from a vendor (purchase of service arrangement) by the degree of responsibility assumed to meet the requirements of the program.

(c) In a financial assistance arrangement, the recipient/sub recipient receives the funding to carry out or administer a program. A recipient/sub recipient may be responsible for determining who is eligible for participation in a program by applying pre-determined eligibility requirements. A vendor who reserves the right to reject a participant based on a criteria other than eligibility, does not become a recipient by exercising that right. A recipient/sub recipient is responsible for making programmatic decision and its performance is measured against meeting the programs objectives. Normally, but not always, there is an interest in how program funds are expended. Although recipient/sub recipient generally have cost reimbursement grants/contracts it is possible for them to have a fee/rate per unit of service arrangement.

(d) A vendor (purchase of services/goods) is measured against the terms of a contract. Goods must meet certain specifications and services are measured against certain quality standards. A vendor normally operates in a competitive environment and once a pre-determined unit price has been established in a contract, usually there is no interest in how the vendor expends funds in meeting the vendor's obligation under the terms of the contract.

(e) In distinguishing between a purchase of service and financial assistance arrangement, the substance of the relationship is more important than the form of the agreement.

(f) Reviewing a recipient/sub recipient contractual requirements and answering the following questions should give an indication of the type arrangement represented by the contract.

		<u>Indication of</u>	
		<u>Financial</u>	<u>Purchase/</u>
		<u>Assistance</u>	<u>Service</u>
		<u>Yes</u>	<u>No</u>
1.	<u>Does the contract provider determine client eligibility?</u>		
2.	<u>Does the contract provider authorize services on a client specific basis?</u>		
3.	<u>Does the contract provider determine the appropriateness of the services to be provided?</u>		
4.	<u>Does the contract provider provide administrative functions, such as:</u>		
a.	<u>Program evaluation?</u>		
b.	<u>Program planning?</u>		
c.	<u>Monitoring?</u>		
d.	<u>Develop program standards, procedures, and rules?</u>		
5.	<u>Does the contract provider have responsibility for program compliance?</u>		
6.	<u>Does the contract provider have to submit a cost report to satisfy a cost reimbursement arrangement?</u>		
7.	<u>Does the contract provider have any obligation to the funding authority other than the delivery of the specified goods/services?</u>		
		<u>No</u>	<u>Yes</u>
8.	<u>Does the contract provider operate in a competitive environment?</u>		
9.	<u>Does the contract provider provide similar goods and/or services to many different purchasers?</u>		
10.	<u>Does the contract provider provide the goods and/or services within normal business operations?</u>		

The list in this Rule is not intended to be all inclusive; however, the answers to the questions should offer guidance in distinguishing between a purchase of service or financial assistance arrangement. There may be other factors that would influence the decision on whether a contract is classified as either financial assistance or purchase of service and the decision should only be made after weighing all factors relative to the contract. All factors will not carry the same weight. As an illustration, if any of the answers to questions 1 through 5 are yes, the contract will almost always be a financial assistance arrangement. However, regardless of the answers to the questions, they will not contradict a determination/classification that has been/or may be made by the funding Federal authority.

The funding DHR Division's fiscal officer will be available to assist, on a timely basis, its local counterparts in making the distinction in unique situations.

*Statutory Authority G.S. 143B-10(J)(2).*

### **TITLE 13 - DEPARTMENT OF LABOR**

*1, 1995.*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor, Division of Occupational Safety and Health intends to amend rule cited as 13 NCAC 07A .0605, with changes from the proposed text noticed in the Register, Volume 9, Issue 19, pages 1546 - 1560.

**Reason for Proposed Action:** Revisions were made to the proposed text based on written comments received. The related amendments to 13 NCAC 7A .0602, .0603 and .0604 have not been revised.

**The** proposed effective date of this action is June

**Comment Procedures:** Written comments will be accepted until April 17, 1995. Direct all corre-



spondence to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

**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.

## CHAPTER 7 - OSHA

### SUBCHAPTER 7A - GENERAL RULES AND OPERATIONAL PROCEDURES

#### SECTION .0600 - SAFETY AND HEALTH PROGRAMS AND COMMITTEES

##### .0605 SAFETY & HEALTH COMMITTEE REQUIREMENTS

(a) ~~Employers with employees who do not report to a fixed or regular location worksite, but meet the other requirements of G.S. 95-251 and, if applicable, G.S. 95-252, are required to have a Safety and Health Committee. An employer with mobile work crews shall have at least one committee for each type of crew. However, if 11 or more employees of such an employer also report to a fixed or regular location worksite, then that location must have a separate Safety and Health Committee.~~

(b) ~~Safety and Health Committees shall be established at multi employer construction worksites if the single prime, general or managing contractor, any other contractor, or subcontractor at the worksite has an experience rate modifier of 1.5 or above. The single prime, general or managing contractor shall be responsible for establishing a Safety and Health Committee for that worksite including representatives from each of the subcontractors working at that site. For construction sites where there is no identified single prime, general or managing contractor, the contractor responsible for expediting construction progress shall be responsible for establishing the Safety and Health Committee.~~

(c) ~~At multi employer fixed or regular non-construction worksites, each employer with a Safety and Health Committee must notify the other employers present at that worksite of the chairperson(s) of their committees and arrange for the exchange of information on hazards that affect~~

~~other employers:~~

#### (a) Multi-Site Employers:

- (1) Employers with 11 or more employees who do not report to a fixed or regular location worksite are required to have a Safety and Health Committee to represent those employees. The employer must have a separate Safety and Health Committee for each mobile work crew consisting of 11 or more employees.
- (2) Employers with employees who report to a fixed or regular location worksite must have a separate safety and health committee for each location with 11 or more employees.

#### (b) Multi-Employer Worksites:

- (1) At multi-employer fixed or regular location worksites, any employer required to establish a safety and health committee pursuant to G.S. 95-252 shall notify the general contractor or equivalent of the requirements of this legislation and of the chairpersons of their committee.
- (2) The general contractor or equivalent shall designate a representative to attend the safety and health committee meetings of the notifying employer(s).
- (3) The notifying employer shall work with the general contractor or equivalent to distribute information as required by G.S. 95-251(b)(9).

Statutory Authority G.S. 95-252.

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

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2B .0201, .0211 - .0212, .0214 - .0216, .0218 - .0219; and adopt rules cited as 15A NCAC 2B .0220 - .0228.

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

**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 Beth McGee, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535 by March 31, 1995. The request must specify which rule the hearing is being requested on. Mailed written requests must be postmarked no later than March 31, 1995.

**Reason for Proposed Action:** To gather public comment on proposals to reorganize and subsequently recodify portions of the water quality standards and classifications rules. Rules can be found in Title 15A NCAC 2B .0200. A reorganization and subsequent recodification is proposed for better rule organization and clarity. No additional changes other than renumbering and recodifying are part of this proposed action. This action would not result in any new standards or requirements of any type.

The Water Quality Section has had to revise the state's water quality classifications and standards rules on numerous occasions during the past several years. These revisions have been made on the basis of changing state and federal laws, such as amendments to the federal Clean Water Act and passage of state laws pertaining to water quality protection, as well as on revisions to other agencies' rules, and necessary clarifications and corrections. Future revisions are expected to be necessary within the next year on the basis of additional changes to state and federal laws.

As changes have been made to the rules, the description of surface water classifications and their management strategies has become cumbersome under the current rule structure format. In order to simplify the process for conducting future rule-making proceedings, a reorganization and subsequent recodification is proposed for better rule organization and clarity. This reorganization would establish a separate rule for each of the surface water classifications and the standards associated with each of the classifications.

No additional changes other than renumbering and recodifying are part of this requested action. This action would not result in any new standards or requirements of any type.

The following rules in 15A NCAC 2B .0200 have been moved and renumbered.

<u>Title</u>	<u>Old Rule Number</u>	<u>New Rule Number</u>
Antidegradation	.0201	.0201 (HQP moved to .0224)
Freshwater class	.0211	.0211 (just Class C)
WS-I	.0211	.0212
WS-II	.0211	.0214
WS-III	.0211	.0215
WS-IV	.0211	.0216
WS-V	.0211	.0218
B	.0211	.0219
SC	.0212	.0220
SA	.0212	.0221

<i>SB</i>	<i>.0212</i>	<i>.0222</i>
<i>NSW</i>	<i>.0214</i>	<i>.0223</i>
<i>HQW</i>	<i>.0201</i>	<i>.0224</i>
<i>ORW</i>	<i>.0216</i>	<i>.0225</i>
<i>Water Quality Exemptions</i>	<i>.0218</i>	<i>.0226</i>
<i>Water Quality Management Plans</i>	<i>.0219</i>	<i>.0227</i>
 <i>Effluent Channels</i>	 <i>.0215</i>	 <i>.0228</i>

**Comment Procedures:** All persons interested in these proposed amendments are encouraged to submit written comments. Comments must be postmarked by April 17, 1995 and submitted to Beth McGee, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27625-0535.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

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

##### .0201 ANTIDegradation POLICY

(a) It is the policy of the Environmental Management Commission to maintain, protect, and enhance water quality within the State of North Carolina. Pursuant to this policy, the requirements of 40 CFR 131.12 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00). These requirements will be implemented in North Carolina as set forth in Paragraphs (b), (c) and (d) of this Rule.

(b) Existing uses, as defined by Rule .0202 of this Section, and the water quality to protect such uses shall be protected by properly classifying surface waters and having standards sufficient to protect these uses. In cases where the Commission or its designee determines that an existing use is not included in the classification of waters, a project which will affect these waters will not be permitted unless the existing uses are protected.

(c) The Commission shall consider the present and anticipated usage of waters with quality higher than the standards, including any uses not specified

by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and will not allow degradation of the quality of waters with quality higher than the standards below the water quality necessary to maintain existing and anticipated uses of those waters. Waters with quality higher than the standards are defined by Rule .0202 of this Section. The following procedures will be implemented in order to meet these requirements:

- (1) Each applicant for an NPDES permit or NPDES permit expansion to discharge treated waste will document an effort to consider non-discharge alternatives pursuant to 15A NCAC 2H .0105(c)(2).
- (2) Public Notices for NPDES permits will list parameters that would be water quality limited and state whether or not the discharge will use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for dischargers downstream.
- (3) The Division may require supplemental documentation from the affected local government that a proposed project or parts of the project are necessary for important economic and social development.
- (4) The Commission and Division will work with local governments on a voluntary basis to identify and develop appropriate management strategies or classifications for waters with unused pollutant loading capacity to accommodate future economic growth.

Waters with quality higher than the standards will be identified by the Division on a case-by-case basis through the NPDES permitting and waste load allocation processes (pursuant to the provi-



sions of 15A NCAC 2H .0100). Dischargers affected by the requirements of Paragraphs (c)(1) through (c)(4) of this Rule and the public at large will be notified according to the provisions described herein, and all other appropriate provisions pursuant to 15A NCAC 2H .0109. If an applicant objects to the requirements to protect waters with quality higher than the standards and believes degradation is necessary to accommodate important social and economic development, the applicant can contest these requirements according to the provisions of General Statute 143-215.1(e) and 150B-23.

(d) The Commission shall consider the present and anticipated usage of High Quality Waters (HQW), including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and will not allow degradation of the quality of High Quality Waters below the water quality necessary to maintain existing and anticipated uses of those waters. High Quality Waters are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(e)(5). The following procedures described in Rule .0224 of this Section will be implemented in order to meet the requirements of this part: part.

(1) ~~New or expanded wastewater discharges in High Quality Waters will comply with the following:~~

- (A) ~~Discharges from new single family residences will be prohibited. Those that must discharge will install a septic tank, dual or recirculating sand filters, disinfection and step aeration.~~
- (B) ~~All new NPDES wastewater discharges (except single family residences) will be required to provide the treatment described below:~~

(i) ~~Oxygen Consuming Wastes: Effluent limitations will be as follows: BOD<sub>5</sub> = 5 mg/l, NH<sub>3</sub>-N = 2 mg/l and DO = 6 mg/l. More stringent limitations will be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen consuming wastes will not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily available, evaluations will assume a percent saturation~~

~~determined by staff to be generally applicable to that hydroenvironment.~~

- (ii) ~~Total Suspended Solids: Discharges of total suspended solids (TSS) will be limited to effluent concentrations of 10 mg/l for trout waters and PNA's, and to 20 mg/l for all other High Quality Waters.~~
- (iii) ~~Disinfection: Alternative methods to chlorination will be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges are prohibited to SA waters.~~
- (iv) ~~Emergency Requirements: Failsafe treatment designs will be employed, including stand by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.~~
- (v) ~~Volume: The total volume of treated wastewater for all discharges combined will not exceed 50 percent of the total instream flow under 7Q10 conditions.~~
- (vi) ~~Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or nitrogen, or both.~~
- (vii) ~~Toxic substances: In cases where complex wastes (those containing or potentially containing toxicants) may be present in a discharge, a safety factor will be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent will be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity will be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under design conditions. In all instances there may be no acute toxicity in an effluent concentration of 90 percent as measured by the North Carolina~~

~~"Pass/Fail Methodology for Determining Acute Toxicity in a Single Effluent Concentration". Ammonia toxicity will be evaluated according to EPA guidelines promulgated in the Ammonia Criteria Development Document (1986); EPA document number 440/5-85-001; NTIS number PB85-227114; July 29, 1985 (50 FR 30784).~~

- ~~(C) All expanded NPDES wastewater discharges in High Quality Waters will be required to provide the treatment described in part (1)(B) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.~~
- ~~(2) Development activities which require an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or local erosion and sedimentation control program approved in accordance with 15A NCAC 4B .0218, and which drain to and are within one mile of High Quality Waters (HQW) will be required to control runoff from the one inch design storm as follows:~~
  - ~~(A) Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built-upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built-upon areas at least 30 feet from surface waters will be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case by case basis. Activities conforming to the requirements described in 15A NCAC 2H .1003(a) [except for Subparagraphs (2) and (3) which apply only to waters within the 20 coastal counties as defined in 15A NCAC 2H .1002(9)] will also be deemed to comply with this requirement, except as provided in the pre-~~

ceding sentence.

- ~~(B) High Density Option: Higher density developments will be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built-upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case by case basis. The size of the control system must take into account the runoff from any pervious surfaces draining to the system.~~
- ~~(C) All waters classified WS I or WS II and all waters located in the 20 coastal counties as defined in Rule 15A NCAC 2H .1002(9) are excluded from this requirement since they already have requirements for nonpoint source controls.~~

If an applicant objects to the requirements to protect high quality waters and believes degradation is necessary to accommodate important social and economic development, the applicant can contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B-23.

(e) Outstanding Resource Waters (ORW) are a special subset of High Quality Waters with unique and special characteristics as described in Rule .0216 .0225 of this Section. The water quality of waters classified as ORW shall be maintained such that existing uses, including the outstanding resource values of said Outstanding Resource Waters, will be maintained and protected.

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

## **.0211 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS C WATERS**

(a) General. The water quality standards for all fresh surface waters are the basic standards applicable to Class C waters. Additional and more stringent standards applicable to other specific freshwater classifications are specified in Paragraphs (c) through (f) of this Rule Rules .0212,



.0214, .0215, .0216, .0217, .0218, .0219, .0223, .0224 and .0225 of this Section.

~~(b)~~ All fresh surface waters (Class C):

(1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, and fish), wildlife, secondary recreation, agriculture and any other usage except for primary recreation or as a source of water supply for drinking, culinary or food processing purposes.

(2) Conditions Related to Best Usage. The waters will be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

(3) Quality standards applicable to all fresh surface waters:

(a) ~~(A)~~Chlorophyll a (corrected): not greater than 40 ug/l for lakes, reservoirs, and other slow-moving waters not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other slow-moving waters designated as trout waters (not applicable to lakes and reservoirs less than ten acres in surface area); the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;

(b) ~~(B)~~Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves or backwaters, and lake bottom waters may have lower values if caused by natural conditions;

(c) ~~(C)~~Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes as will not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters

for any designated uses;

(d) ~~(D)~~Gases, total dissolved: not greater than 110 percent of saturation;

(e) ~~(E)~~Organisms of the coliform group: fecal coliforms not to exceed a geometric mean of 200/100ml (MF count) based upon at least five consecutive samples examined during any 30 day period; nor exceed 400/100ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the membrane filter technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results, the MPN 5-tube dilution technique will be used as the reference method;

(f) ~~(F)~~Oils; deleterious substances; colored or other wastes: only such amounts as will not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes will include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b) which are hereby incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00).

(g) ~~(G)~~pH: shall be normal for the waters in the area, which generally shall range between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if



- it is the result of natural conditions;
- (h) ~~(H)~~Phenolic compounds: only such levels as will not result in fish-flesh tainting or impairment of other best usage;
  - (i) ~~(I)~~Radioactive substances:
    - (i) Combined radium-226 and radium-228: the maximum average annual activity level (based on at least four samples collected quarterly) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
    - (ii) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
    - (iii) Beta Emitters: the maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor shall the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
  - (j) ~~(J)~~Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain waters. The temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);
  - (k) ~~(K)~~Turbidity: the turbidity in the receiving water will not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity will not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level

cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202 of this Section]. BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;

- (l) ~~(L)~~Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all fresh surface waters:
  - (i) Arsenic: 50 ug/l;
  - (ii) Beryllium: 6.5 ug/l;
  - (iii) Cadmium: 0.4 ug/l for trout waters and 2.0 ug/l for non-trout waters;
  - (iv) Chlorine, total residual: 17 ug/l for trout waters (Tr); (Action Level of 17 ug/l for all waters not classified as trout waters (Tr); see ~~Paragraph (b)~~ Item (4) of this Rule);
  - (v) Chromium, total recoverable: 50 ug/l;
  - (vi) Cyanide: 5.0 ug/l;
  - (vii) Fluorides: 1.8 mg/l;
  - (viii) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead will be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;
  - (ix) MBAS (Methylene-Blue Active Substances): 0.5 mg/l;
  - (x) Mercury: 0.012 ug/l;
  - (xi) Nickel: 88 ug/l;
  - (xii) Pesticides:
    - (A) ~~(A)~~Aldrin: 0.002 ug/l;
    - (B) ~~(B)~~Chlordane: 0.004 ug/l;
    - (C) ~~(C)~~DDT: 0.001 ug/l;
    - (D) ~~(D)~~Demeton: 0.1 ug/l;
    - (E) ~~(E)~~Dieldrin: 0.002 ug/l;
    - (F) ~~(F)~~Endosulfan: 0.05 ug/l;
    - (G) ~~(G)~~Endrin: 0.002 ug/l;
    - (H) ~~(H)~~Guthion: 0.01 ug/l;
    - (I) ~~(I)~~Heptachlor: 0.004 ug/l;
    - (J) ~~(J)~~Lindane: 0.01 ug/l;

- (K) ~~(XH)~~ Methoxychlor: 0.03 ug/l;  
 (L) ~~(XH)~~ Mirex: 0.001 ug/l;  
 (M) ~~(XH)~~ Parathion: 0.013 ug/l;  
 (N) ~~(XH)~~ Toxaphene: 0.0002 ug/l;  
 (xiii) Polychlorinated biphenyls: 0.001 ug/l;  
 (xiv) Selenium: 5 ug/l;  
 (xv) Toluene: 11 ug/l or 0.36 ug/l in trout waters;  
 (xvi) Trialkyltin compounds: 0.008 ug/l expressed as tributyltin.
- (4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger will be required to monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph will be limited as appropriate in the NPDES permit based on the Action Levels listed in this Subparagraph if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the Action Level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a significant causative factor resulting in toxicity of the effluent;
- (a) ~~(A)~~ Copper: 7 ug/l;  
 (b) ~~(B)~~ Iron: 1.0 mg/l;  
 (c) ~~(C)~~ Silver: 0.06 ug/l;  
 (d) ~~(D)~~ Zinc: 50 ug/l;  
 (e) ~~(E)~~ Chloride: 230 mg/l;  
 (f) ~~(F)~~ Chlorine, total residual: 17 ug/l in all waters except trout waters (Tr); [a standard of 17 ug/l exists for waters classified as trout waters and is applicable as such to all dischargers to trout waters; see Subparagraph (b)(3)(L) Sub-Item (3)(I)(iv) of this Rule];

For purposes other than consideration of NPDES permitting of point source discharges as described

in this Subparagraph, the Action Levels in this Rule, as measured by an appropriate analytical technique, will be considered as numerical ambient water quality standards.

~~(e) Class WS-I Waters:~~

- ~~(1) Best Usage of Waters. Source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection of their water supplies, and any best usage specified for Class C waters;~~
- ~~(2) Conditions Related to the Best Usage. Waters of this class are protected water supplies within essentially natural and undeveloped watersheds with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class must be relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short term or long term basis will be considered to be violating a water quality standard. The Class WS-I classification may be used to protect portions of Class WS-II, WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.~~
- ~~(3) Quality Standards Applicable to Class WS-I Waters:~~
- ~~(A) Nonpoint Source Pollution: none that~~

- would adversely impact the waters for use as a water supply or any other designated use;
- (B) ~~Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;~~
- (C) ~~Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;~~
- (D) ~~Sewage, industrial wastes: none except those specified in Subparagraph (2) of this Paragraph; or Rule .0104 of this Subchapter;~~
- (E) ~~Solids, total dissolved: not greater than 500 mg/l;~~
- (F) ~~Total hardness: not greater than 100 mg/l as calcium carbonate;~~
- (G) ~~Toxic and other deleterious substances:~~
- (i) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-I waters:~~
- (I) ~~Barium: 1.0 mg/l;~~
- (II) ~~Chloride: 250 mg/l;~~
- (III) ~~Manganese: 200 ug/l;~~
- (IV) ~~Nickel: 25 ug/l;~~
- (V) ~~Nitrate nitrogen: 10.0 mg/l;~~
- (VI) ~~2,4 D: 100 ug/l;~~
- (VII) ~~2,4,5 TP (Silvex): 10 ug/l;~~
- (VIII) ~~Sulfates: 250 mg/l;~~
- (ii) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-I waters:~~
- (I) ~~Beryllium: 6.8 ng/l;~~
- (II) ~~Benzene: 1.19 ug/l;~~
- (III) ~~Carbon tetrachloride: 0.254 ug/l;~~
- (IV) ~~Chlorinated benzenes: 488 ug/l;~~
- (V) ~~Dioxin: 0.000013 ng/l;~~
- (VI) ~~Hexachlorobutadiene: 0.445 ug/l;~~
- (VII) ~~Polynuclear aromatic hydrocarbons: 2.8 ng/l;~~
- (VIII) ~~Tetrachloroethane (1,1,2,2): 0.172 ug/l;~~

- (IX) ~~Tetrachloroethylene: 0.8 ug/l;~~
- (X) ~~Trichloroethylene: 3.08 ug/l;~~
- (XI) ~~Vinyl Chloride: 2 ug/l;~~
- (XII) ~~Aldrin: 0.127 ng/l;~~
- (XIII) ~~Chlordane: 0.575 ng/l;~~
- (XIV) ~~DDT: 0.588 ng/l;~~
- (XV) ~~Dieldrin: 0.135 ng/l;~~
- (XVI) ~~Heptachlor: 0.208 ng/l.~~

(d) ~~Class WS-II Waters.~~

- (1) ~~Best Usage of Waters. Source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters.~~
- (2) ~~Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in predominantly undeveloped watersheds; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recyle (closed loop) systems that only discharge in response to 10 year storm events and other stormwater discharges are allowed in the entire watershed; new domestic and industrial discharges of treated wastewater are not allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short term or long term basis will be considered to be violating a water quality standard. The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinance.~~



es to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures:

(3) ~~Quality Standards Applicable to Class WS-II Waters:~~

(A) ~~Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in either Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharger may be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;~~

(B) ~~Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;~~

(i) ~~Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:~~

(I) ~~Low Density Option: Development density must be limited to either no more than one dwelling unit per acre or 12 percent built upon area in the watershed outside of the critical area;~~

(II) ~~High Density Option: If new development exceeds either one dwelling unit per acre or 12 percent built upon area; then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new development~~

~~not to exceed 30 percent built upon area;~~

(III) ~~Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire watershed area at the time of classification; All new development meets this density requirement on a project by project basis;~~

(IV) ~~Clustering of development is allowed on a project by project basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built upon areas shall be designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow; Remainder of tract to remain in vegetated or natural state;~~

(V) ~~A maximum of five percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new non-residential development projects of up to 70 percent built upon surface area in addition to the new non-residential development approved in compliance with the appropriate requirements of Subparagraphs (d)(3)(B)(i)(I) or (d)(3)(B)(i)(II) of this Paragraph. The Commission may allow 70 percent built upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. Each project must to the maximum extent practicable minimize~~

built upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts; if the local government opts for high density development then appropriate engineered stormwater controls (wet detention basins) must be employed for the new non-residential development which exceeds the low density requirements;

(VI) If local governments choose the high density development option which requires stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;

(VII) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Subparagraphs (d)(3)(B)(i)(I) or (d)(3)(B)(ii)(II) of this Paragraph; otherwise a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;

(VIII) No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of BMPs;

(IX) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;

(X) No new discharging landfills are allowed;

(ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:

(I) New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials [as defined by 15A NCAC 2B .0202] are either used, stored or manufactured on the premises;

(II) Low Density Option: New development is limited to either no more than one dwelling unit per two acres or six percent built-upon area;

(III) High Density Option: If new development density exceeds either one dwelling unit per two acres or six percent built-upon area, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; development density not to exceed 24 percent built-upon area;

(IV) No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;

(V) No new landfills are allowed;

(C) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause: taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

- (D) ~~Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;~~
- (E) ~~Total hardness: not greater than 100 mg/l as calcium carbonate;~~
- (F) ~~Total dissolved solids: not greater than 500 mg/l;~~
- (G) ~~Toxic and other deleterious substances:~~
  - (i) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-II waters:~~
    - (I) ~~Barium: 1.0 mg/l;~~
    - (II) ~~Chloride: 250 mg/l;~~
    - (III) ~~Manganese: 200 ug/l;~~
    - (IV) ~~Nickel: 25 ug/l;~~
    - (V) ~~Nitrate nitrogen: 10 mg/l;~~
    - (VI) ~~2,4-D: 100 ug/l;~~
    - (VII) ~~2,4,5 TP: 10 ug/l;~~
    - (VIII) ~~Sulfates: 250 mg/l;~~
  - (ii) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:~~
    - (I) ~~Beryllium: 6.8 ng/l;~~
    - (II) ~~Benzene: 1.19 ug/l;~~
    - (III) ~~Carbon tetrachloride: 0.254 ug/l;~~
    - (IV) ~~Chlorinated benzenes: 488 ug/l;~~
    - (V) ~~Dioxin: 0.000013 ng/l;~~
    - (VI) ~~Hexachlorobutadiene: 0.445 ug/l;~~
    - (VII) ~~Polynuclear aromatic hydrocarbons: 2.8 ng/l;~~
    - (VIII) ~~Tetrachloroethane (1,1,2,2): 0.172 ug/l;~~
    - (IX) ~~Tetrachloroethylene: 0.8 ug/l;~~
    - (X) ~~Trichloroethylene: 3.08 ug/l;~~
    - (XI) ~~Vinyl Chloride: 2 ug/l;~~
    - (XII) ~~Aldrin: 0.127 ng/l;~~
    - (XIII) ~~Chlordane: 0.575 ng/l;~~
    - (XIV) ~~DDT: 0.588 ng/l;~~
    - (XV) ~~Dieldrin: 0.135 ng/l;~~
    - (XVI) ~~Heptachlor: 0.208 ng/l;~~
- (e) ~~Class WS-III Waters:~~
  - (1) ~~Best Usage of Waters. Source of water supply for drinking, culinary, or food processing purposes for those~~

users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters;

- (2) ~~Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in low to moderately developed watersheds; discharges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recyle (closed loop) systems that only discharge in response to 10-year storm events, and other stormwater discharges are allowed in the entire watershed; treated domestic wastewater discharges are allowed in the entire watershed but no new domestic wastewater discharges are allowed in the critical area; no new industrial wastewater discharges except non-process industrial discharges are allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard; the Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.~~
- (3) ~~Quality Standards Applicable to Class WS-III Waters:~~
  - (A) ~~Sewage, industrial wastes, non-process industrial wastes, or other~~



wastes: none except for those specified in Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

(B) ~~Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;~~

(i) ~~Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:~~

(I) ~~Low Density Option: Development density must be limited to either no more than two dwelling units per acre or 24 percent built upon on area in watershed outside of the critical area;~~

(II) ~~High Density Option: If new development density exceeds two dwelling units per acre or 24 percent built upon area then development must control runoff from the first inch of rainfall; new development not to exceed 50 percent built upon area;~~

(III) ~~Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when~~

~~densities are averaged throughout the entire watershed area; All new development meets these density requirements on a project by project basis;~~

(IV) ~~Clustering of development is allowed on a project by project basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimizes concentrated stormwater flow; Remainder of tract to remain in vegetated or natural state;~~

(V) ~~A maximum of five percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new non-residential development projects of up to 70 percent built upon surface area in addition to the new non-residential development approved in compliance with the appropriate requirements of Subparagraphs (c)(3)(B)(i)(I) or (c)(3)(B)(i)(II) of this Paragraph. The Commission may allow 70 percent built upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. Each project must to the maximum extent practicable minimize built upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices to minimize water quality impacts; if the local government opts for high density development then appropriate engineered stormwater controls (wet detention basins) must be employed for the new~~

non-residential—development which exceeds the low density requirements;

(VI) ~~If local governments choose the high density development option which requires engineered stormwater controls; then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;~~

(VII) ~~Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density requirements as specified in Subparagraphs (e)(3)(B)(i)(I) or (e)(3)(B)(ii)(II) of this Paragraph, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;~~

(VIII) ~~No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;~~

(IX) ~~Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;~~

(X) ~~No new discharging landfills are allowed;~~

(ii) ~~Critical Area Nonpoint Source~~

~~and Stormwater Pollution Control Criteria:~~

(I) ~~New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises;~~

(II) ~~Low Density Option: New development limited to one dwelling unit per acre or 12 percent built-upon area;~~

(III) ~~High Density Option: If new development exceeds either one dwelling unit per acre or 12 percent built-upon area then engineered stormwater controls must be used to control runoff from the first inch of rainfall; development not to exceed 30 percent built-upon area;~~

(IV) ~~No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;~~

(V) ~~No new landfills are allowed;~~

(C) ~~Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;~~

(D) ~~Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;~~

(E) ~~Total hardness: not greater than 100 mg/l as calcium carbonate;~~

(F) ~~Total dissolved solids: not greater than 500 mg/l;~~

(G) ~~Toxic and other deleterious substances:~~

(i) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:~~

- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10 mg/l;
- (VI) 2,4 D: 100 ug/l;
- (VII) 2,4,5 TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters:
  - (I) Beryllium: 6.8 ng/l;
  - (II) Benzene: 1.19 ug/l;
  - (III) Carbon tetrachloride: 0.254 ug/l;
  - (IV) Chlorinated benzenes: 488 ug/l;
  - (V) Dioxin: 0.000013 ng/l;
  - (VI) Hexachlorobutadiene: 0.445 ug/l;
  - (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
  - (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
  - (IX) Tetrachloroethylene: 0.8 ug/l;
  - (X) Trichloroethylene: 3.08 ug/l;
  - (XI) Vinyl Chloride: 2 ug/l;
  - (XII) Aldrin: 0.127 ng/l;
  - (XIII) Chlordane: 0.575 ng/l;
  - (XIV) DDT: 0.588 ng/l;
  - (XV) Dieldrin: 0.135 ng/l;
  - (XVI) Heptachlor: 0.208 ng/l.
- (f) Class WS-IV Waters.
  - (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters;
  - (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in moderately to highly developed watersheds or protected areas; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recyle (closed loop) systems that only discharge in response to 10 year storm events, other stormwater discharges and domestic wastewater discharges are allowed in

the protected and critical areas; treated industrial wastewater discharges are allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area are required to meet the provisions of 15A NCAC 2B .0201(d)(1)(B)(iv), (v) and (vii), and 15A NCAC 2B .0203; new industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 2H .0904 are allowed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short term or long term basis will be considered to be violating a water quality standard;

(3) Quality Standards Applicable to Class WS-IV Waters:

- (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;



- (B) ~~Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;~~
- (i) ~~Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:~~
- (I) ~~Low Density Option: Development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than either: two dwelling units per acre or 24 percent built-upon on area; or three dwelling units per acre or 36 percent built-upon area for projects without curb and gutter street system in the protected area outside of critical area;~~
- (II) ~~High Density Option: If new development activities which require a Sedimentation/Erosion Control Plan exceed the requirements of Subparagraphs (f)(3)(B)(i)(I) of this Rule then development must control the runoff from the first inch of rainfall; new development not to exceed 70 percent built-upon area;~~
- (III) ~~Land within the critical and protected area will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire area; All new development meets these density requirements on a project-by-project basis;~~
- (IV) ~~Clustering of development is allowed on a project-by-project~~

basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimizes concentrated stormwater flow; Remainder of tract to remain in vegetated or natural state;

- (V) ~~If local governments choose the high density development option which requires engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;~~
- (VI) ~~Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Subparagraphs (f)(3)(B)(i)(I) or (f)(3)(B)(ii)(I) of this Paragraph, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank shoreline stabilization;~~
- (VII) ~~No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;~~
- (VIII) ~~Maintain inventory of all hazardous materials used and stored in the watershed or~~

- protected area; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;
- (ii) ~~Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:~~
- (I) ~~Low Density Option: New development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than two dwelling units per acre or 24 percent built upon area;~~
- (II) ~~High Density Option: If new development density exceeds either two dwelling units per acre or 24 percent built upon area then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new development not to exceed 50 percent built upon area;~~
- (III) ~~No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;~~
- (IV) ~~No new landfills are allowed;~~
- (C) ~~Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;~~
- (D) ~~Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a~~
- ~~different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;~~
- (E) ~~Total hardness: not greater than 100 mg/l as calcium carbonate;~~
- (F) ~~Total dissolved solids: not greater than 500 mg/l;~~
- (G) ~~Toxic and other deleterious substances:~~
- (i) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS IV waters:~~
- (I) ~~Barium: 1.0 mg/l;~~
- (II) ~~Chloride: 250 mg/l;~~
- (III) ~~Manganese: 200 ug/l;~~
- (IV) ~~Nickel: 25 ug/l;~~
- (V) ~~Nitrate nitrogen: 10.0 mg/l;~~
- (VI) ~~2,4-D: 100 ug/l;~~
- (VII) ~~2,4,5-TP (Silvex): 10 ug/l;~~
- (VIII) ~~Sulfates: 250 mg/l;~~
- (ii) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS IV waters:~~
- (I) ~~Beryllium: 6.8 ng/l;~~
- (II) ~~Benzene: 1.19 ug/l;~~
- (III) ~~Carbon tetrachloride: 0.254 ug/l;~~
- (IV) ~~Chlorinated benzenes: 488 ug/l;~~
- (V) ~~Dioxin: 0.000013 ng/l;~~
- (VI) ~~Hexachlorobutadiene: 0.445 ug/l;~~
- (VII) ~~Polynuclear aromatic hydrocarbons: 2.8 ng/l;~~
- (VIII) ~~Tetrachloroethane (1,1,2,2): 0.172 ug/l;~~
- (IX) ~~Tetrachloroethylene: 0.8 ug/l;~~
- (X) ~~Trichloroethylene: 3.08 ug/l;~~
- (XI) ~~Vinyl Chloride: 2 ug/l;~~
- (XII) ~~Aldrin: 0.127 ng/l;~~
- (XIII) ~~Chlordane: 0.575 ng/l;~~
- (XIV) ~~DDT: 0.588 ng/l;~~
- (XV) ~~Dieldrin: 0.135 ng/l;~~
- (XVI) ~~Heptachlor: 0.208 ng/l;~~
- (g) ~~Class WS V Waters:~~
- (1) ~~Best Usage of Waters. Waters protected as water supplies which are generally upstream and draining to Class~~

~~WS IV waters or waters previously used for drinking water supply purposes; no categorical restrictions on watershed development or wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of waters downstream of receiving waters (15A NCAC 2B .0203); suitable for all Class C uses;~~

- (2) ~~Conditions Related to Best Usage: Waters of this class are protected water supplies; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short term or long term basis will be considered to be violating a water quality standard;~~

- (3) ~~Quality Standards Applicable to Class WS V Waters:~~

- (A) ~~Sewage, industrial wastes, non-process industrial wastes, or other wastes: none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;~~

- (B) ~~Nonpoint Source and Stormwater Pollution: none that would adversely~~

~~impact the waters for use as water supply or any other designated use;~~

- (C) ~~Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;~~

- (D) ~~Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;~~

- (E) ~~Total hardness: not greater than 100 mg/l as calcium carbonate;~~

- (F) ~~Total dissolved solids: not greater than 500 mg/l;~~

- (G) ~~Toxic and other deleterious substances:~~

- (i) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS V waters:~~

- (I) ~~Barium: 1.0 mg/l;~~  
 (II) ~~Chloride: 250 mg/l;~~  
 (III) ~~Manganese: 200 ug/l;~~  
 (IV) ~~Nickel: 25 ug/l;~~  
 (V) ~~Nitrate nitrogen: 10.0 mg/l;~~  
 (VI) ~~2,4 D: 100 ug/l;~~  
 (VII) ~~2,4,5 TP (Silvex): 10 ug/l;~~  
 (VIII) ~~Sulfates: 250 mg/l.~~

- (ii) ~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS V waters:~~

- (I) ~~Beryllium: 6.8 ng/l;~~  
 (II) ~~Benzene: 1.19 ug/l;~~  
 (III) ~~Carbon tetrachloride: 0.254 ug/l;~~  
 (IV) ~~Chlorinated benzenes: 488 ug/l;~~  
 (V) ~~Dioxin: 0.000013 ng/l;~~



- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(h) Class B Waters:

- (1) Best Usage of Waters. Primary recreation and any other best usage specified by the "C" classification;
- (2) Conditions Related to Best Usage. The waters will meet accepted standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;
- (3) Quality standards applicable to Class B waters:
  - (A) Sewage, industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waste when discharged into waters to be used for bathing, the Commission will consider the quality and quantity of the sewage and wastes involved and the proximity of such discharges to waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be reliably treated to ensure the protection of primary recreation;
  - (B) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30-day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.

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

.0212 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-I WATERS

(a) General. The water quality standards for all tidal salt waters are the basic standards applicable to Class SC waters. Additional and more stringent standards applicable to other specific tidal salt water classifications are specified in Paragraphs (c) and (d) of this Rule.

(b) All tidal salt waters (Class SC):

- (1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, fish and functioning PNAs), wildlife, secondary recreation, and any other usage except primary recreation or shellfishing for market purposes;
- (2) Conditions Related to Best Usage. The waters will be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation; Any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis will be considered to be violating a water quality standard;
- (3) Quality standards applicable to all tidal salt waters:
  - (A) Chlorophyll a (corrected): not greater than 40 ug/l in sounds, estuaries, and other slow-moving waters; the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired.
  - (B) Dissolved oxygen: not less than 5.0 mg/l, except that swamp waters, poorly flushed tidally influenced streams or embayments, or estuarine bottom waters may have lower values if caused by natural conditions;
  - (C) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial

- wastes or other wastes, as will not make the waters unsafe or unsuitable for aquatic life and wildlife, or impair the waters for any designated uses;
- (D) ~~Gases, total dissolved: not greater than 110 percent of saturation;~~
- (E) ~~Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based upon at least five consecutive samples examined during any 30-day period; not to exceed 400/100 ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the MF technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results the MPN 5 tube dilution method will be used as the referee method;~~
- (F) ~~Oils; deleterious substances; colored or other wastes: only such amounts as will not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes will include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b).~~
- (G) ~~pH: will be normal for the waters in the area, which generally will range between 6.8 and 8.5 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;~~
- (H) ~~Phenolic compounds: only such levels as will not result in fish flesh tainting or impairment of other best usage;~~
- (I) ~~Radioactive substances:~~
- (i) ~~Combined radium 226 and radium 228: The maximum average annual activity level (based on at least four samples, collected quarterly) for combined radium 226, and radium 228 will not exceed five picoCuries per liter;~~
- (ii) ~~Alpha Emitters. The average annual gross alpha particle activity (including radium 226, but excluding radon and uranium) will not exceed 15 picoCuries per liter;~~
- (iii) ~~Beta Emitters. The maximum average annual activity level (based on at least four samples, collected quarterly) for strontium 90 will not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium 40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor will the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;~~
- (J) ~~Salinity: will not be appreciably modified as a result of hydrological modifications in areas draining to PNAs; projects which are determined by the Director to result in the appreciable modification of salinity within a PNA will be required to employ appropriate water management practices;~~
- (K) ~~Temperature: will not be increased above the natural water temperature by more than 0.8 degrees C (1.44 degrees F) during the months of June, July, and August nor more than 2.2 degrees C (3.96 degrees F) during other months and in no cases to exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;~~
- (L) ~~Turbidity: the turbidity in the receiving water will not exceed 25 NTU; if turbidity exceeds this level due to natural background conditions, the existing turbidity level cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Design-~~

- nated Nonpoint Source Agency (as defined by Rule .0202 of this Section). BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;
- (M) ~~Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all tidal saltwaters:~~
- (i) ~~Arsenic, total recoverable: 50 ug/l;~~
  - (ii) ~~Cadmium: 5.0 ug/l;~~
  - (iii) ~~Chromium, total: 20 ug/l;~~
  - (iv) ~~Cyanide: 1.0 ug/l;~~
  - (v) ~~Mercury: 0.025 ug/l;~~
  - (vi) ~~Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead will be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;~~
  - (vii) ~~Nickel: 8.3 ug/l;~~
  - (viii) ~~Pesticides:~~
    - (I) ~~Aldrin: 0.003 ug/l;~~
    - (II) ~~Chlordane: 0.004 ug/l;~~
    - (III) ~~DDT: 0.001 ug/l;~~
    - (IV) ~~Demeton: 0.1 ug/l;~~
    - (V) ~~Dieldrin: 0.002 ug/l;~~
    - (VI) ~~Endosulfan: 0.009 ug/l;~~
    - (VII) ~~Endrin: 0.002 ug/l;~~
    - (VIII) ~~Guthion: 0.01 ug/l;~~
    - (IX) ~~Heptachlor: 0.004 ug/l;~~
    - (X) ~~Lindane: 0.004 ug/l;~~
    - (XI) ~~Methoxychlor: 0.03 ug/l;~~
    - (XII) ~~Mirex: 0.001 ug/l;~~
    - (XIII) ~~Parathion: 0.178 ug/l;~~
    - (XIV) ~~Toxaphene: 0.0002 ug/l.~~
  - (ix) ~~Polychlorinated biphenyls: 0.001 ug/l;~~
  - (x) ~~Selenium: 71 ug/l;~~
  - (xi) ~~Trialkyltin compounds: 0.002 ug/l expressed as tributyltin.~~
- (4) ~~Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chem-~~
- ~~ical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger will be required to monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph may be limited as appropriate in the NPDES permit if sufficient information exists to indicate that any of those substances may be a significant causative factor resulting in toxicity of the effluent.~~
- (A) ~~Copper: 3 ug/l;~~
  - (B) ~~Silver: 0.1 ug/l;~~
  - (C) ~~Zinc: 86 ug/l.~~
- (e) ~~Class SA Waters:~~
- (1) ~~Best Usage of Waters. Shellfishing for market purposes and any other usage specified by the "SB" or "SC" classification;~~
  - (2) ~~Conditions Related to Best Usage. Waters will meet the current sanitary and bacteriological standards as adopted by the Commission for Health Services and will be suitable for shellfish culture; any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short term or a long term basis will be considered to be violating a water quality standard;~~
  - (3) ~~Quality Standards applicable to Class SA Waters:~~
    - (A) ~~Floating solids; settleable solids; sludge deposits: none attributable to sewage, industrial wastes or other wastes;~~
    - (B) ~~Sewage: none;~~
    - (C) ~~Industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission in accordance with the requirements of the Division of Health Services;~~
    - (D) ~~Organisms of coliform group: fecal coliform group not to exceed a median MF of 14/100 ml and not more than 10 percent of the samples shall exceed an MF count of 43/100 ml in~~



those areas most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

~~(d) Class SB Waters:~~

- ~~(1) Best Usage of Waters. Primary recreation and any other usage specified by the "SC" classification;~~
- ~~(2) Conditions Related to Best Usage. The waters will meet accepted sanitary standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes; any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short term or a long term basis will be considered to be violating a water quality standard;~~
- ~~(3) Quality Standards applicable to Class SB waters:~~
  - ~~(A) Floating solids; settleable solids; sludge deposits: none attributable to sewage, industrial wastes or other wastes;~~
  - ~~(B) Sewage; industrial wastes; or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waters discharged into waters which are to be used for bathing, the Commission will take into consideration quantity and quality of the sewage and other wastes involved and the proximity of such discharges to the waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be treated to ensure the protection of primary recreation;~~
  - ~~(C) Organisms of coliform group: fecal coliforms not to exceed a geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30 day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.~~

The following water quality standards apply to surface waters within predominantly undeveloped water supply watersheds that are classified WS-I. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section

also apply to Class WS-I waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection of their water supplies, and any best usage specified for Class C waters.
- (2) Conditions Related to the Best Usage. Waters of this class are protected water supplies within essentially natural and undeveloped watersheds with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class must be relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard. The Class WS-I classification may be used to protect portions of Class WS-II, WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.
- (3) Quality Standards Applicable to Class WS-I Waters:
  - (a) Nonpoint Source Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;
  - (b) Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean

- value in watersheds serving as unfiltered water supplies;
- (c) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
  - (d) Sewage, industrial wastes: none except those specified in Subparagraph (2) of this Paragraph; or Rule .0104 of this Subchapter;
  - (e) Solids, total dissolved: not greater than 500 mg/l;
  - (f) Total hardness: not greater than 100 mg/l as calcium carbonate;
  - (g) Toxic and other deleterious substances:
    - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-I waters:
      - (A) Barium: 1.0 mg/l;
      - (B) Chloride: 250 mg/l;
      - (C) Manganese: 200 ug/l;
      - (D) Nickel: 25 ug/l;
      - (E) Nitrate nitrogen: 10.0 mg/l;
      - (F) 2,4-D: 100 ug/l;
      - (G) 2,4,5-TP (Silvex): 10 ug/l;
      - (H) Sulfates: 250 mg/l;
    - (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-I waters:
      - (A) Beryllium: 6.8 ng/l;
      - (B) Benzene: 1.19 ug/l;
      - (C) Carbon tetrachloride: 0.254 ug/l;
      - (D) Chlorinated benzenes: 488 ug/l;
      - (E) Dioxin: 0.000013 ng/l;
      - (F) Hexachlorobutadiene: 0.445 ug/l;
      - (G) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
      - (H) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
      - (I) Tetrachloroethylene: 0.8 ug/l;
      - (J) Trichloroethylene: 3.08 ug/l;
      - (K) Vinyl Chloride: 2 ug/l;
      - (L) Aldrin: 0.127 ng/l;
      - (M) Chlordane: 0.575 ng/l;
      - (N) DDT: 0.588 ng/l;
      - (O) Dieldrin: 0.135 ng/l;
      - (P) Heptachlor: 0.208 ng/l.

## **.0214 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-II WATERS**

(a) In addition to existing classifications, the Commission may classify any surface waters of the state as nutrient sensitive waters (NSW) upon a finding that such waters are experiencing or are subject to excessive growths of microscopic or macroscopic vegetation. Excessive growths are growths which the Commission in its discretion finds to substantially impair the use of the water for its best usage as determined by the classification applied to such waters.

(b) NSW may include any or all waters within a particular river basin as the Commission deems necessary to effectively control excessive growths of microscopic or macroscopic vegetation.

(c) For the purpose of this Rule, the term "nutrients" shall mean phosphorous and/or nitrogen. When considering the assignment of this classification, the Commission may specify as a "nutrient" any other chemical parameter or combination of parameters which it determines to be essential for the growth of microscopic and macroscopic vegetation.

(d) Those waters additionally classified as nutrient sensitive shall be identified in the appropriate schedule of classifications as referenced in Section .0300 of this Subchapter.

(e) For the purpose of this Rule, the term "background levels" shall mean the concentration(s), taking into account seasonal variations, of the specific nutrient or nutrients upstream of a nutrient source.

(f) Quality standards applicable to NSW: no increase in nutrients over background levels unless it is shown to the satisfaction of the Director that the increase:

- (1) is the result of natural variations; or
- (2) will not endanger human health, safety or welfare and that preventing the increase would cause a serious economic hardship without equal or greater benefit to the public.

The following water quality standards apply to surface waters within low to moderately developed water supply watersheds that are classified WS-II. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-II waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classifica-

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



tion is not feasible and any best usage specified for Class C waters.

- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in predominantly undeveloped watersheds; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events and other stormwater discharges are allowed in the entire watershed; new domestic and industrial discharges of treated wastewater are not allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard. The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

- (3) Quality Standards Applicable to Class WS-II Waters:

- (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in either Item (2) of this Rule and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of

the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharger may be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

- (b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;

- (i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:

- (A) Low Density Option: Development density must be limited to either no more than one dwelling unit per acre or 12 percent built-upon area in the watershed outside of the critical area;

- (B) High Density Option: If new development exceeds either one dwelling unit per acre or 12 percent built-upon area, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new development not to exceed 30 percent built-upon area;

- (C) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire watershed area at the time of classification; All new development meets this density requirement on a project-by-project basis;

- (D) Clustering of development is allowed on a project-by-project basis as follows: Overall density of the project meets associated density or stormwater control



- requirements; Built-upon areas shall be designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow; Remainder of tract to remain in vegetated or natural state;
- (E) A maximum of five percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new non-residential development projects of up to 70 percent built-upon surface area in addition to the new non-residential development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule. The Commission may allow 70 percent built-upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. Each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts; if the local government opts for high density development then appropriate engineered stormwater controls (wet detention basins) must be employed for the new non-residential development which exceeds the low density requirements;
- (F) If local governments choose the high density development option which requires stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;
- (G) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule; otherwise a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;
- (H) No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of BMPs;
- (I) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;
- (J) No new discharging landfills are allowed;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials [as defined by 15A NCAC 2B .0202] are either used, stored or manufactured on the premises;
- (B) Low Density Option: New development is limited to either no more than one dwelling unit per two acres or six percent built-upon area;
- (C) High Density Option: If new development density exceeds either one dwelling unit per two acres or six percent built-upon

- area, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; development density not to exceed 24 percent built-upon area;
- (D) No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;
- (E) No new landfills are allowed;
- (c) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause: taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (d) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (e) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (f) Total dissolved solids: not greater than 500 mg/l;
- (g) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-II waters:
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Manganese: 200 ug/l;
- (D) Nickel: 25 ug/l;
- (E) Nitrate nitrogen: 10 mg/l;
- (F) 2,4-D: 100 ug/l;
- (G) 2,4,5-TP: 10 ug/l;
- (H) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:
- (A) Beryllium: 6.8 ng/l;
- (B) Benzene: 1.19 ug/l;
- (C) Carbon tetrachloride: 0.254 ug/l;
- (D) Chlorinated benzenes: 488 ug/l;
- (E) Dioxin: 0.000013 ng/l;
- (F) Hexachlorobutadiene: 0.445 ug/l;
- (G) Polynuclear aromatic hydrocar-

- bons: 2.8 ng/l;
- (H) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (I) Tetrachloroethylene: 0.8 ug/l;
- (J) Trichloroethylene: 3.08 ug/l;
- (K) Vinyl Chloride: 2 ug/l;
- (L) Aldrin: 0.127 ng/l;
- (M) Chlordane: 0.575 ng/l;
- (N) DDT: 0.588 ng/l;
- (O) Dieldrin: 0.135 ng/l;
- (P) Heptachlor: 0.208 ng/l.

Statutory Authority G.S. 143-214.1.

#### .0215 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-III WATERS

The standards of water quality contained in this Section shall not apply to waters within effluent channels, as defined in Rule .0202(15) of this Section, except that said waters shall be maintained at a quality which will prevent the occurrence of offensive conditions, protect public health, and allow maintenance of the standards applicable to all downstream waters. Effluent channels will be designated by the Director, such that the channels will:

- (1) be contained entirely on property owned (or otherwise controlled) by the discharger (to be demonstrated by the discharger);
- (2) not contain natural waters except when such waters occur in direct response to rainfall events by overland runoff;
- (3) be so constructed or modified as to minimize the migration of fish into said channel;
- (4) be identified and designated on a case-by-case basis prior to permit issuance.

The following water quality standards apply to surface water supply waters that are classified WS-III. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-III waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in low to moderately developed watersheds; dis-

charges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, and other stormwater discharges are allowed in the entire watershed; treated domestic wastewater discharges are allowed in the entire watershed but no new domestic wastewater discharges are allowed in the critical area; no new industrial wastewater discharges except non-process industrial discharges are allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard; the Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-III Waters:

- (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health,

and Natural Resources; any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

- (b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;

(i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:

- (A) Low Density Option: Development density must be limited to either no more than two dwelling units per acre or 24 percent built-upon on area in watershed outside of the critical area;
- (B) High Density Option: If new development density exceeds two dwelling units per acre or 24 percent built-upon area then development must control runoff from the first inch of rainfall; new development not to exceed 50 percent built-upon area;
- (C) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire watershed area; All new development meets these density requirements on a project-by-project basis;
- (D) Clustering of development is allowed on a project-by-project basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimizes concentrated stormwater flow;



Remainder of tract to remain in vegetated or natural state;

- (E) A maximum of five percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new non-residential development projects of up to 70 percent built-upon surface area in addition to the new non-residential development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule. The Commission may allow 70 percent built-upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. Each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices to minimize water quality impacts; if the local government opts for high density development then appropriate engineered stormwater controls (wet detention basins) must be employed for the new non-residential development which exceeds the low density requirements;
- (F) If local governments choose the high density development option which requires engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;
- (G) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density requirements as specified in Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule, otherwise a minimum 30 foot vegetative buffer for develop-

ment is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;

- (H) No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;
- (I) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;
- (J) No new discharging landfills are allowed;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
  - (A) New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises;
  - (B) Low Density Option: New development limited to one dwelling unit per acre or 12 percent built-upon area;
  - (C) High Density Option: If new development exceeds either one dwelling unit per acre or 12 percent built-upon area then engineered stormwater controls must be used to control runoff from the first inch of rainfall; development not to exceed 30 percent built-upon area;
  - (D) No new permitted sites for land application of sludge/residuals or

- petroleum contaminated soils are allowed;
- (E) No new landfills are allowed;
- (c) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (d) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (e) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (f) Total dissolved solids: not greater than 500 mg/l;
- (g) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Manganese: 200 ug/l;
- (D) Nickel: 25 ug/l;
- (E) Nitrate nitrogen: 10 mg/l;
- (F) 2,4-D: 100 ug/l;
- (G) 2,4,5-TP (Silvex): 10 ug/l;
- (H) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters:
- (A) Beryllium: 6.8 ng/l;
- (B) Benzene: 1.19 ug/l;
- (C) Carbon tetrachloride: 0.254 ug/l;
- (D) Chlorinated benzenes: 488 ug/l;
- (E) Dioxin: 0.000013 ng/l;
- (F) Hexachlorobutadiene: 0.445 ug/l;
- (G) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (H) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (I) Tetrachloroethylene: 0.8 ug/l;
- (J) Trichloroethylene: 3.08 ug/l;
- (K) Vinyl Chloride: 2 ug/l;

- (L) Aldrin: 0.127 ng/l;
- (M) Chlordane: 0.575 ng/l;
- (N) DDT: 0.588 ng/l;
- (O) Dieldrin: 0.135 ng/l;
- (P) Heptachlor: 0.208 ng/l.

Statutory Authority G.S. 143-214.1.

## .0216 FRESH SURFACE WATER QUALITY STANDARDS FOR WS-IV WATERS

~~(a) General. In addition to the existing classifications, the Commission may classify certain unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:~~

- ~~(1) there are no significant impacts from pollution with the water quality rated as excellent based on physical, chemical or biological information;~~
- ~~(2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.~~

~~(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:~~

- ~~(1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;~~
- ~~(2) there is an unusually high level of water-based recreation or the potential for such recreation;~~
- ~~(3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;~~
- ~~(4) the waters represent an important component of a state or national park or forest; or~~
- ~~(5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.~~

~~(c) Quality Standards for ORW.~~

- ~~(1) Freshwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters~~



classified ORW. Management strategies to protect resource values will be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges will be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program will be required to control stormwater runoff as follows:

- (A) ~~Low Density Option:~~ Developments which limit single family developments to one acre lots and other type developments to 12 percent built upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built upon areas at least 30 feet from surface water areas will be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of those waters, in which case such additional stormwater runoff control measures may be required on a case by case basis.
- (B) ~~High Density Development:~~ Higher density developments will be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of those waters, in which case such additional stormwater runoff control measures may be required on a case by case basis. The size of the control system must take into account the runoff from any pervious surfaces draining

to the system.

- (2) ~~Saltwater:~~ Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values will be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, new development will comply with the low density options as specified in the Stormwater Runoff Disposal rules [15A NCAC 2H .1003 (a)(2)] within 575 feet of the mean high water line of the designated ORW area. New non discharge permits will be required to meet reduced loading rates and increased buffer zones, to be determined on a case by case basis. No dredge or fill activities will be allowed where significant shellfish or submerged aquatic vegetation bed resources occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values will be considered on a site specific basis during the proceedings to classify waters as ORW and will be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission will also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (c) of this Rule and in the Schedule of Classifications (15A NCAC 2B .0302 through .0317) as specified for the appropriate river basin and will also be described on maps maintained by the Division of Environmental Management.

(d) ~~Petition Process.~~ Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee will initiate public proceedings to classify



waters as ORW or will inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director

DEHNR/Division of Environmental Management  
P.O. Box 29535

Raleigh, North Carolina 27626-0535

The envelope containing the petition shall clearly bear the notation: **RULE MAKING PETITION FOR ORW CLASSIFICATION.**

(e) **Listing of Waters Classified ORW with Specific Actions.** Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) ~~Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5 (1) and 20-36-9.5 (2)] including all fresh and saline waters within the property boundaries of the natural area will have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1003(a)(2) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).~~
- (2) ~~Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (e) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments will be allowed if there is no increase in pollutant loading:~~
  - (A) ~~North and South Fowler Creeks,~~
  - (B) ~~Green and Norton Mill Creeks,~~
  - (C) ~~Cane Creek,~~
  - (D) ~~Ammons Branch,~~
  - (E) ~~Glade Creek, and~~
  - (F) ~~Associated tributaries.~~
- (3) ~~Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (e) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:~~
  - (A) ~~Ivy Creek,~~
  - (B) ~~Rock Creek, and~~
  - (C) ~~Associated tributaries.~~

(4) ~~South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Rule .0216(e)(1), will be applied to protect the designated ORW areas:~~

- (A) ~~Stormwater controls described in Rule .0216(e)(1) will apply within one mile and draining to the designated ORW areas;~~
- (B) ~~New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW will be permitted such that the following water quality standards are maintained in the ORW segment:~~
  - (i) ~~the total volume of treated wastewater for all upstream discharges combined will not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions;~~
  - (ii) ~~a safety factor will be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent will be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 2B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one half the normal standard at the upstream border of the ORW segment;~~
  - (iii) ~~a safety factor will be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 2B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;~~
- (C) ~~New or expanded NPDES permitted wastewater discharges located up-~~

stream of the designated ORW will comply with the following:

- (i) ~~Oxygen Consuming Wastes:~~ Effluent limitations will be as follows: BOD = 5 mg/l, and NH<sub>3</sub>-N = 2 mg/l;
  - (ii) ~~Total Suspended Solids:~~ Discharges of total suspended solids (TSS) will be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;
  - (iii) ~~Emergency Requirements:~~ Failsafe treatment designs will be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
  - (iv) ~~Nutrients:~~ Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or nitrogen, or both.
- (5) ~~Old Field Creek (New River Basin):~~ the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Rule .0216(e) of this Section in order to protect the designated waters as per Rule .0203 of this Section.
- (6) ~~In the following designated waterbodies, no additional restrictions will be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that will be allowed will be non domestic, non-process industrial discharges.~~
- (A) ~~The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer~~

Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River Alligator River Canal) and all other tributary streams and canals.

- (7) ~~In the following designated waterbodies, the only type of new or expanded marina that will be allowed will be those marinas located in upland basin areas, or those with less than 30 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that will be allowed will be non domestic, non-process industrial discharges.~~
- (A) ~~The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35° 23' 51" and Long. 76° 21' 02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.~~
- (B) ~~The Neuse Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocrakee Inlet northwest to the Tar Pamlico River and Neuse River basin boundary, then southwest to Ship Point.~~
- (C) ~~The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.~~
- (D) ~~The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.~~
- (E) ~~The Stump Sound Area (Cape Fear River Basin) including all waters of~~



- Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
- (F) ~~The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.~~
- (8) ~~In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 30 slips, having no boats over 21 feet in length and no boats with heads will be allowed.~~
- (A) ~~The Swanquarter Bay and Juniper Bay Area (Tar Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35° 23' 51" and Long. 76° 21' 02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.~~
- (B) ~~The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shaikleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.~~
- (C) ~~The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.~~
- (D) ~~The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.~~
- (9) ~~Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68 (0.5), 18-68 (3.5), 18-68 (11.5), 18-68 12 (0.5), 18-68 12 (11.5), and 18-68 2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (e)(1) of this Rule, will be applied to protect the designated ORW areas:~~
- (A) ~~Stormwater controls described in Subparagraph (e)(1) of this Rule will apply within one mile and draining to the designated ORW areas;~~
- (B) ~~New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) will comply with the following discharge restrictions:~~
- (i) ~~Oxygen Consuming Wastes: Effluent limitations will be as follows: BOD = 5 mg/l and NH<sub>3</sub>-N = 2 mg/l;~~
- (ii) ~~Total Suspended Solids: Discharges of total suspended solids (TSS) will be limited to effluent concentrations of 20 mg/l;~~
- (iii) ~~Emergency Requirements: Failsafe treatment designs will be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;~~



- (iv) ~~Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or nitrogen, or both.~~
- (v) ~~Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor will be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent will be allocated at one half of the normal standard at design conditions. Whole effluent toxicity will be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 2B .0206).~~

The following water quality standards apply to surface water supply waters that are classified WS-IV. Water quality standards applicable to Class C waters as describe in Rule .0211 of this Section also apply to Class WS-IV waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters.
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in moderately to highly developed watersheds or protected areas; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, other stormwater discharges and domestic wastewater discharges are allowed in the protected and critical areas; treated industrial wastewater discharges are allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area are required to meet the provisions of 15A NCAC 2B .0201(d)(1)(B)(iv), (v) and (vii), and 15A NCAC 2B .0203; new industrial connections and expansions to

existing municipal discharges with a pretreatment program pursuant to 15A NCAC 2H .0904 are allowed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard.

(3) Quality Standards Applicable to Class WS-IV Waters:

- (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
  - (i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:
    - (A) Low Density Option: Development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North

- Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than either: two dwelling units per acre or 24 percent built-upon area; or three dwelling units per acre or 36 percent built-upon area for projects without curb and gutter street system in the protected area outside of critical area;
- (B) High Density Option: If new development activities which require a Sedimentation/Erosion Control Plan exceed the requirements of Sub-Item (3)(b)(i)(A) of this Rule then development must control the runoff from the first inch of rainfall; new development not to exceed 70 percent built-upon area;
- (C) Land within the critical and protected area will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire area; All new development meets these density requirements on a project-by-project basis;
- (D) Clustering of development is allowed on a project-by-project basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimizes concentrated stormwater flow; Remainder of tract to remain in vegetated or natural state;
- (E) If local governments choose the high density development option which requires engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;
- (F) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank shoreline stabilization;
- (G) No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;
- (H) Maintain inventory of all hazardous materials used and stored in the watershed or protected area; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: New development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than two dwelling units per acre or 24 percent built-upon area;

- (B) High Density Option: If new development density exceeds either two dwelling units per acre or 24 percent built-upon area then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new development not to exceed 50 percent built-upon area;
- (C) No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;
- (D) No new landfills are allowed;
- (c) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (d) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (e) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (f) Total dissolved solids: not greater than 500 mg/l;
- (g) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-IV waters:
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Manganese: 200 ug/l;
- (D) Nickel: 25 ug/l;
- (E) Nitrate nitrogen: 10.0 mg/l;
- (F) 2,4-D: 100 ug/l;
- (G) 2,4,5-TP (Silvex): 10 ug/l;
- (H) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect

human health through water consumption and fish tissue consumption for carcinogens in Class WS-IV waters:

- (A) Beryllium: 6.8 ng/l;
- (B) Benzene: 1.19 ug/l;
- (C) Carbon tetrachloride: 0.254 ug/l;
- (D) Chlorinated benzenes: 488 ug/l;
- (E) Dioxin: 0.000013 ng/l;
- (F) Hexachlorobutadiene: 0.445 ug/l;
- (G) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (H) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (I) Tetrachloroethylene: 0.8 ug/l;
- (J) Trichloroethylene: 3.08 ug/l;
- (K) Vinyl Chloride: 2 ug/l;
- (L) Aldrin: 0.127 ng/l;
- (M) Chlordane: 0.575 ng/l;
- (N) DDT: 0.588 ng/l;
- (O) Dieldrin: 0.135 ng/l;
- (P) Heptachlor: 0.208 ng/l.

*Statutory Authority G.S. 143-214.1.*

#### **.0218 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-V WATERS**

~~Variances from applicable standards, revisions to water quality standards or site specific water quality standards may be granted by the Commission on a case-by-case basis pursuant to General Statutes 143-215.3(e), 143-214.3 or 143-214.1. A listing of existing variances will be maintained and made available to the public by the Division. Exemptions established pursuant to this Rule will be reviewed as part of the Triennial Review of Water Quality Standards conducted pursuant to 40 CFR 131.10(g).~~

The following water quality standards apply to surface water supply waters that are classified WS-V. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-V waters.

- (1) Best Usage of Waters. Waters protected as water supplies which are generally upstream and draining to Class WS-IV waters or waters previously used for drinking water supply purposes; no categorical restrictions on watershed development or wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of waters downstream of receiving waters (15A NCAC 2B



- .0203); suitable for all Class C uses.
- (2) Conditions Related to Best Usage. Waters of this class are protected water supplies; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard.
- (3) Quality Standards Applicable to Class WS-V Waters:
- (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
- (c) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of

this class;

- (d) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (e) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (f) Total dissolved solids: not greater than 500 mg/l;
- (g) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-V waters:
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Manganese: 200 ug/l;
- (D) Nickel: 25 ug/l;
- (E) Nitrate nitrogen: 10.0 mg/l;
- (F) 2,4-D: 100 ug/l;
- (G) 2,4,5-TP (Silvex): 10 ug/l;
- (H) Sulfates: 250 mg/l.
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-V waters:
- (A) Beryllium: 6.8 ng/l;
- (B) Benzene: 1.19 ug/l;
- (C) Carbon tetrachloride: 0.254 ug/l;
- (D) Chlorinated benzenes: 488 ug/l;
- (E) Dioxin: 0.000013 ng/l;
- (F) Hexachlorobutadiene: 0.445 ug/l;
- (G) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (H) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (I) Tetrachloroethylene: 0.8 ug/l;
- (J) Trichloroethylene: 3.08 ug/l;
- (K) Vinyl Chloride: 2 ug/l;
- (L) Aldrin: 0.127 ng/l;
- (M) Chlordane: 0.575 ng/l;
- (N) DDT: 0.588 ng/l;
- (O) Dieldrin: 0.135 ng/l;
- (P) Heptachlor: 0.208 ng/l.

Statutory Authority G.S. 143-214.1; 143-214.3; 143-215.3(e).

**.0219 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS B WATERS**

(a) ~~In implementing the water quality standards to protect the existing uses [as defined by Rule .0202(16) of this Section] of the waters of the state or the water quality which supports those uses, the Commission shall develop water quality management plans on a priority basis to attain, maintain or enhance water quality throughout the state. Additional specific actions deemed necessary by the Commission to protect the water quality or the existing uses of the waters of the state will be specified in Paragraph (b) of this Rule. These actions may include anything within the powers of the Commission. The Commission may also consider local actions which have been taken to protect a waterbody in determining the appropriate protection options to be incorporated into the water quality management plan.~~

(b) ~~All waters determined by the Commission to be protected by a water quality management plan are listed with specific actions as follows:~~

(1) ~~The Lockwoods Folly River Area (Lumber River Basin), which includes all waters of the lower Lockwoods Folly River in an area extending north from the Intracoastal Waterway to a line extending from Genoes Point to Mullet Creek, will be protected by the specific actions described in Subparagraphs (A) through (E) of this Rule.~~

(A) ~~New development activities within 575' of the mean high water line which require a Sedimentation Erosion Control Plan or a CAMA major development permit must comply with the low density option of the coastal Stormwater Runoff Disposal Rules [as specified in 15A NCAC 2H .1003(a)(2)].~~

(B) ~~New or expanded NPDES permits will be issued only for non-domestic, non-industrial process type discharges (such as non-industrial process cooling or seafood processing discharges). A public hearing is mandatory for any proposed (new or expanded) NPDES permit to this protected area.~~

(C) ~~New non-discharge permits will be required to meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis.~~

(D) ~~New or expanded marinas must be located in upland basin areas.~~

(E) ~~No dredge or fill activities will be~~

~~allowed where significant shellfish or submerged aquatic vegetation bed resources occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.~~

The following water quality standards apply to surface waters that are for primary recreation, including frequent or organized swimming and are classified as Class B waters. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class B waters.

(1) Best Usage of Waters. Primary recreation and any other best usage specified by the "C" classification;

(2) Conditions Related to Best Usage. The waters will meet accepted standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

(3) Quality standards applicable to Class B waters:

(a) Sewage, industrial wastes, or other wastes; none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waste when discharged into waters to be used for bathing, the Commission will consider the quality and quantity of the sewage and wastes involved and the proximity of such discharges to waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be reliably treated to ensure the protection of primary recreation;

(b) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30-day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.

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



**.0220 TIDAL SALT WATER QUALITY  
STANDARDS FOR CLASS SC  
WATERS**

General. The water quality standards for all tidal salt waters are the basic standards applicable to Class SC waters. Additional and more stringent standards applicable to other specific tidal salt water classifications are specified in Rules .0221 and .0222 of this Section.

- (1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, fish and functioning PNAs), wildlife, secondary recreation, and any other usage except primary recreation or shellfishing for market purposes.
- (2) Conditions Related to Best Usage. The waters will be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation; Any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis will be considered to be violating a water quality standard.
- (3) Quality standards applicable to all tidal salt waters:
  - (a) Chlorophyll a (corrected): not greater than 40 ug/l in sounds, estuaries, and other slow-moving waters; the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;
  - (b) Dissolved oxygen: not less than 5.0 mg/l, except that swamp waters, poorly flushed tidally influenced streams or embayments, or estuarine bottom waters may have lower values if caused by natural conditions;
  - (c) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes, as will not make the waters unsafe or unsuitable for aquatic life and wildlife, or impair the waters for any designated uses;
  - (d) Gases, total dissolved: not greater than

- (e) 110 percent of saturation;  
Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based upon at least five consecutive samples examined during any 30 day period; not to exceed 400/100 ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the MF technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results the MPN 5-tube dilution method will be used as the referee method;
- (f) Oils; deleterious substances; colored or other wastes: only such amounts as will not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes will include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b);
- (g) pH: will be normal for the waters in the area, which generally will range between 6.8 and 8.5 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (h) Phenolic compounds: only such levels as will not result in fish-flesh tainting or impairment of other best usage;
- (i) Radioactive substances:
  - (i) Combined radium-226 and radium-228: The maximum average annual activity level (based on at least four samples, collected quarterly) for combined radium-226, and radium-228 will not exceed five picoCuries per liter;
  - (ii) Alpha Emitters. The average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) will not exceed 15



- picoCuries per liter;
- (iii) Beta Emitters. The maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 will not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor will the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (j) Salinity: will not be appreciably modified as a result of hydrological modifications in areas draining to PNAs; projects which are determined by the Director to result in the appreciable modification of salinity within a PNA will be required to employ appropriate water management practices;
- (k) Temperature: will not be increased above the natural water temperature by more than 0.8 degrees C (1.44 degrees F) during the months of June, July, and August nor more than 2.2 degrees C (3.96 degrees F) during other months and in no cases to exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;
- (l) Turbidity: the turbidity in the receiving water will not exceed 25 NTU; if turbidity exceeds this level due to natural background conditions, the existing turbidity level cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Nonpoint Source Agency (as defined by Rule .0202 of this Section). BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;
- (m) Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all tidal saltwaters:
- (i) Arsenic, total recoverable: 50 ug/l;
- (ii) Cadmium: 5.0 ug/l;
- (iii) Chromium, total: 20 ug/l;
- (iv) Cyanide: 1.0 ug/l;
- (v) Mercury: 0.025 ug/l;
- (vi) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead will be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;
- (vii) Nickel: 8.3 ug/l;
- (viii) Pesticides:
- (A) Aldrin: 0.003 ug/l;
- (B) Chlordane: 0.004 ug/l;
- (C) DDT: 0.001 ug/l;
- (D) Demeton: 0.1 ug/l;
- (E) Dieldrin: 0.002 ug/l;
- (F) Endosulfan: 0.009 ug/l;
- (G) Endrin: 0.002 ug/l;
- (H) Guthion: 0.01 ug/l;
- (I) Heptachlor: 0.004 ug/l;
- (J) Lindane: 0.004 ug/l;
- (K) Methoxychlor: 0.03 ug/l;
- (L) Mirex: 0.001 ug/l;
- (M) Parathion: 0.178 ug/l;
- (N) Toxaphene: 0.0002 ug/l.
- (ix) Polychlorinated biphenyls: 0.001 ug/l;
- (x) Selenium: 71 ug/l;
- (xi) Trialkyltin compounds: 0.002 ug/l expressed as tributyltin.
- (4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger will be required to monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph may be limited as appropriate in the NPDES permit if sufficient information exists to indicate that any of those substances may be a

significant causative factor resulting in toxicity of the effluent.

- (a) Copper: 3 ug/l;
- (b) Silver: 0.1 ug/l;
- (c) Zinc: 86 ug/l.

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

#### .0221 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SA WATERS

The following water quality standards apply to surface waters that are used for shellfishing for market purposes and are classified SA. Water quality standards applicable to Class SC waters as described in Rule .0220 of this Section also apply to Class SA waters.

- (1) Best Usage of Waters. Shellfishing for market purposes and any other usage specified by the "SB" or "SC" classification;
- (2) Conditions Related to Best Usage. Waters will meet the current sanitary and bacteriological standards as adopted by the Commission for Health Services and will be suitable for shellfish culture; any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis will be considered to be violating a water quality standard;
- (3) Quality Standards applicable to Class SA Waters:
  - (a) Floating solids; settleable solids; sludge deposits: none attributable to sewage, industrial wastes or other wastes;
  - (b) Sewage: none;
  - (c) Industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission in accordance with the requirements of the Division of Health Services;
  - (d) Organisms of coliform group: fecal coliform group not to exceed a median MF of 14/100 ml and not more than 10 percent of the samples shall exceed an MF count of 43/100 ml in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

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

#### .0222 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SB WATERS

The following water quality standards apply to surface waters that are used for primary recreation, including frequent or organized swimming, and are classified SB. Water quality standards applicable to Class SC waters are described in Rule .0220 of this Section also apply to SB waters.

- (1) Best Usage of Waters. Primary recreation and any other usage specified by the "SC" classification;
- (2) Conditions Related to Best Usage. The waters will meet accepted sanitary standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes; any source of water pollution which precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis will be considered to be violating a water quality standard;
- (3) Quality Standards applicable to Class SB waters:
  - (a) Floating solids; settleable solids; sludge deposits: none attributable to sewage, industrial wastes or other wastes;
  - (b) Sewage; industrial wastes; or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waters discharged into waters which are to be used for bathing, the Commission will take into consideration quantity and quality of the sewage and other wastes involved and the proximity of such discharges to the waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be treated to ensure the protection of primary recreation;
  - (c) Organisms of coliform group: fecal coliforms not to exceed a geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30 day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.

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



## **.0223 NUTRIENT SENSITIVE WATERS**

(a) In addition to existing classifications, the Commission may classify any surface waters of the state as nutrient sensitive waters (NSW) upon a finding that such waters are experiencing or are subject to excessive growths of microscopic or macroscopic vegetation. Excessive growths are growths which the Commission in its discretion finds to substantially impair the use of the water for its best usage as determined by the classification applied to such waters.

(b) NSW may include any or all waters within a particular river basin as the Commission deems necessary to effectively control excessive growths of microscopic or macroscopic vegetation.

(c) For the purpose of this Rule, the term "nutrients" shall mean phosphorous and/or nitrogen. When considering the assignment of this classification, the Commission may specify as a "nutrient" any other chemical parameter or combination of parameters which it determines to be essential for the growth of microscopic and macroscopic vegetation.

(d) Those waters additionally classified as nutrient sensitive shall be identified in the appropriate schedule of classifications as referenced in Section .0300 of this Subchapter.

(e) For the purpose of this Rule, the term "background levels" shall mean the concentration(s), taking into account seasonal variations, of the specific nutrient or nutrients upstream of a nutrient source.

(f) Quality standards applicable to NSW: no increase in nutrients over background levels unless it is shown to the satisfaction of the Director that the increase:

- (1) is the result of natural variations; or
- (2) will not endanger human health, safety or welfare and that preventing the increase would cause a serious economic hardship without equal or greater benefit to the public.

*Statutory Authority G.S. 143-214.1.*

## **.0224 HIGH QUALITY WATERS**

High Quality Waters (HQW) are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(e)(5). The following procedures will be implemented in order to implement the requirements of Rule .0201(d) of this Section.

- (1) New or expanded wastewater discharges in High Quality Waters will comply with the following:

- (a) Discharges from new single family residences will be prohibited. Those that must discharge will install a septic tank, dual or recirculating sand filters, disinfection and step aeration.
- (b) All new NPDES wastewater discharges (except single family residences) will be required to provide the treatment described below:
  - (i) Oxygen Consuming Wastes: Effluent limitations will be as follows: BOD<sub>5</sub> = 5 mg/l, NH<sub>3</sub>-N = 2 mg/l and DO = 6 mg/l. More stringent limitations will be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen-consuming wastes will not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily available, evaluations will assume a percent saturation determined by staff to be generally applicable to that hydroenvironment.
  - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) will be limited to effluent concentrations of 10 mg/l for trout waters and PNA's, and to 20 mg/l for all other High Quality Waters.
  - (iii) Disinfection: Alternative methods to chlorination will be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges are prohibited to SA waters.
  - (iv) Emergency Requirements: Failsafe treatment designs will be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.
  - (v) Volume: The total volume of treated wastewater for all discharges combined will not exceed 50 percent of the total instream flow under 7Q10 conditions.
  - (vi) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or



- nitrogen, or both.
- (vii) Toxic substances: In cases where complex wastes (those containing or potentially containing toxicants) may be present in a discharge, a safety factor will be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent will be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity will be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under design conditions. In all instances there may be no acute toxicity in an effluent concentration of 90 percent as measured by the North Carolina "Pass/Fail Methodology for Determining Acute Toxicity in a Single Effluent Concentration". Ammonia toxicity will be evaluated according to EPA guidelines promulgated in the Ammonia Criteria Development Document (1986); EPA document number 440/5-85-001; NTIS number PB85-227114; July 29, 1985 (50 FR 30784).
- (c) All expanded NPDES wastewater discharges in High Quality Waters will be required to provide the treatment described in Sub-Item (1)(b) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.
- (2) Development activities which require an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or local erosion and sedimentation control program approved in accordance with 15A NCAC 4B .0218, and which drain to and are within one mile of High Quality Waters (HQW) will be required to control runoff from the one inch design storm as follows:
- (a) Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built-upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built-upon areas at least 30 feet from surface waters will be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis. Activities conforming to the requirements described in 15A NCAC 2H .1003(a) [except for Subparagraphs (2) and (3) which apply only to waters within the 20 coastal counties as defined in 15A NCAC 2H .1002(9)] will also be deemed to comply with this requirement, except as provided in the preceding sentence.
- (b) High Density Option: Higher density developments will be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built-upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis. The size of the control system must take into account the runoff from any pervious surfaces draining to the system.
- (c) All waters classified WS-I or WS-II and all waters located in the 20 coastal counties as defined in Rule 15A NCAC 2H .1002(9) are excluded from this requirement since they already have requirements for nonpoint source controls.
- If an applicant objects to the requirements to protect high quality waters and believes degradation is necessary to accommodate important social and economic development, the applicant can contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B-23.
- Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

**.0225 OUTSTANDING RESOURCE WATERS**

(a) General. In addition to the existing classifications, the Commission may classify certain unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) there are no significant impacts from pollution with the water quality rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;
- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW.

- (1) Freshwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values will be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges will be permitted, and stormwater controls for all new devel-

opment activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program will be required to control stormwater runoff as follows:

- (A) Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built-upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built-upon areas at least 30 feet from surface water areas will be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of those waters, in which case such additional stormwater runoff control measures may be required on a case-by-case basis.
- (B) High Density Development: Higher density developments will be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built-upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of those waters, in which case such additional stormwater runoff control measures may be required on a case-by-case basis. The size of the control system must take into account the runoff from any pervious surfaces draining to the system.
- (2) Saltwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values will be developed on a site-specific basis during the proceedings to classify waters as



ORW. At a minimum, new development will comply with the low density options as specified in the Stormwater Runoff Disposal rules [15A NCAC 2H .1003 (a)(2)] within 575 feet of the mean high water line of the designated ORW area. New non-discharge permits will be required to meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities will be allowed where significant shellfish or submerged aquatic vegetation bed resources occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values will be considered on a site specific basis during the proceedings to classify waters as ORW and will be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission will also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 2B .0302 through .0317) as specified for the appropriate river basin and will also be described on maps maintained by the Division of Environmental Management.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee will initiate public proceedings to classify waters as ORW or will inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director  
DEHNR/Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535

The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions. Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area will have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1003(a)(2) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments will be allowed if there is no increase in pollutant loading:
  - (A) North and South Fowler Creeks,
  - (B) Green and Norton Mill Creeks,
  - (C) Cane Creek,
  - (D) Ammons Branch,
  - (E) Glade Creek, and
  - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
  - (A) Ivy Creek,
  - (B) Rock Creek, and
  - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, will be applied to protect the designated ORW areas:



- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule will apply within one mile and draining to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW will be permitted such that the following water quality standards are maintained in the ORW segment:
- (i) the total volume of treated wastewater for all upstream discharges combined will not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions;
  - (ii) a safety factor will be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent will be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 2B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
  - (iii) a safety factor will be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 2B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW will comply with the following:
- (i) Oxygen Consuming Wastes: Effluent limitations will be as follows: BOD = 5 mg/l, and NH<sub>3</sub>-N = 2 mg/l;
  - (ii) Total Suspended Solids: Dis-
- charges of total suspended solids (TSS) will be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;
- (iii) Emergency Requirements: Failsafe treatment designs will be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
  - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions will be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that will be allowed will be non-domestic, non-process industrial discharges.
- (A) The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.
- (7) In the following designated waterbodies, the only type of new or expanded marina that will be allowed

will be those marinas located in upland basin areas, or those with less than 30 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that will be allowed will be non-domestic, non-process industrial discharges.

- (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35° 23' 51" and Long. 76° 21' 02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
- (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
- (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.
- (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.
- (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
- (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) includ-

ing all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

- (8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 30 slips, having no boats over 21 feet in length and no boats with heads will be allowed.
  - (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35° 23' 51" and Long. 76° 21' 02" thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.
  - (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.
  - (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of



Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.

- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-21]; the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, will be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule will apply within one mile and draining to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) will comply with the following discharge restrictions:
- (i) Oxygen Consuming Wastes: Effluent limitations will be as follows: BOD = 5 mg/l and NH<sub>3</sub>-N = 2 mg/l;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) will be limited to effluent concentrations of 20 mg/l;
- (iii) Emergency Requirements: Failsafe treatment designs will be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those con-

taining or potentially containing toxicants) may be currently present in the discharge, a safety factor will be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent will be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity will be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 2B .0206).

*Statutory Authority G.S. 143-214.1.*

#### **.0226 EXEMPTIONS FROM SURFACE WATER QUALITY STANDARDS**

Variances from applicable standards, revisions to water quality standards or site-specific water quality standards may be granted by the Commission on a case-by-case basis pursuant to General Statutes 143-215.3(e), 143-214.3 or 143-214.1. A listing of existing variances will be maintained and made available to the public by the Division. Exemptions established pursuant to this Rule will be reviewed as part of the Triennial Review of Water Quality Standards conducted pursuant to 40 CFR 131.10(g).

*Statutory Authority G.S. 143-214.1; 143-214.3.*

#### **.0227 WATER QUALITY MANAGEMENT PLANS**

(a) In implementing the water quality standards to protect the existing uses [as defined by Rule .0202(25) of this Section] of the waters of the state or the water quality which supports those uses, the Commission shall develop water quality management plans on a priority basis to attain, maintain or enhance water quality throughout the state. Additional specific actions deemed necessary by the Commission to protect the water quality or the existing uses of the waters of the state will be specified in Paragraph (b) of this Rule. These actions may include anything within the powers of the Commission. The Commission may also consider local actions which have been taken to protect a waterbody in determining the appropriate protection options to be incorporated into the water quality management plan.

(b) All waters determined by the Commission to



be protected by a water quality management plan are listed with specific actions as follows:

The Lockwoods Folly River Area (Lumber River Basin), which includes all waters of the lower Lockwoods Folly River in an area extending north from the Intracoastal Waterway to a line extending from Genoes Point to Mullet Creek, will be protected by the specific actions described in Subparagraphs (1) through (5) of this Paragraph.

- (1) New development activities within 575' of the mean high water line which require a Sedimentation Erosion Control Plan or a CAMA major development permit must comply with the low density option of the coastal Stormwater Runoff Disposal Rules [as specified in 15A NCAC 2H .1003(a)(2)].
- (2) New or expanded NPDES permits will be issued only for non-domestic, non-industrial process type discharges (such as non-industrial process cooling or seafood processing discharges). A public hearing is mandatory for any proposed (new or expanded) NPDES permit to this protected area.
- (3) New non-discharge permits will be required to meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis.
- (4) New or expanded marinas must be located in upland basin areas.
- (5) No dredge or fill activities will be allowed where significant shellfish or submerged aquatic vegetation bed resources occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.

Statutory Authority G.S. 143-214.1; 143-214.8A.

#### .0228 EFFLUENT CHANNELS

The standards of water quality contained in this Section shall not apply to waters within effluent channels, as defined in Rule .0202(23) of this Section, except that said waters shall be maintained at a quality which will prevent the occurrence of offensive conditions, protect public health, and allow maintenance of the standards applicable to all downstream waters. Effluent channels will be

designated by the Director, such that the channels will:

- (1) be contained entirely on property owned (or otherwise controlled) by the discharger (to be demonstrated by the discharger);
- (2) not contain natural waters except when such waters occur in direct response to rainfall events by overland runoff;
- (3) be so constructed or modified as to minimize the migration of fish into said channel;
- (4) be identified and designated on a case-by-case basis prior to permit issuance.

Statutory Authority G.S. 143-214.1.

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*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 10B .0105, .0114 and 10D .0003.*

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

*The public hearing will be conducted at 10:00 a.m. on April 3, 1995 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC.*

#### *Reason for Proposed Action:*

*15A NCAC 10B .0105 - To conform area of early goose season permit hunting to those areas identified in Federal Regulations.*

*15A NCAC 10B .0114 - To require requests for field trial authorization to be submitted 30 days in advance.*

*15A NCAC 10D .0003 - To make minor editorial changes and corrections.*

*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 March 16, 1995 through April 17, 1995. 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 10B - HUNTING AND  
TRAPPING

SECTION .0100 - GENERAL  
REGULATIONS

.0105 MIGRATORY GAME BIRDS

(a) Cooperative State Rules:

- (1) The taking of sea ducks (scoter, eider and old squaw) during any special federally-announced season for these species shall be limited to the waters of the Atlantic Ocean, and to those coastal waters south of US 64 which are separated by a distance of at least 800 yards of open water from any shore, island or marsh.
- (2) The extra daily bag and possession limits allowed by the federal regulations on scaup apply in all coastal waters east of U.S. Highway 17, except Currituck Sound north of US 158.
- (3) Tundra swans may be taken during the open season by permit only subject to limitations imposed by the U. S. Fish and Wildlife Service. A limited number of nontransferable swan permits will be issued by the Wildlife Resources Commission to applicants who will be selected at random by computer, and only one swan may be taken under each permit which must be cancelled at the time of the kill by cutting out the month and day of the kill. Accompanying the permit is a tag which must be affixed to the swan at the time and place of the kill. The tag must be affixed in accordance with instructions provided with the permit. In addition, a preaddressed post-paid card is supplied to each permittee on which to report the number of days hunted and the details of the kill if made. It is unlawful to hunt swans without having the permit and the tag in possession or to possess a swan without the cancelled permit in possession and the tag properly affixed to the swan. It is unlawful to possess a swan permit or tag while hunting that was assigned to another person or to alter the permit or tag in any way other than cutting out the proper month and day of kill.

- (4) Canada geese may be taken ~~west of~~ 1-95 during the open season by permit holders only subject to limitations imposed by the U.S. Fish and Wildlife Service. Permits will be issued by the North Carolina Wildlife Resources Commission. It is unlawful to hunt or possess Canada geese ~~west of 1-95~~ without having the permit in possession. It is unlawful to possess a Canada goose permit while hunting that was assigned to another person or to alter the permit in any way.

(b) Notwithstanding the provisions of G.S. 113-291.1(a) and (b), the following restrictions apply to the taking of migratory game birds:

- (1) No migratory game bird may be taken:
  - (A) With a rifle;
  - (B) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so as to limit its total capacity to not more than three shells.
- (2) No migratory game bird may be taken:
  - (A) From or by the use of a sinkbox or any other type of low floating device affording the hunter a means of concealment beneath the surface of the water;
  - (B) With the aid of bait, or on, over or within 300 yards of any place where any grain, salt or other feed is exposed so as to constitute an attraction to migratory game birds or has been so exposed during any of the 10 consecutive days preceding the taking, except that this Part shall not apply to standing crops, flooded croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting;
  - (C) With the aid of live decoys, or on, over or within 300 yards of any place where tame or captive migratory game birds are present, unless such birds are and have been for a period of 10 consecutive days prior to such taking confined within an enclosure which substantially reduces the audibility of their calls and totally conceals them from the sight of wild

- migratory game birds.
- (3) Waterfowl hunting and harassment and other unauthorized activities shall be prohibited on posted waterfowl management areas established by the Wildlife Resources Commission for Canada Geese and ducks restoration.
  - (4) In that area of Roanoke Sound adjacent to and immediately Northeast of Roanoke Island as marked by buoys designating the waterfowl rest area, it shall be unlawful to harass or take any waterfowl.

*Authority G.S. 113-134; 113-274; 113-291.1; 113-291.2; 50 C.F.R. 20.21; 50 C.F.R. 20.105.*

#### **.0114 DOG TRAINING AND FIELD TRIALS**

(a) Except as provided in Paragraphs (b) and (c) of this Rule, each person engaged in training or running a dog or dogs and each active participant in a field trial must have obtained a North Carolina hunting license. The term "active participant" as used herein includes each person who owns or handles dogs, carries a firearm, or is a member of an organized group engaged in the conduct of a field trial, but does not include a person who is observing a field trial incidentally or who has stopped to witness a part of it.

(b) A person serving as judge of a commission-sanctioned field trial and any nonresident participating therein may do so without having a North Carolina license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. A "commission-sanctioned" field trial is one which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence by an authorized representative of the Wildlife Resources Commission.

(c) Persons without license may participate in commission-sanctioned field trials for beagles conducted without firearms on private field trial areas which are fenced in accordance with G.S. 113-276(k).

(d) Except as allowed by regulations pertaining to authorized field trials, it is unlawful to carry firearms, axes, saws or climbing irons while training or running dogs during closed season on game animals.

(e) Except as authorized in this Paragraph, no firearms or other hunting weapons may be possessed or used during any field trial for foxhounds or any field trial conducted during the closed

hunting season for any other species of wildlife serving as the quarry or prey. On a commission-sanctioned field trial for retrievers or bird dogs, shotguns containing live ammunition or firearms using only blank ammunition may be used only when the application for and the authorization of the field trial so provide. No wild waterfowl, quail or pheasant may be used in field trials when shotguns with live ammunition are permitted. All waterfowl, quail and pheasants so used must be obtained from a licensed game bird propagator. Each specimen of waterfowl so obtained shall be marked by one of the methods provided by 50 C.F.R. 21.13. Each pheasant or quail so obtained shall be banded by the propagator prior to delivery with a metal leg band which is imprinted with the number of his propagation license. The purchaser of such birds shall obtain a copy of the receipt from the propagator showing the date and the number and species of birds purchased. The copy of the receipt shall be available for inspection by any authorized agent of the Wildlife Resources Commission during the time and at the place where the trial is being held.

(f) Applications for authorization of a field trial must be submitted in writing to a Wildlife Enforcement Officer at least 30 days prior to the scheduled event.

*Authority G.S. 113-134; 113-273; 113-276; 113-291.1; 113-291.5; 50 C.F.R. 21.13.*

### **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



this Chapter, 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. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. 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
- (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 open-

ing 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 is 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 14~~ the Monday on or nearest October 15;
- (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~~  
Three Top Mountain 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 the Monday on or nearest October 15 ~~October 14~~ 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 the  
Monday on or nearest October 15  
~~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 the Monday on  
or nearest October 15 ~~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 prohib-  
 ited.)  
 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 prohib-  
 ited 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 per-  
 mits to participate in managed hunts  
 scheduled and conducted in accordance  
 with this Subparagraph on the game  
 lands or portions of game lands includ-  
 ed 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 be-  
 fore Thanksgiving Week:  
     Sandhills east of US 1  
     Sandhills west of US 1  
 Application forms for permits to partici-  
 pate in managed deer hunts on game  
 lands, together with pertinent informa-  
 tion and instructions, may be obtained  
 from hunting and fishing license agents  
 and from the Wildlife Resources Com-

mission. 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--  
Burke County--John's River Waterfowl 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.

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**Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Commission for Health Services intends to amend rules cited as 15A NCAC 13A .0009 and .0010.

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

**The** public hearing will be conducted at 1:30 pm on April 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.

**Reason for Proposed Action:**

15A NCAC 13A .0009 - To incorporate by refer-

ence federal rules which were promulgated between October 1, 1994 and December 31, 1994, which are needed to remain in compliance with EPA authorization requirements. Amends 15A NCAC 13A .0009 to include 40 CFR 264.179, 264.200 and 264.232 Air Emission Standards. Adds new Paragraph (x) to include 40 CFR 264.1080 through 264.1091 (Subpart CC) Air Emission Standards for Tanks, Surface Impoundments and Containers.

15A NCAC 13A .0010 - To incorporate by reference federal rules which were promulgated between October 1, 1994 and December 31, 1994, which are needed to remain in compliance with EPA authorization requirements. Amends 15A NCAC 13A .0010 to include 40 CFR 265.178, 265.202 and 265.231 Air Emission Standards. Adds new Paragraph (u) to include 40 CFR 265.1080 through 265.1091 (Subpart CC) Air Emission Standards for Tanks, Surface Impoundments and Containers.

**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 April 19, 1995. 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 13 - SOLID WASTE MANAGEMENT

### SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

#### .0009 STANDARDS FOR OWNERS/ OPERATORS OF HWTSD FACILITIES - PART 264

(a) Any person who treats, stores or disposes of hazardous waste shall comply with the requirements set forth in this Section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in this Section.

(b) 40 CFR 264.1 through 264.4 (Subpart A), "General", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 264.10 through 264.19 (Subpart B), "General Facility Standards", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 264.30 through 264.37 (Subpart C), "Preparedness and Prevention", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 264.50 through 264.56 (Subpart D), "Contingency Plan and Emergency Procedures", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 264.70 through 264.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 264.90 through 264.101 (Subpart F), "Releases From Solid Waste Management Units", ~~have been~~ are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 264.90(a)(2).

(h) 40 CFR 264.110 through 264.120 (Subpart G), "Closure and Post-Closure", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 264.140 through 264.151 (Subpart H), "Financial Requirements", ~~have been~~ are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), and 40 CFR 264.151(a)(1), Section 15 are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) which were not incorporated by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these Rules, an owner or operator using a closure trust fund established prior to the effective date of these Rules shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not incorporated by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(3) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not incorporated by reference:

(A) Except as otherwise provided in Paragraph (i)(3)(B) of this Section, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund over the term of the RCRA post-closure permit may



be established by the Department as a permit condition.

- (4) The following additional requirement shall apply:

The trustee shall notify the Department of payment to the trust fund, by certified mail within ~~ten~~ 10 days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

(j) 40 CFR 264.170 through ~~264.178~~ 264.179 (Subpart I), "Use and Management of Containers", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 264.190 through ~~264.199~~ 264.200 (Subpart J), "Tank Systems", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(l) The following are requirements for Surface Impoundments:

- (1) 40 CFR 264.220 through ~~264.231~~ 264.232 (Subpart K), "Surface Impoundments", ~~have been~~ are incorporated by reference including subsequent amendments and editions.
- (2) The following are additional standards for surface impoundments:
  - (A) The liner system shall consist of at least two liners;
  - (B) Artificial liners shall be equal to or greater than 30 mils in thickness;
  - (C) Clayey liners shall be equal to or greater than five feet in thickness and have a maximum permeability of  $1.0 \times 10^{-7}$  cm/sec;
  - (D) Clayey liner soils shall have the same characteristics as described in (r)(4)(B)(ii), (iii), (iv), (vi) and (vii) of this Rule;
  - (E) A leachate collection system shall be constructed between the upper liner and the bottom liner;
  - (F) A leachate detection system shall be constructed below the bottom liner; and
  - (G) Surface impoundments shall be constructed in such a manner to prevent landsliding, slippage or slumping.

(m) 40 CFR 264.250 through 264.259 (Subpart L), "Waste Piles", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 264.270 through 264.283 (Subpart

M), "Land Treatment", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 264.300 through 264.317 (Subpart N), "Landfills", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(p) A long-term storage facility shall meet groundwater protection, closure and post-closure, and financial requirements for disposal facilities as specified in Paragraphs (g), (h), and (i) of this Rule.

(q) 40 CFR 264.340 through 264.351 (Subpart O), "Incinerators", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(r) The following are additional location standards for facilities:

- (1) In addition to the location standards set forth in 15A NCAC 13A .0009(c), the Department, in determining whether to issue a permit for a hazardous waste management facility, shall consider the risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers and shall consider whether provision has been made for adequate buffer zones. The Department shall also consider ground water travel time, soil pH, soil cation exchange capacity, soil composition and permeability, slope, climate, local land use, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility; potential impact on air quality, existence of seismic activity and cavernous bedrock.
- (2) The following minimum separation distances shall be required of all hazardous waste management facilities except that existing facilities shall be required to meet these minimum separation distances to the maximum extent feasible:
  - (A) All hazardous waste management facilities shall be located at least 0.25 miles from institutions including but

- not limited to schools, health care facilities and prisons, unless the owner or operator can demonstrate that no unreasonable risks shall be posed by the proximity of the facility.
- (B) All hazardous waste treatment and storage facilities shall comply with the following separation distances: all hazardous waste shall be treated and stored a minimum of 50 feet from the property line of the facility; except that all hazardous waste with ignitable, incompatible or reactive characteristics shall be treated and stored a minimum of 200 feet from the property line of the facility if the area adjacent to the facility is zoned for any use other than industrial or is not zoned.
- (C) All hazardous waste landfills, long-term storage facilities, land treatment facilities and surface impoundments, shall comply with the following separation distances:
- (i) All hazardous waste shall be located a minimum of 200 feet from the property line of the facility;
  - (ii) Each hazardous waste landfill, long-term storage or surface impoundment facility shall be constructed so that the bottom of the facility is 10 feet or more above the historical high ground water level. The historical high ground water level shall be determined by measuring the seasonal high ground water levels and predicting the long-term maximum high ground water level from published data on similar North Carolina topographic positions, elevations, geology, and climate; and
  - (iii) All hazardous waste shall be located a minimum of 1,000 feet from the zone of influence of any existing off-site ground water well used for drinking water, and outside the zone of influence of any existing or planned on-site drinking water well.
- (D) Hazardous waste storage and treatment facilities for liquid waste that is classified as TC toxic, toxic, or acutely toxic and is stored or treated in tanks or containers shall not be located:
- (i) in the recharge area of an aquifer which is designated as an existing sole drinking water source as defined in the Safe Drinking Water Act, Section .1424(e) [42 U.S.C. 300h-3(e)] unless an adequate secondary containment system is constructed, and after consideration of applicable factors in (r)(3) of this Rule, the owner or operator can demonstrate no unreasonable risk to public health;
  - (ii) within 200 feet of surface water impoundments or surface water stream with continuous flow as defined by the United States Geological Survey;
  - (iii) in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 2B .0200 and 15A NCAC 18C .0102;
  - (iv) in an area that will allow direct surface or subsurface discharge to the watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
  - (v) within 200 feet horizontally of a 100-year floodplain elevation;
  - (vi) within 200 feet of a seismically active area as defined in (c) of this Rule; and
  - (vii) within 200 feet of a mine, cave, or cavernous bedrock.
- (3) The Department may require any hazardous waste management facility to comply with greater separation distances or other protective measures necessary to avoid unreasonable risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers or to provide an adequate buffer zone. The Department may also require protective measures necessary to avoid unreasonable risks posed by the soil pH, soil cation exchange capacity, soil

composition and permeability, climate, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility, potential impact on air quality, and the existence of seismic activity and cavernous bedrock. In determining whether to require greater separation distances or other protective measures, the Department shall consider the following factors:

- (A) All proposed hazardous waste activities and procedures to be associated with the transfer, storage, treatment or disposal of hazardous waste at the facility;
- (B) The type of hazardous waste to be treated, stored, or disposed of at the facility;
- (C) The volume of waste to be treated, stored, or disposed of at the facility;
- (D) Land use issues including the number of permanent residents in proximity to the facility and their distance from the facility;
- (E) The adequacy of facility design and plans for containment and control of sudden and non-sudden accidental events in combination with adequate off-site evacuation of potentially adversely impacted populations;
- (F) Other land use issues including the number of institutional and commercial structures such as airports and schools in proximity to the facility, their distance from the facility, and the particular nature of the activities that take place in those structures;
- (G) The lateral distance and slope from the facility to surface water supplies or to watersheds draining directly into surface water supplies;
- (H) The vertical distance, and type of soils and geologic conditions separating the facility from the water table;
- (I) The direction and rate of flow of ground water from the sites and the extent and reliability of on-site and nearby data concerning seasonal and long-term groundwater level fluctuations;
- (J) Potential air emissions including rate, direction of movement, dispersion and

exposure, whether from planned or accidental, uncontrolled releases; and

- (K) Any other relevant factors.
- (4) The following are additional location standards for landfills, long-term storage facilities and hazardous waste surface impoundments:
- (A) A hazardous waste landfill, long-term storage, or a surface impoundment facility shall not be located:
    - (i) In the recharge area of an aquifer which is an existing sole drinking water source;
    - (ii) Within 200 feet of a surface water stream with continuous flow as defined by the United States Geological Survey;
    - (iii) In an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 2B .0200 and 15A NCAC 18C .0102;
    - (iv) In an area that will allow direct surface or subsurface discharge to a watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
    - (v) Within 200 feet horizontally of a 100-year flood hazard elevation;
    - (vi) Within 200 feet of a seismically active area as defined in (c) of this Rule; and
    - (vii) Within 200 feet of a mine, cave or cavernous bedrock.
  - (B) A hazardous waste landfill or long-term storage facility shall be located in highly weathered, relatively impermeable clayey formations with the following soil characteristics:
    - (i) The depth of the unconsolidated soil materials shall be equal to or greater than 20 feet;
    - (ii) The percentage of fine-grained soil material shall be equal to or greater than 30 percent passing through a number 200 sieve;
    - (iii) Soil liquid limit shall be equal to or greater than 30;
    - (iv) Soil plasticity index shall be equal to or greater than 15;
    - (v) Soil compacted hydraulic conductivity shall be a maximum of  $1.0 \times 10^{-7}$  cm/sec;
    - (vi) Soil Cation Exchange Capacity



- shall be equal to or greater than 5 milliequivalents per 100 grams;
- (vii) Soil Potential Volume Change Index shall be equal to or less than 4; and
- (viii) Soils shall be underlain by a competent geologic formation having a rock quality designation equal to or greater than 75 percent unless other geological conditions afford adequate protection of public health and the environment.
- (C) A hazardous waste landfill or long-term storage facility shall be located in areas of low to moderate relief to the extent necessary to prevent landsliding or slippage and slumping. The site may be graded to comply with this standard.
- (5) All new hazardous waste impoundments that close with hazardous waste residues left in place shall comply with the standards for hazardous waste landfills in (r)(4) of this Rule unless the applicant can demonstrate that equivalent protection of public health and environment is afforded by some other standard.
- (6) The owners and operators of all new hazardous waste management facilities shall construct and maintain a minimum of two observation wells, one upgradient and one downgradient of the proposed facility; and shall establish background groundwater concentrations and monitor annually for all hazardous wastes that the owner or operator proposes to store, treat, or dispose at the facility.
- (7) The owners and operators of all new hazardous waste facilities shall demonstrate that the community has had an opportunity to participate in the siting process by complying with the following:
  - (A) The owners and operators shall hold at least one public meeting in the county in which the facility is to be located to inform the community of all hazardous waste management activities including but not limited to: the hazardous properties of the waste to be managed; the type of management proposed for the wastes; the

mass and volume of the wastes; and the source of the wastes; and to allow the community to identify specific health, safety and environmental concerns or problems expressed by the community related to the hazardous waste activities associated with the facility. The owners and operators shall provide a public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting. The written transcript and other written material submitted or used at the meeting shall be submitted to the local public library closest to and in the county of the proposed site with a request that the information be made available to the public.

- (B) For the purposes of this Rule, public notice shall include: notification of the boards of county commissioners of the county where the proposed site is to be located and all contiguous counties in North Carolina; a legal advertisement placed in a newspaper or newspapers serving those counties; and provision of a news release to at least one newspaper, one radio station, and one TV station serving these counties. Public notice shall include the time, place, and purpose of the meetings required by this Rule.
- (C) No less than 30 days after the first public meeting transcript is available at the local public library, the owners and operators shall hold at least one additional public meeting in order to attempt to resolve community concerns. The owners and operators shall provide public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of

the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting.

- (D) The application, written transcripts of all public meetings and any additional material submitted or used at the meetings, and any additions or corrections to the application, including any responses to notices of deficiencies shall be submitted to the local library closest to and in the county of the proposed site, with a request that the information be made available to the public until the permit decision is made.

- (E) The Department shall consider unresolved community concerns in the permit review process and impose final permit conditions based on sound scientific, health, safety, and environmental principles as authorized by applicable laws or rules.

(s) 40 CFR 264.552 through 264.553 (Subpart S), "Corrective Action for Solid Waste Management Units", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 264.570 through 264.575 (Subpart W), "Drip Pads", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(u) 40 CFR 264.600 through 264.603 (Subpart X), "Miscellaneous Units", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 264.1030 through 264.1049 (Subpart AA), "Air Emission Standards for Process Vents", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(w) 40 CFR 264.1050 through 264.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(x) 40 CFR 264.1080 through 264.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers", are incorporated by reference including subsequent amendments and editions.

(y) ~~(x)~~ 40 CFR 264.1100 through 264.1102 (Subpart DD), "Containment Buildings", ~~have been~~ are incorporated by reference including

subsequent amendments and editions.

(z) ~~(y)~~ Appendices to 40 CFR Part 264 ~~have been~~ are incorporated by reference including subsequent amendments and editions.

*Statutory Authority G.S. 130A-294(c); 150B-21.6.*

#### **.0010 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART 265**

(a) 40 CFR 265.1 through 265.4 (Subpart A), "General", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 265.10 through 265.19 (Subpart B), "General Facility Standards", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 265.30 through 265.37 (Subpart C), "Preparedness and Prevention", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 265.50 through 265.56 (Subpart D), "Contingency Plan and Emergency Procedures", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 265.70 through 265.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 265.90 through 265.94 (Subpart F), "Ground-Water Monitoring", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 265.110 through 265.120 (Subpart G), "Closure and Post-Closure", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 265.140 through 265.151 (Subpart H), "Financial Requirements", ~~have been~~ are incorporated by reference including subsequent amendments and editions, except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), are not incorporated by reference.

- (1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not incorporated by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these Rules, an owner or operator using a closure trust fund established prior to

the effective date of these Rules shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

- (2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not incorporated by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

- (3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not incorporated by reference:

- (A) Except as otherwise provided in Paragraph (h)(3)(B) of this Section, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

- (B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period may be established by the Department by use of an Administrative Order.

(i) 40 CFR 265.170 through ~~265.177~~ 265.178 (Subpart I), "Use and Management of Containers", ~~have been~~ are incorporated by reference including subsequent amendments and editions. Additionally, the owner or operator shall keep records and results of required inspections for at least three years from the date of the inspection.

(j) 40 CFR 265.190 through ~~265.201~~ 265.202

(Subpart J), "Tank Systems", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 265.220 through ~~265.230~~ 265.231 (Subpart K), "Surface Impoundments", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 265.250 through 265.260 (Subpart L), "Waste Piles", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(m) 40 CFR 265.270 through 265.282 (Subpart M), "Land Treatment", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 265.300 through 265.316 (Subpart N), "Landfills", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 265.340 through 265.352 (Subpart O), "Incinerators", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(p) 40 CFR 265.370 through 265.383 (Subpart P), "Thermal Treatment", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(q) 40 CFR 265.400 through 265.406 (Subpart Q), "Chemical, Physical, and Biological Treatment", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(r) 40 CFR 265.440 through 265.445 (Subpart W), "Drip Pads", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(s) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(u) 40 CFR 265.1080 through 265.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers", are incorporated by reference including subsequent amendments and editions.

(v) ~~(u)~~ 40 CFR 265.1100 through 265.1102 (Subpart DD), "Containment Buildings", ~~have been~~ are incorporated by reference including subsequent amendments and editions.

(w) ~~(v)~~ Appendices to 40 CFR Part 265 ~~have been~~ are incorporated by reference including subsequent amendments and editions.



Statutory Authority G.S. 130A-294(c); 150B-21.6.

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**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 16A .1103, .1104 and .1106.

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

**The** public hearing will be conducted at 1:30 pm on April 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.

**Reason for Proposed Action:** The major reason for the proposed changes in the rules of the Cancer Control Program is to bring them more in line with current acceptable medical practices. Many diagnostic examinations used for cancer in the past have taken place in a hospital setting. The current trend is for these tests to be performed on an outpatient basis, given the high cost of inpatient care.

Many providers have expressed concern that the current limitations of days for outpatient and inpatient care are insufficient to complete diagnostic workups and treatment plans for cancer patients. Therefore, the Program seeks to increase the number of days for these services. Also, some providers are reluctant to refer eligible patients to the Program since it does not provide reimbursement for necessary follow-up days.

The adoption of nationally accepted medical practices will standardize the procedures for management of cervical intraepithelial neoplasia. Use of the National Cancer Institute's SEER data will provide a guide for the physicians who must determine patient survival rates.

The proposed changes will allow the Program to provide a more comprehensive plan of care for cancer patients and enhance the ability of the Program to recruit and retain providers.

**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 April 19, 1995. 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 16 - ADULT HEALTH

### SUBCHAPTER 16A - CHRONIC DISEASE

#### SECTION .1100 - CANCER DIAGNOSTIC AND TREATMENT PROGRAM

##### .1103 LIMITATIONS ON DAYS OF SERVICE

(a) Financial assistance shall be provided for diagnostic services for ~~one day of services on an inpatient basis or up to two days of services on an outpatient basis~~ up to eight days per year per patient. The Program shall authorize the number of days for reimbursement based on the medical condition of the patient and the procedure to be performed.

- (1) Applications for inpatient diagnostic services shall be accompanied by a written, signed statement from the attending physician that includes the following:
  - (A) the medical reason that the inpatient services are required; and

- (B) the medical reason such services cannot be performed on an outpatient basis.
- (2) The statement in Subparagraph (a)(1) of this Rule may be in the form of a workup protocol, clinical notes, medical history, or other medical document in lieu of a separately prepared statement.
- (3) The statement in Subparagraph (a)(1) of this Rule shall be reviewed by the Program which shall assess the medical need for inpatient diagnostic services.
- (b) Financial assistance shall be provided for treatment services, ~~for up to eight days of inpatient services or up to 16 days of outpatient services per year or an equivalent combination thereof for each~~ for up to 30 days per year per patient. The Program shall authorize the number of days for reimbursement based on the medical condition of the patient and the procedure to be performed.

Statutory Authority G.S. 130A-220.

#### .1104 COVERED SERVICES

(a) Covered services shall include diagnostic and treatment services for cancer or a condition suggestive of cancer. Physical therapy following surgery, where medically indicated, is an approved treatment service.

(b) Service restrictions:

- (1) Dental treatment is not covered except in cases of head and neck cancer when necessary for the delivery of oncologic care.
- (2) The Program shall not cover late discharge fees, transportation, telephone calls, or other miscellaneous charges.
- (3) Cosmetic surgery shall not be covered. This does not preclude the coverage of functional, reconstructive surgery.
- (4) Ancillary diagnostic studies shall be authorized only when they are determined by the Program to be directly related to the confirmation of a diagnosis of cancer or are necessary for treatment planning.
- (5) The Program ~~shall not~~ may authorize reimbursement for up to two follow-up office visits after completion of diagnostic studies or treatment. These visits shall be included within the days allowed for diagnostic and treatment services. ~~However, this does not prohibit coverage of diagnosis or treatment of a recurrent disease.~~
- (6) ~~For patients suspected of having cervi-~~

~~cal intraepithelial neoplasia, the Program will not authorize treatment services unless a colposcopic directed biopsy to determine appropriate therapy has been performed. Diagnostic or therapeutic conization or loop excision of the cervix will be considered medically necessary if one or more of the following conditions are met and documented: Treatment for patients suspected of having cervical intraepithelial neoplasia shall be performed in accordance with the guidelines of the American College of Obstetricians and Gynecologists (ACOG) contained in Technical Bulletin Number 183 - August 1993, which is incorporated herein by reference in accordance with G.S. 150B-21.6, along with any subsequent amendments and editions. Copies of the guidelines can be obtained by calling (919)715-3370 or by writing to the Cancer Control Program, P.O. Box 27687, Raleigh, North Carolina 27611-7687.~~

- (A) ~~Unsatisfactory colposcopy due to an inability to visualize the entire lesion or the transformation zone;~~
- (B) ~~Positive endocervical curettage; or~~
- (C) ~~Cytologic or histologic suspicion of invasive cancer.~~

~~Conization of the cervix will be covered only on an outpatient basis unless the Program determines that the patient's health would be jeopardized by service provided on an outpatient basis.~~

- (7) ~~Hysterectomy will not be covered as a primary therapy for cervical intraepithelial neoplasia.~~

(7) (8) The use of any treatment, equipment, drug, device or supply not recognized as having scientifically established medical value nor accepted as standard medical treatment for the condition being treated, as determined by the Program, will not be covered.

- (8) (9) Inpatient services shall not be authorized unless the hospital is licensed in the State of North Carolina under General Statute 131E-5, the Hospital Licensure Act, or under conditions of participation for Medicare (Title XVIII of the Social Security Act) or Medicaid (Title XIX of the Social Security Act).

(c) Meals and overnight accommodations, in a motel, home, boarding house, ambulatory care

facility, or similar facility for patients receiving covered services on an outpatient basis shall be covered by the Program if the patient's residence is at least 50 miles from the medical facility providing the outpatient services.

- (1) Reimbursement for actual expenses shall not exceed the maximum allowable subsistence (meals and accommodations) for state employees in the course of their official duties, found in G.S. 138-6, based on those rates of reimbursement in effect at the time of the authorization of these expenses by the Program.
- (2) Program authorization of meals and accommodations shall be limited to the maximum number of days of service coverage. However, the Program shall cover meals and accommodations for weekends between the periods during which treatment is authorized.
- (3) Authorization Requests for meals and accommodations shall state the number of days which will be required, as well as the dates of service on which outpatient diagnostic or treatment services shall be rendered.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317 Public Health Services Act, as amended.*

#### **.1106 MEDICAL ELIGIBILITY**

(a) To be medically eligible for diagnostic authorization, a patient must have a condition strongly suspicious of cancer which requires diagnostic services to confirm the preliminary diagnosis. The Program shall authorize only those services determined by the program to be medically necessary to confirm a preliminary diagnosis.

(b) Diagnostic services for suspected cervical intraepithelial neoplasia shall be covered by the Program if there is cytologic evidence suggestive of cervical intraepithelial neoplasia.

(c) A positive pathology report shall be required before treatment services can be authorized by the Program.

(d) Before treatment services ~~may~~ can be authorized, the attending physician must certify that there is a 25 percent or better chance of five-year survival with initial treatment. The Program shall use the current five-year relative survival rates published by the National Cancer Institute's Surveillance, Epidemiology, and End Results (SEER) Program as a guide for evaluating requests for treatment. These rates are incorporated herein by

reference in accordance with G.S. 150B-21.6, along with any subsequent amendments and editions. They may be used by physicians to assist with estimating survival. Copies of the rates can be obtained by calling (919)715-3370 or by writing to the Cancer Control Program, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

(e) All requests for treatment shall be reviewed by the Program. Such requests shall be authorized when the Program determines that there is at least a 25 percent chance of five-year survival with initial treatment and that the services to be provided are medically necessary to improve the chance of survival. In determining medical eligibility, the Program may confer with the patient's attending physician, members of the Cancer Committee of the North Carolina Medical Society, and other physicians trained in the treatment of cancer.

(f) All requests for chemotherapy shall be accompanied by a protocol describing the treatment being requested.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*



\*\*\*\*\*

*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 18A .1935 and .1956.*

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

*The public hearing will be conducted at 1:30pm on April 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.*

***Reason for Proposed Action:***

*15A NCAC 18A .1935 - To amend the definitions for "Rock" (34), "Saprolite" (36), and "Soil" (41) to be consistent with current technology and proposed amendment to 15A NCAC 18A .1956(6).*

*15A NCAC 18A .1956 - To amend the rule governing modifications to conventional septic tank systems that have been classified Unsuitable as to soil depth. To provide procedures for evaluating saprolite. To provide for the increased usage of saprolite in accordance with recent research related to wastewater disposal in saprolite.*

***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 April 19, 1995. 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 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS**

**.1935 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Alluvial Soils" means stratified soils without distinct horizons, deposited by flood waters.
- (2) "Alternative System" means any approved ground absorption sewage treatment and disposal system other than an approved privy or an approved septic tank system.
- (3) "Approved" means that which has been considered acceptable to the State or local health department.
- (4) "Approved Privy" means a fly-tight structure consisting of a pit, floor slab, and seat riser constructed in accordance with Rule .1959 of this Section.
- (5) "Approved Public or Community Sewage System" means a single system of sewage collection, treatment, and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality, or a public utility, constructed and operated in

compliance with applicable requirements of the Division of Environmental Management.

- (6) "Areas subject to frequent flooding" means those areas inundated at a 10-year or less frequency and includes alluvial soils and areas subject to tidal or storm overwash.
- (7) "Collection sewer" means gravity flow pipelines, force mains, effluent supply lines, and appliances appurtenant thereto, used for conducting wastes from building drains to a treatment system or to a ground absorption sewage treatment and disposal system.
- (8) "Designated wetland" means an area on the land surface established under the provisions of the Coastal Area Management Act or the Federal Clean Water Act.
- (9) "Design unit" means one or more dwelling units, places of business, or places of public assembly on:
  - (a) a single lot or tract of land;
  - (b) multiple lots or tracts of land served by a common ground absorption sewage treatment and disposal system; or
  - (c) a single lot or tract of land or multiple lots or tracts of land where the dwelling units, places of business or places of public assembly are under multiple ownership (e.g. condominiums) and are served by a ground absorption system or multiple ground absorption systems which are under common or joint ownership or control.
- (10) "Dwelling unit" means any room or group of rooms located within a structure and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, bathing, toilet usage, cooking, and eating.
- (11) "Effluent" means the liquid discharge of a septic tank or other sewage treatment device.
- (12) "Ground absorption sewage treatment and disposal system" means a system that utilizes the soil for the subsurface disposal of partially treated or treated sewage effluent.
- (13) "Horizon" means a layer of soil, approximately parallel to the surface, that has distinct characteristics produced by soil forming processes.
- (14) "Local health department" means any county, district, or other health department authorized to be organized under the General Statutes of North Carolina.
- (15) "Mean high water mark" means, for coastal waters having six inches or more lunar tidal influence, the average height of the high water over a 19 year period as may be ascertained from National Ocean Survey or U.S. Army Corps of Engineers tide stations data or as otherwise determined under the provisions of the Coastal Area Management Act.
- (16) "Naturally occurring soil" means soil formed in place due to natural weathering processes and being unaltered by filling, removal, or other man-induced changes other than tillage.
- (17) "Nitrification field" means the area in which the nitrification lines are located.
- (18) "Nitrification lines" means approved pipe, specially designed porous blocks, or other approved materials which receive partially treated sewage effluent for distribution and absorption into the soil beneath the ground surface.
- (19) "Nitrification trench", also referred to as a sewage absorption trench, means a ditch into which a single nitrification line is laid and covered by soil.
- (20) "Non-ground absorption sewage treatment system" means a facility for waste treatment designed not to discharge to the soil, land surface, or surface waters, including but not limited to, approved vault privies, incinerating toilets, mechanical toilets, composting toilets, chemical toilets, and recycling systems.
- (21) "Organic soils" means those organic mucks and peats consisting of more than 20 percent organic matter (by dry weight) and 18 inches or greater in thickness.
- (22) "Parent material" means the mineral matter that is in its present position through deposition by water, wind, gravity or by decomposition of rock and exposed at the land surface or overlain by soil or saprolite.
- (23) "Ped" means a unit of soil structure, such as an aggregate, crumb, prism, block, or granule formed by natural processes.
- (24) "Perched water table" means a saturated zone, generally above the natural water table, as identified by drainage mottles caused by a restrictive horizon.
- (25) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, or unit of local government.
- (26) "Place of business" means any store, warehouse, manufacturing establishment, place of amusement

- or recreation, service station, foodhandling establishment, or any other place where people work or are served.
- (27) "Place of public assembly" means any fairground, auditorium, stadium, church, campground, theater, school, or any other place where people gather or congregate.
  - (28) "Privy building" means and includes any and all buildings which are used for privacy in the acts of urination and defecation which are constructed over pit privies and are not connected to a ground absorption sewage treatment and disposal system or a public or community sewage system.
  - (29) "Public management entity" means a city (G.S. 160A, Article 16), county (G.S. 153A, Article 15), interlocal contract (G.S. 153A, Article 16), joint management agency (G.S. 160A-461 -462), county service district (G.S. 153A, Article 16), county water and sewer district (G.S. 162A, Article 6), sanitary district (G.S. 130A, Article 2), water and sewer authority (G.S. 162A, Article 1), metropolitan water district (G.S. 162A, Article 4), metropolitan sewerage district (G.S. 162A, Article 5), public utility [G.S. 62-3(23)], county or district health department (G.S. 130A, Article 2), or other public entity legally authorized to operate and maintain on-site sewage systems.
  - (30) "Relocation" means the displacement of a residence, place of business, or place of public assembly from one location to another.
  - (31) "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with these Rules, which is reserved for the installation of additional nitrification fields and is not covered with structures or impervious materials.
  - (32) "Residence" means any home, hotel, motel, summer camp, labor work camp, mobile home, dwelling unit in a multiple-family structure, or any other place where people reside.
  - (33) "Restrictive horizon" means a soil horizon that is capable of perching ground water or sewage effluent and that is brittle and strongly compacted or strongly cemented with iron, aluminum, silica, organic matter, or other compounds. Restrictive horizons may occur as fragipans, iron pans or organic pans, and are recognized by their resistance in excavation or in using a soil auger.
  - (34) ~~"Rock" means the consolidated or partially consolidated mineral matter or aggregate, including bedrock or weathered rock, not exhibiting the properties of soil and exposed at the land surface or overlain by soil or saprolite.~~ "Rock" means the body of consolidated or partially consolidated material composed of minerals at or below the land surface. Rock includes bedrock and partially weathered rock that is relatively hard and cannot be easily dug with hand tools when moist. The upper boundary of rock is "saprolite", "soil", or the land surface. Water movement through rock is mainly along fractures.
  - (35) "Sanitary system of sewage treatment and disposal" means a complete system of sewage collection, treatment and disposal, including approved privies, septic tank systems, connection to public or community sewage systems, incinerators, mechanical toilets, composting toilets, recycling toilets, mechanical aeration systems, or other such systems.
  - (36) ~~"Saprolite" means thoroughly decomposed earthy mineral matter, weathered in place from igneous or metamorphic rock and usually overlain by soil and exhibiting some properties of rock.~~ "Saprolite" means the body of soft, friable to firm when moist, and porous material formed in place by weathering of igneous or metamorphic rocks. Saprolite has a massive, rock-controlled structure, and retains the fabric (arrangement of minerals) of its parent rock in at least 50 percent of its volume as evaluated at a given depth on the walls of an open pit dug into saprolite. Saprolite can be easily dug with hand tools, and in general it conducts water between individual grains and various types of pores such as tubular pores. The lower limit of saprolite is "rock" and its upper limit is "soil" or the land surface.
  - (37) "Septic tank" means a water-tight, covered receptacle designed for primary treatment of sewage and constructed to:
    - (a) receive the discharge of sewage from a building;
    - (b) separate settleable and floating solids from the liquid;
    - (c) digest organic matter by anaerobic bacterial action;
    - (d) store digested solids through a period of detention; and
    - (e) allow clarified liquids to discharge for additional treatment and final disposal.
  - (38) "Septic tank system" means a subsurface sanitary sewage system consisting of a septic tank and a subsurface disposal field.
  - (39) "Sewage" means the liquid and solid human waste and liquid waste generated by water-using fixtures



- and appliances, including those associated with food handling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (40) "Site" means the area in which the sewage treatment and disposal system is to be located and the area required to accommodate repairs and replacement of nitrification field and permit proper functioning of the system.
- (41) ~~"Soil" means the naturally occurring, unconsolidated mineral and organic material of the land surface developed from rock or other parent material and consists of sand, silt, and clay-sized particles and variable amount of organic materials. Soil does not exhibit properties of rock or parent material. However, zones of transition in which soil characteristics predominate shall be considered soil.~~ "Soil" means the naturally occurring body of soft, friable to firm when moist, and porous mineral and organic materials on the land surface that is capable of supporting the growth of plants outdoors. Soil is composed of sand-, silt-, and clay-sized particles that are mixed with varying amounts of larger fragments and some organic material. Soil differs from saprolite in that it contains many roots and organisms, and the rock fabric of the parent material is visible in less than 50 percent of its volume as evaluated by auger boring or assessed at a given depth on the walls of an open pit. In general, soil conducts water through the planar voids as well as the individual grains and tubular pores created by roots and organisms. The upper limit of the soil is the land surface, and its lower limit is "rock", "saprolite", or other materials where roots cannot penetrate except along fractures that are spaced at intervals of 10 cm or more.
- (42) "Soil structure" means the arrangement of primary soil particles into compound particles, peds, or clusters that are separated by natural planes of weakness from adjoining aggregates.
- (43) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 - 0.05 mm in size), silt (less than 0.05 mm - 0.002 mm or greater in size), and clay (less than 0.002 mm in size) particles. The specific textural classes are defined as follows and as shown in Soil Taxonomy, Appendix I, which is hereby adopted by reference in accordance with G.S. 150B-14(c):
- (a) "Sand" means soil material that contains 85 percent or more of sand; the percentage of silt plus 1.5 times the percentage of clay shall not exceed 15.
- (b) "Loamy sand" means soil material that contains at the upper limit 85 to 90 percent sand, and the percentage silt plus 1.5 times the percentage of clay is not less than 15; at the lower limit it contains not less than 70 to 85 percent sand, and the percentage of silt plus twice the percentage of clay does not exceed 30.
- (c) "Sandy loam" means soil material that contains either 20 percent clay or less, and the percentage of silt plus twice the percentage of clay exceeds 30, and contains 52 percent or more sand; or less than seven percent clay, less than 50 percent silt, and between 43 and 52 percent sand.
- (d) "Loam" means soil material that contains seven to 27 percent clay, 28 to 50 percent silt, and less than 52 percent sand.
- (e) "Silt loam" means soil material that contains 50 percent or more silt and 12 to 27 percent clay; or contains 50 to 80 percent silt and less than 12 percent clay.
- (f) "Silt" means soil material that contains 80 percent or more silt and less than 12 percent clay.
- (g) "Sandy clay loam" means soil material that contains 20 to 35 percent clay, less than 28 percent silt, and 45 percent or more sand.
- (h) "Clay loam" means soil material that contains 27 to 40 percent clay and 20 to 45 percent sand.
- (i) "Silty clay loam" means soil material that contains 27 to 40 percent clay and less than 20 percent sand.
- (j) "Sandy clay" means soil material that contains 35 percent or more clay and 45 percent or more sand.
- (k) "Silty clay" means soil material that contains 40 percent or more clay and 40 percent or more silt.
- (l) "Clay" means soil material that contains 40 percent or more clay, less than 45 percent sand, and less than 40 percent silt.
- (44) "State" means the Department of Environment, Health, and Natural Resources, Division of Environmental Health.
- (45) "Stream" means a natural or manmade channel, including groundwater lowering ditches and devices, in which water flows or stands most of the year.
- (46) "Subsurface disposal" means the application of sewage effluent beneath the surface of the ground by

distribution through approved nitrification lines.

*Statutory Authority G.S. 130A-335(e) and (f).*

### **.1956 MODIFICATIONS TO SEPTIC TANK SYSTEMS**

The following are modifications to septic tank systems which may be utilized to overcome selected soil and site limitations. Except as required in this Rule, the provisions for design and installation of Rule .1955 of this Section shall apply:

- (1) Sites classified UNSUITABLE as to soil depth or soil wetness may be reclassified as PROVISIONALLY SUITABLE with respect to soil depth or soil wetness conditions by utilizing shallow placement of nitrification trenches in the naturally occurring soil. Shallow trenches may be used where at least 24 inches of naturally occurring soil are present above saprolite, rock, or soil wetness conditions and all other factors are PROVISIONALLY SUITABLE or SUITABLE. Shallow trenches shall be designed and constructed to meet the vertical separation requirements in Rule .1955(m) of this Section. The long-term acceptance rate shall be based on the most hydraulically limiting naturally occurring soil horizon within 24 inches of the ground surface or to a depth of one foot below the trench bottom, whichever is deeper. Soil cover above the original grade shall be placed at a uniform depth over the entire nitrification field and shall extend laterally five feet beyond the nitrification trench. The soil cover shall be placed over a nitrification field only after proper preparation of the original ground surface. The type and placement of soil cover shall be approved by the local health department.
- (2) Sites classified UNSUITABLE as to soil wetness conditions or restrictive horizons may be reclassified PROVISIONALLY SUITABLE as to soil wetness conditions or restrictive horizons when:
  - (a) Soils are Soil Groups I or II with SUITABLE structure, and clay mineralogy;
  - (b) Restrictive horizons, if present, are less than three inches thick or less than 12 inches from the soil surface;
  - (c) Modifications can be made to meet the requirements in Rule .1955(m) of this Section for the separation between the water table and the bottom of the nitrification trench at all times and when provisions are made for maintenance of the drainage systems;
  - (d) Easements are recorded and have adequate width for egress and ingress for maintenance of drainage systems serving two or more lots;
  - (e) Maintenance of the drainage system is made a condition of any permit issued for the use or operation of a sanitary sewage system; and
  - (f) Drainage may be used in other types of soil when the requirements of Rule .1957(c) in this Section are met.
- (3) Modified nitrification trenches or lines, including large diameter pipe (greater than four inches I.D.), and specially designed porous block systems may be permitted by the local health department.
  - (a) Gravelless nitrification trench systems may be substituted for conventional trench systems on any site found to be suitable or provisionally suitable in accordance with Rules .1940 to .1948 of this Section to eliminate the need for gravel, minimize site disturbance, or for other site planning considerations. Gravelless nitrification trench systems shall not be used, however, where wastes contain high amounts of grease and oil, such as restaurants.
    - (i) Large diameter pipe systems shall consist of eight-inch or 10-inch (inside diameter), corrugated, polyethylene tubing encased in a nylon, polyester, or nylon/polyester blend filter wrap installed in a nitrification trench, 12 or more inches wide and backfilled with soil classified as soil group I, II, or III. Nitrification area requirement shall be determined in accordance with Rules .1955(b) and .1955(c), or in Rule .1956(6)(b), Table III of this Section, when applicable, with eight-inch tubing considered equivalent to a two-foot-wide conventional trench and 10-inch tubing considered equivalent to a two and one-half-foot-wide conventional trench. The long-term acceptance rate shall not exceed 0.8 gallons per day per square foot. Tubing and fittings shall comply with the requirements of ASTM F-667, which is hereby incorporated by reference including any subsequent amendments and editions. Copies of the standards may be inspected in and copies obtained from the Division of Environmental Health, P.O. Box 27687, Raleigh, NC 27611-7687 at no cost. The corrugated tubing shall have two rows of holes, each hole between

three-eighths and one-half-inch in diameter, located 120 degrees apart along the bottom half of the pipe (each 60 degrees from the bottom center line) and staggered so that one hole is present in the valley of each corrugation. The tubing shall be marked with a visible top location indicator, 120 degrees away from each row of holes. Filter wrap shall be spun, bonded, or spunlaced nylon, polyester, or nylon/polyester blend nylon filter wrap meeting the following minimum requirements:

Unit Weight: Oz/yd<sup>2</sup> = 1.0

Sheet Grab Tensile: MD - 23 lbs.

Trapezoid Tear: MD - 6.2 lbs.

XD - 5.1 lbs.

Mullen Burst: PSI = 40

KPa = 276

Frazier Air Perm, CFM/ft ] 0.5 "H<sub>2</sub>O: 500"

Corrugated Tubing shall be covered with filter wrap at the factory and each joint shall be immediately encased in a black polyethylene sleeve which shall continue to encase the large diameter pipe and wrap until just prior to installation in the trench. Large diameter pipe systems shall be installed in accordance with this Rule and the manufacturer's guidelines. The trench bottom and pipe shall be level (with a maximum fall of one inch in 100 feet). Filter wrap encasing the tubing shall not be exposed to sunlight (ultraviolet radiation) for extended periods. Rocks and large soil clumps shall be removed from backfill material prior to being used. Clayey soils (soil group IV) shall not be used for backfill. The near end of the large diameter pipe shall have an eight-inch by four-inch offset adaptor (small end opening at top) suitable for receiving the pipe from the septic tank or distribution device and making a mechanical joint in the nitrification trench.

- (ii) A Prefabricated, Permeable Block Panel System (PPBPS), utilizing both horizontal and vertical air chambers and special construction to promote downline and horizontal distribution of effluent, may be used under the following conditions:
  - (A) the soil and site criteria of this Section shall be met;
  - (B) in calculating the required linear footage for a PPBPS's nitrification field, the linear footage for the nitrification line as determined in Rule .1955 (b) and (c), or in Rule .1956 (6)(b), Table III of this Section when applicable, shall be multiplied by 0.5 for a 16 inch PPBPS;
  - (C) installation of the PPBPS shall be in accordance with these Rules except:
    - (I) the PPBPS trench shall be located not less than eight feet on centers;
    - (II) the installation shall be in accordance with the manufacturer's specifications; and
    - (III) the sidewalls of nitrification trenches placed in Group IVa soils shall be raked to open pores which were damaged or sealed during excavation;
  - (D) where design sewage flow is more than 480 gallons per day, the system shall be pressure-dosed; and
  - (E) the long-term acceptance rate shall not exceed 0.8 gallons per day per square foot.
- (b) Other types of nitrification trenches or lines may be approved by the local health department on a site-specific basis in accordance with Rule .1969 of this Section.
- (4) Sites classified as UNSUITABLE as to soil wetness conditions because of the presence of lateral water movement may be reclassified PROVISIONALLY SUITABLE as to soil wetness conditions when such water is intercepted and diverted to prevent saturation of the soil absorption system.
- (5) Stable slopes greater than 30 percent may be reclassified as PROVISIONALLY SUITABLE when:
  - (a) The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least one foot below the bottom of the nitrification trench at the upslope side of the



- trench;
- (b) Surface water runoff is diverted around the nitrification field if necessary to prevent scouring or erosion of the soil over the field; and
  - (c) The finished grade over the nitrification field site is returned to the original topography and adequately seeded, unless otherwise specified by the local health department.
- (6) Sites classified UNSUITABLE as to soil depth, with saprolite present, may be reclassified PROVISIONALLY SUITABLE as to soil depth when the provisions of this Paragraph are met.
- (a) An investigation of the site using pits ~~or trenches~~ at locations and to depths specified by the local health department shall be conducted. The following physical properties and characteristics must be present:
    - (i) the saprolite shall be weathered from acidic (granite, gneiss, or schist) parent rock types of metamorphic or igneous origin;
    - (ii) the saprolite texture ~~shall be suitable and~~ saprolite shall have 27 percent or less than 20 clay; - sized particles and 30 percent or greater sand-sized particles;
    - (iii) clay mineralogy shall be suitable;
    - (iv) the saprolite consistence shall be loose, friable to very friable when moist as determined in place and nonsticky to slightly sticky or nonplastic to slightly plastic when wet;
    - (v) the saprolite shall be overlain by ~~at least one foot of SUITABLE or PROVISIONALLY SUITABLE~~ naturally occurring soil; and in an undisturbed state except as specifically approved by the Department;
    - (vi) the saprolite shall have no open and continuous joints or fractures relic of parent rock to a depth of two feet below the proposed trench bottom.
  - (b) Table III shall be used in determining the long-term acceptance rate for septic tank systems installed pursuant to Paragraph (6) of this Rule. The long-term acceptance rate shall be based on the most hydraulically limiting, naturally occurring saprolite to a depth of two feet below trench bottom.

TABLE III

<u>SAPROLITE GROUP</u>	<u>SAPROLITE TEXTURAL CLASSES</u>	<u>LONG-TERM ACCEPTANCE RATE</u>
		<u>gpd/ft<sup>2</sup></u>
I	Sands	Sand
		0.6 - 0.5
II	Coarse Loams ( <del>with less than 20%</del> <u>27% or less clay and</u> <u>30% or greater sand</u> )	Loamy Sand
		0.5 - 0.4
		Sandy Loam
		0.4 - 0.3
		Loam
		Sandy Clay Loam
		0.3 - 0.1
		<u>0.2 - 0.05</u>
		<u>Silt Loam</u>
		<u>0.1 - 0.05</u>

If a low pressure pipe system is used, the long term acceptance rate in Table III shall be reduced by one-half and the system shall be designed in accordance with Rule .1957(a) of this Section, except that Rule .1957 (a)(2)(B) and Rule .1957(a)(3) shall not apply. Saprolite textural classifications shall be determined from disturbed materials and determined by Rule .1941(a)(1) of this Section. The local health department may require low-pressure distribution in conventional nitrification trenches, or other modifications available under this Rule, to insure adequate effluent treatment and disposal.

- (c) Only ground absorption systems with a design daily flow of 480 gallons or less shall be installed on sites reclassified pursuant to this Paragraph [Rule .1956(6)].
- (d) The nitrification field shall be constructed using nitrification trenches with a maximum width of three feet and a maximum depth of two feet on the downslope side of the nitrification trench. The bottom of a nitrification trench shall be a minimum of two feet above rock or saprolite that does not meet the requirements of Subparagraph (6)(a) of this Rule. However, where SUITABLE or PROVISIONALLY SUITABLE soil underlies the trench bottom, this separation distance may be reduced by subtracting the actual soil depth beneath the trench bottom from 24 inches to establish the minimum separation distance from the trench bottom to rock.

- (e) The bottom of any nitrification trench shall be a minimum of two feet above any wetness condition.
- (f) Surface and subsurface interceptor drains may be required.
- (g) Exceptions to the provisions of Rule .1950(a) found in Rule .1950 and .1951 of this Section shall not apply to systems installed pursuant to this Paragraph [Rule .1956(6)].

Statutory Authority G.S. 130A-335(e) and (f).

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*Notice is hereby given in accordance with G.S. 150B-21.2 that EHNH - Commission for Health Services intends to amend rule cited as 15A NCAC 19A .0202.*

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

*The public hearing will be conducted at 1:30 p.m. on April 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.*

*Reason for Proposed Action: To promote early identification of HIV infection among pregnant women, promote subsequent counseling and possible treatment to minimize the risk of transmission of HIV from the mother to the fetus.*

*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, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 19, 1995. 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, ASSOCIA-**

**TIONS, 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 19 - HEALTH: EPIDEMIOLOGY

### SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

#### SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

##### .0202 CONTROL MEASURES - HIV

The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

- (1) Infected persons shall:
  - (a) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;
  - (b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
  - (c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
  - (d) have a skin test for tuberculosis;
  - (e) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous year.
- (2) The attending physician shall:
  - (a) give the control measures in Item (1) of

- this Rule to infected patients, in accordance with 15A NCAC 19A .0210;
- (b) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse appropriately, the physician shall list the spouse on a form provided by the Division of Epidemiology and shall mail the form to the Division; the Division will undertake to counsel the spouse; the attending physician's responsibility to notify exposed and potentially exposed persons is satisfied by fulfilling the requirements of Sub-Items (2)(a) and (b) of this Rule;
  - (c) advise infected persons concerning proper clean-up of blood and other body fluids;
  - (d) advise infected persons concerning the risk of perinatal transmission and transmission by breastfeeding.
- (3) The attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.
- (a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include appropriate school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee.
    - (i) If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee.
    - (ii) If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.
  - (b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:
    - (i) notify the parents;
    - (ii) notify the committee;
    - (iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
    - (iv) determine if an alternative educational setting is necessary to protect the public health;
    - (v) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by appropriate school personnel; and
    - (vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.
  - (c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.
- (4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were infected with HIV, would pose a significant risk of HIV transmission, the following shall apply:
- (a) When the source person is known:
    - (i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source



that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and shall test the source for HIV infection unless the source is already known to be infected.

The attending physician of the exposed person shall be notified of the infection status of the source.

- (ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the source person was HIV infected, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.
- (b) When the source person is unknown, the attending physician of the exposed person shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.
- (c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.
- (5) The attending physician shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person, in good faith, has reasonable cause to suspect a person infected with HIV is not following control measures and is thereby causing a significant risk of transmission.
- (6) When the local health director is notified pursuant to Item (5) of this Rule, of a person who is mentally ill or mentally retarded, the local health director shall

confer with the attending mental health physician or appropriate mental health authority and the physician, if any, who notified the local health director to develop an appropriate plan to prevent transmission.

- (7) The Director of Health Services of the North Carolina Department of Correction and the prison facility administrator shall be notified when any person confined in a state prison is determined to be infected with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined HIV infected person is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making appropriate recommendations to the unit housing classification committee.
- (8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.
- (9) Local health departments shall provide testing for HIV infection with pre- and post-test counseling at no charge to the patient. Third party payors may only be billed for HIV counseling and testing when such services are provided as a part of family planning and maternal and child health services. By August 1, 1991, the State Health Director shall designate a minimum of 16 local health departments to provide anonymous testing. Beginning September 1, 1991, only cases of confirmed HIV infection identified by anonymous tests conducted at local health departments designated as anonymous testing sites pursuant to this Sub-Item shall be reported in accordance with 15A NCAC 19A .0102(a)(3). All other cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2). Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).

- (10) Appropriate counseling for HIV testing shall include risk assessment, risk reduction guidelines, appropriate referrals for medical and psychosocial services, and, when the person tested is found to be infected with HIV, control measures. Pre-test counseling may be done in a group or individually, as long as each individual is provided the opportunity to ask questions in private. Post-test counseling must be individualized.
- (11) A local health department or the Department may release information regarding an infected person pursuant to G.S. 130A-143(3) only when the local health department or the Department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.
- (12) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual and may include one or more of the following available and appropriate services:
  - (a) substance abuse counseling and treatment;
  - (b) mental health counseling and treatment; and
  - (c) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission.
- (13) The Division of Epidemiology shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. All partner identifying information obtained as a part of the partner notification program shall be destroyed within two years.
- (14) All pregnant women shall be given appropriate pre-test counseling, as defined in 15A NCAC 19A .0202(10), and shall be tested for HIV infection by their attending physician as early in pregnancy as possible, unless, after pre-test counseling, they refuse testing.

Statutory Authority G.S. 130A-133; 130A-135;

130A-144; 130A-145; 130A-148(h).

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*Notice is hereby given in accordance with G.S. 150B-21.2 that EHNH - Commission for Health Services intends to amend rule cited as 15A NCAC 20D .0101.*

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

*The public hearing will be conducted at 1:30 p.m. on April 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.*

*Reason for Proposed Action: To ensure that HIV antibody detection tests, when positive, are confirmed by an independent licensed confirmatory test.*

*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, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 19, 1995. 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.*

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**SIONS 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 20 - LABORATORY SERVICES**

**SUBCHAPTER 20D - CERTIFICATION AND IMPROVEMENT**

**SECTION .0100 - LABORATORY CERTIFICATION**

**.0101 CERTIFICATION FOR LABORATORIES CONDUCTING HIV TESTING**

(a) Laboratories conducting HIV serologic antibody testing shall be certified in accordance with this Rule. The requirements for certification are as follows:

- (1) All laboratories, except the State Public Health Laboratory, shall be licensed under the Clinical Laboratory Improvement Act (CLIA), accredited by the College of American Pathologists (CAP), American Association of Blood Banks (AABB), or the Joint Commission on the Accreditation of Hospitals (JCAH), certified by the Health Care Financing Administration (HCFA) for Medicare or Medicaid, or accredited by a comparable program approved by the Director, State Public Health Laboratory.
- (2) Laboratories shall participate in a periodic proficiency testing program operated jointly by AABB and CAP or in a comparable periodic proficiency testing program with comparable standards of acceptable performance approved by the Director, State Public Health Laboratory. Laboratories shall demonstrate an acceptable level of proficiency according to the standards of the testing program.
- (3) HIV antibody screening test results shall not be issued as final until all initially reactive tests have been repeated at least once, and all repeatedly reactive tests have been confirmed by the Western Blot method or a method approved by the Director, State Public Health Laboratory. Preliminary results may be released after all initially reac-

tive tests have been repeated but before a confirmatory test is done if the results are clearly marked as preliminary. The results of both screening and confirmatory tests shall be transmitted to the ordering physician.

- (4) Laboratories shall perform HIV serologic antibody tests only on specimens submitted by a physician licensed to practice medicine.

(b) An application for certification shall be submitted to the Department of Human Resources listing the name and location of the laboratory requesting certification, the name of the laboratory director, and evidence that the laboratory meets the requirements listed in Paragraph (a). Laboratories will be notified in writing within 45 days of the receipt of the application that they have been certified or, if certification has been denied, of the reasons for denial.

(c) Certification must be renewed when licensing, accreditation or certification renewal is required by the program that has accredited the laboratory pursuant to Paragraph (a). If a laboratory's license, accreditation or certification from one of these programs is suspended or revoked, the laboratory director shall immediately notify the department and the laboratory's certification under this Rule shall be revoked in accordance with G.S. 130A-23. Certification may otherwise be suspended or revoked in accordance with G.S. 130A-23 for violation of this Rule or for repeatedly issuing erroneous test results. The laboratory may apply for recertification when it can provide evidence that it meets the requirements listed in Paragraph (a)-(c).

(d) Appeals concerning the interpretation and enforcement of this Rule shall be made in accordance with G.S. 150B.

(e) Laboratories conducting HIV serologic antibody testing may be certified under this Rule upon the Rule's effective date. However, these laboratories are not required to be certified until July 1, 1988.

*Statutory Authority G.S. 130A-148(a).*



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*Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 21D .0706 and .0909.*

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

*The public hearing will be conducted at 1:30 p.m. on April 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.*

*Reason for Proposed Action: To strengthen vendor management for the WIC Program by preventing abusive vendors from applying for other stores while already serving a disqualification. They also provide a framework to determine participant hardship. In addition they eliminate conflict of interest in selecting a hearing officer for a fair hearing.*

*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, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 19, 1995. 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.*

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## CHAPTER 21 - HEALTH: PERSONAL HEALTH

### SUBCHAPTER 21D - WIC/NUTRITION

#### SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

##### **.0706 AUTHORIZED WIC VENDORS**

(a) An applicant to become authorized as a WIC vendor shall comply with the following:

- (1) Accurately complete a WIC Vendor Application, a WIC Vendor Price List, and a WIC Vendor Contract;
- (2) Submit all completed forms to the local WIC program, except that a corporate WIC Vendor with 20 or more WIC stores shall submit one completed WIC Vendor Contract to the state agency and a separate WIC Vendor Application and WIC Vendor Price List for each store to the local WIC agency;
- (3) Successfully pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of WIC-approved foods as specified in Subparagraph (b)(16) of this Rule; an applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days; if the applicant fails both reviews, he shall wait 90 days from the date of his previous application before submitting a new application;

- (4) Attend WIC Vendor Training provided by the local WIC program prior to authorization and instruct other vendor employees in WIC Program procedures or send an employee who will do this;
- (5) The applicant's vendor site shall be located at a permanent and fixed location within the State of North Carolina. The vendor site shall be the address indicated on the WIC vendor application and shall be the site at which WIC participants, proxies, or compliance investigators shall select WIC approved foods;
- (6) The applicant's vendor site shall be open for business with the public at least four hours per day between 8:00 a.m. and 5:00 p.m. during weekdays;
- (7) An applicant shall not submit false, erroneous, or misleading information in an application to become a WIC vendor or in subsequent documents submitted to the state or local agency;
- (8) An applicant shall comply with all requirements of 7 CFR 246.12, G.S. 130A-361, and 15A NCAC 21D .0706;
- (9) An applicant shall not employ any management personnel or 25 percent or more of clerks who were employed in any vendor disqualified or penalized by the WIC or Food Stamp Programs in the past three years as described in Paragraph (a)(12)(A) or (B) of this Rule;
- (10) An applicant, including an owner of 25 percent or more financial interest in an applicant or vendor, shall not have been convicted of a misdemeanor involving fraud, misuse or theft of state or federal funds or any felony, or any tax violation. A certified copy of conviction may be offered and admitted into evidence as proof of such conviction;
- (11) An applicant shall not be employed, have a spouse, child, or parent who is employed by the state or local WIC program, and not have an employee who is employed, or has a spouse, child, or parent who is employed by the state or local WIC program. For purposes of the preceding sentence, the term "vendor" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a 10 percent interest in the partnership, corporation, or other legal entity; and
- (12) An applicant shall not hold 25 percent or more financial interest in any of the following:
  - (A) any Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
  - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1) as the result of violation of Paragraph (e)(1)(C)(i), (D), or (E) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirement of this provision shall not be met by the transfer or conveyance of financial interest during the period of disqualification.

(b) By signing the WIC Vendor Agreement, the applicant agrees to the following:

~~(a) DEHNR Form 2768, WIC Vendor Agreement, shall outline the responsibilities of the vendor to the WIC program, and the local WIC agency's and state agency's responsibilities towards the authorized WIC vendor. In order for a food retailer or pharmacy to participate in the WIC program and be entitled to the rights and responsibilities of an authorized WIC vendor, a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.~~

~~(b) In order to participate in the WIC program, the vendor shall:~~

- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
- (2) Accept WIC program food instruments in consideration for the purchase of eligible food items. Eligible food items are those food items which satisfy the requirements of 15A NCAC 21D .0501. The food items, specifications and product identification are described in the WIC Vendor Manual;
- (3) Provide all eligible food items as specified on the food instrument to WIC program participants, accurately determine the charges to the WIC program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the counter-signature by the participant, parent, guardian or proxy;
- (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current prices, or less than the current prices, for the eligible food items provided and shall not charge or collect sales taxes for the eligible items provided;
- (5) Accept WIC program food instruments only on a date between the "Date of Issue" and the

- "Participant Must Use By" date;
- (6) Enter in the "Date Redeemed" box the month, day and year the WIC food instrument is accepted in consideration for the purchase of eligible food items;
  - (7) Accept WIC program food instruments only if they have been validated with a "WIC Agency Authorizing Stamp";
  - (8) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
  - (9) Not redeem food instruments in whole or in part for cash, unauthorized foods, other items of value to participants or a credit for past accounts;
  - (10) Clearly imprint the Authorized WIC Vendor Stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument;
  - (11) Clearly imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
  - (12) Promptly deposit WIC program food instruments in a state or national bank having an office in the State of North Carolina. All North Carolina WIC program food instruments must be received by the North Carolina State Treasurer within 60 days of the "Date of Issue" on the food instrument;
  - (13) Insure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the Authorized WIC Vendor Stamp;
  - (14) Maintain secure storage for the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
  - (15) Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);
  - (16) Maintain a minimum inventory of eligible food items in the store for purchase by WIC Program participants. All such foods shall be within the manufacturer's expiration date. The following items and sizes constitute the minimum inventory of eligible food items for stores classified 1 - 4:

<u>Food Item</u>	<u>Type of Inventory</u>	<u>Quantities Required</u>
Milk	Whole fluid: gallon and half gallon -and- Skim/lowfat fluid: gallon or half gallon Nonfat dry: quart package -or- Evaporated: 12 oz. can	Total of 6 gallons fluid milk  Total of 5 quarts when reconstituted
Cheese	2 types: 8 or 16 oz.	Total of 6 pounds
Cereals	4 types (minimum box size 12 oz.)	Total of 12 boxes
Eggs	Grade A, large or extra-large: white or brown	6 dozen
Juices	Orange juice must be available in 2 types. A second flavor must be available in 1 type. The types are: 12 oz. frozen, and 46 oz. canned	10-12 oz. frozen 10-46 oz. canned
Dried Peas and Beans or Peanut Butter Infant	2 types  18 oz. jars	3 one-pound bags  3 jars



# PROPOSED RULES

Cereal	2 cereal grains; 8-oz. boxes (one must be rice); brand specified in Vendor Agreement	6 boxes
Infant Formula	milk and soy-based as specified in Vendor Agreement; 13 oz. concentrate	62 cans combination
Tuna	Chunk light in water: 6-6.5 oz. can	4 cans
Carrots	Raw, canned or frozen	29 oz.

For store classification 5, the following applies: Supply within 48 hours of verbal request by local WIC agency staff any of the following products: Nutramigen, Portagen, Pregestimil, Similac Special Care 24, Similac 60/40, Ensure, Ensure Plus, Osmolite, Sustacal HC, Sustacal, Isocal, Enrich, Enfamil Premature, PediaSure, Polycose and MCT Oil. All vendors (classifications 1 through 5) shall supply milk or soy based, 32 oz. ready-to-feed or powdered infant formula upon request.

- (17) Permit WIC program participant to purchase eligible food items without making other purchases;
- (18) Attend annual vendor training class on WIC procedures and regulations upon notification of class by the local agency;
- (19) Inform and train vendor's employees in WIC procedures and regulations;
- (20) Be accountable for actions of vendor's employees in utilization of WIC food instruments and provision of WIC authorized food items;
- (21) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with this agreement and state and federal WIC Program rules, regulations and policies; This includes, but shall not be limited to, allowance of access to WIC food instruments negotiated the day of the monitoring and vendor records pertinent to the purchase of WIC food items; vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC food items purchased, including invoices and copies of purchase orders;
- (22) Submit a current accurately completed copy of the WIC Program Approved Food Items Price List to the local agency when signing this agreement, six months thereafter, or on January 1, whichever is earlier, and within one week of any written request by the state or local agency;
- (23) Reimburse the state agency within 30 days of written notification for amounts paid by the state agency on WIC Program food instruments processed by the vendor which did not satisfy the conditions set forth in the Vendor Agreement and for amounts paid by the state agency on WIC food instruments as the result of the unauthorized use of the Authorized WIC Vendor Stamp;
- (24) Not seek restitution from the participant for reimbursements paid to the state agency or for WIC food instruments not paid by the state agency;
- (25) Notify the local agency when the vendor ceases operations or the ownership changes;
- (26) Return the Authorized WIC Vendor Stamp to the local agency upon termination of this agreement or suspension or termination from the WIC Program;
- ~~(27) Not be employed, or have a spouse, child, or parent who is employed by the state or local WIC program, and not have an employee who is employed, or has a spouse, child, or parent who is employed by the state or local WIC program. For purpose of the preceding sentence, the term "vendor" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a 10 percent interest in the partnership, corporation, or other legal entity;~~
- ~~(27)~~ (28) Offer WIC participants the same courtesies as offered to other customers;
- ~~(28)~~ (29) Not charge or collect sales taxes for the eligible items provided; and;
- ~~(29)~~ Comply with all the requirements for applicants of Subparagraphs (a)(5) through (11) of this Rule throughout the term of authorization.

(c) By signing the WIC Vendor Agreement, the local agency agrees to the following:

- (1) Provide at a minimum annual vendor training classes on WIC procedures and regulations;
- (2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations and policies, and applicable law. A minimum of 50 percent of all authorized vendors shall be monitored at least once a year. Any vendor shall be monitored within one week of written request by the state agency;
- (3) Provide vendors with the North Carolina WIC Vendor's Manual, all Vendor's Manual amendments, blank WIC Program Approved Food Items Price Lists, and the Authorized WIC Vendor Stamp indicated on the signature page of this agreement;
- (4) Assist the vendor with problems or questions which may arise under this agreement or the vendor's participation in the WIC Program; and
- (5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.

(d) The WIC Vendor Agreement shall outline the responsibilities of the vendor to the WIC Program, and the local WIC agency's and state agency's responsibilities towards the authorized WIC vendor. In order for a food retailer or pharmacy to participate in the WIC Program and be entitled to the rights and responsibilities of an authorized WIC vendor, a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.

(e) (d) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

(f) (e) An authorized WIC vendor may be disqualified from the WIC program for violation of 15A NCAC 21D .0706~~(b)~~ or violation of any other state and federal WIC program rules for a period not to exceed three years in accordance with the following:

- (1) When a vendor commits a violation of the WIC program rules, he shall be assessed sanction points as set forth below:
  - (A) 2.5 points for stocking WIC approved foods outside of manufacturer's expiration date;
  - (B) 5 points for:
    - (i) failure to attend annual vendor training;
    - (ii) failure to submit price reports twice a year or within seven days of request by agency;
    - (iii) requiring participants to purchase specific brands when more than one WIC-approved brand is available;
    - (iv) providing unauthorized foods (as listed in the vendor agreement);
    - (v) allowing substitutions for foods listed on WIC food instrument(s);
    - (vi) failure to stock minimum inventory.
  - (C) 7.5 points for:
    - (i) failure to properly redeem (e.g., not completing date and purchase price on WIC food instrument(s) before obtaining participant's signature);
    - (ii) discrimination (separate WIC lines, denying trading stamps, etc.);
    - (iii) issuing rainchecks;
    - (iv) requiring cash purchases to redeem WIC food instrument(s);
    - (v) contacting WIC participants in an attempt to recoup funds for food instrument(s).
  - (D) 15 points for:
    - (i) charging more than current shelf price for WIC-approved foods ~~more than once~~ on two different days;
    - (ii) charging for foods in excess of those listed on WIC food instrument(s);
    - (iii) failure to allow monitoring of a store by WIC staff when required;
    - (iv) failure to provide WIC food instrument(s) for review when requested;
    - (v) failure to provide store inventory records when requested by WIC staff;
    - (vi) nonpayment of a claim made by the state agency;
    - (vii) tendering for payment any food instrument(s) accepted by any other store;
    - (viii) intentionally providing false information on vendor records (application, price list, WIC food instrument(s), monitoring forms);
  - (E) 20 points for:
    - (i) providing cash or credit for WIC food instrument(s);

- (ii) providing non-food items or alcoholic beverages for WIC food instrument(s);
  - (iii) charging for food not received by the WIC participant; evidence that an overcharge amounts to the cost of one or more items not purchased by a participant, proxig or investigator within five cents (\$.05) of the cost of the items shall constitute violation of this provision;
- (2) All earned points are retained on the vendor file for a period of one year or until the vendor is disqualified as a result of those points. If a vendor commits a violation within six months of reauthorization after a disqualification period, 10 points in addition to those earned from the violation shall be assigned; if a vendor commits a violation after six months, but within one year of the reauthorization date after a disqualification period, five points in addition to those earned from the violation shall be assigned.
  - (3) If a vendor accumulates 15 or more points, he shall be disqualified. The nature of the violation(s), the number of violations and past disqualifications, as represented by the points assigned in Subparagraphs (e)(1) and (2), are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points of the worst offense multiplied by 18 days. Eighteen days shall be added to the disqualification period for each point over 15 points.
  - (4) Notwithstanding disqualification pursuant to accumulated points, an authorized WIC vendor shall also be disqualified from the WIC program upon disqualification or imposition of a civil money penalty from another USDA, FNS FCS Program ~~for a period not to exceed that of the same period as the other disqualification, not to exceed three years, or for a period not to exceed that of the same period as~~ the original disqualification period determined by the USDA, FNS FCS Program before imposition of the civil money penalty.
  - (5) An authorized WIC vendor shall be given 15 days written notice of any adverse action which affects his participation in the WIC Program. The vendor appeals procedure shall be in accordance with 15A NCAC 21D .0800.
- (g) ~~(f)~~ The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (b)(23) of this Rule.
- ~~(h)~~ ~~(g)~~ North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law. Neither the vendor nor the state is under any obligation to renew this contract. Nonrenewal of a vendor contract is not an appealable action. If a contract is not renewed, the person may reapply and if denied, may appeal the denial.
- ~~(i)~~ ~~(h)~~ Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment for WIC food instruments accepted by a non-authorized WIC vendor, a current WIC vendor agreement need only be signed by the vendor and the state agency. The vendor may request such one-time payment directly from the state agency. The vendor shall sign a statement indicating that he has provided foods as prescribed on the food instrument, charged current shelf prices and verified the identity of the participant. For the purposes of effecting such a WIC vendor agreement, the vendor is exempt from the inventory requirement and the requirement for an on-site visit by the local WIC agency. Any WIC vendor agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question.
- ~~(j)~~ In considering whether disqualification of a WIC vendor would create undue participant hardship pursuant to 7 CFR 246.12(k)(1)(iv)(A) or 246.12(k)(1)(v), disqualification shall not create undue hardship if any one of the following criteria is met:
- (1) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
  - (2) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor;
  - (3) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments;
  - (4) WIC participants have access to public transportation to another WIC vendor; or
  - (5) WIC participants must drive to reach a WIC vendor, regardless of whether the noncomplying vendor is disqualified.

*Statutory Authority G.S. 130A-361.*



SECTION .0900 - WIC PROGRAM PARTICIPANT FAIR HEARINGS

**.0909 HEARING OFFICER**

~~The agency official or any designated representative he/she may name~~ The Director of the Division of Maternal & Child Health shall designate a representative who did not participate in making the decision under appeal ~~may~~ to be the hearing officer. The hearing officer shall:

- (1) preside over the informal proceeding;
- (2) ensure that all relevant issues are considered;
- (3) request, receive and insert into the hearing record all evidence determined necessary to reach a decision;
- (4) conduct the meeting in accordance with due process and ensure an orderly hearing;
- (5) order, if relevant and necessary, an independent medical assessment or professional evaluation for the appellant from a source mutually satisfactory to all parties to the hearing;
- (6) issue to the agency official a proposal for decision, or, if authorized by the agency official and agreed to by the parties in writing or at the hearing, render a final decision which will resolve the dispute.

Statutory Authority G.S. 130A-361;

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*Notice is hereby given in accordance with G.S. 150B-21.2 that EHNH - Commission for Health Services intends to amend rules cited as 15A NCAC 24A .0202 and .0402.*

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

*The public hearing will be conducted at 1:30 p.m. on April 19, 1995 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.*

**Reason for Proposed Action:**

**15A NCAC 24A .0202** - The Cancer Control Program has sufficient funds to expand its income eligibility scale to 200% of the federal poverty level in order to provide for more low-income patients who are not funded by Medicaid or insurance. Also, this change will cause the Cancer Control Program to have a financial eligibility scale identical to the Breast and Cervical Cancer Control Program from which an increasing number of patients are referred to the Cancer Control Program.

Text shown in **Bold** in 15A NCAC 24A .0202 was adopted by agency on February 9, 1995. These changes are pending review by the Rules Review Commission for an effective date of April 1, 1995. **15A NCAC 24A .0402** - The current rule states that "The Department shall reimburse providers of authorized inpatient hospitalization services at the

*Medicaid per diem rate in effect at the time the claim is received by the Department." Medicaid began reimbursing inpatient hospital service based on Diagnosis Related Groups (DRG's), instead of per diems, effective January 1, 1995. Per diems for the current fiscal year will expire June 30, 1995, therefore, after that time, we will have no reimbursement basis for inpatient hospital service without amending this rule.*

**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, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 19, 1995. 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

##### .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, except as provided in Paragraph (f) of this Rule.

(b) A person shall be financially eligible for inpatient services under the Sickie 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 Sickie 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~~ 110 percent of the federal poverty level in effect on ~~April~~ July 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) A person shall be financially eligible for the Cancer Program if gross family income is at or below 200% of the federal poverty level in effect on July 1 of each year.

(g) ~~(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.

(h) ~~(g)~~ Except as provided in Paragraph ~~(h)~~ (i) 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.

(i) ~~(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 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.

(j) ~~(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.

## SECTION .0400 - REIMBURSEMENT

### .0402 REIMBURSEMENT FOR INPATIENT HOSPITALIZATION

The Department shall reimburse providers of authorized inpatient hospitalization services at the Medicaid per diem rate in effect at the time the claim is received by the Department 80 percent of the hospital's inpatient cost rate, which is then applied to the amount billed for authorized services. The inpatient cost rate is a ratio of cost to charges that is derived from audited cost reports and is obtained from the Division of Medical Assistance. The Department shall use the cost rate in effect on the date a claim is received, and retroactive adjustments to claims paid shall not be made. If a cost rate cannot be obtained for an out-of-state hospital, the Department shall reimburse the hospital at 75 percent of the billed amount for authorized services. The cost rates and any subsequent amendments and editions are incorporated herein by reference in accordance with G.S. 150B-21.6. The cost rates can be obtained from the Office of the Controller, Purchase of Medical Care Services Section, P.O. Box 27687, Raleigh, N.C. 27611-7687.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205; 130A-223.

## 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 6D .0101 and adopt rule cited as 16 NCAC 6D .0304.*

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

*The public hearing will be conducted at 9:30 a.m. on April 19, 1995 at the Education Building, Room 224, 301 N. Wilmington Street, Raleigh, NC 27601-2825.*

### *Reason for Proposed Action:*

*16 NCAC 6D .0101 - Amendment simplifies terms "diploma" and "graduation".*

*16 NCAC 6D .0304 - Rule is needed to define grade-level proficiency standards and how these standards are to be used.*

*Comment Procedures: Any interested person may present comments orally at the hearing or in writing prior to or at the hearing.*

## CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

### SUBCHAPTER 6D - INSTRUCTION

#### SECTION .0100 - CURRICULUM

##### .0101 DEFINITIONS

As used in this Subchapter:

- (1) "Competency goals" means broad statements of general direction or purpose.
- (2) "Course unit" means at least 150 clock hours of instruction. LEAs may award credit for short courses in an amount corresponding to the fractional part of a total unit.
- (3) "Curriculum guide" means a document prepared by the Department for each subject or area of study listed in the standard course of study and many commonly offered electives, including competency goals, objectives and suggested measures.
- (4) "Diploma" means that document by which the LEA certifies that a student has ~~satisfactorily completed all state and local course requirements and has passed the North Carolina Competency Test~~ met the requirements of Rule .0103 of this Section.
- (5) "Graduation" means satisfactory completion of all state and local course requirements and ~~achievement of a passing score on the North Carolina Competency Test~~ meeting the requirements of Rule .0304 of this Subchapter.
- (6) "Measures" means a variety of sugges-



tions for ways in which the student may demonstrate ability to meet an objective.

- (7) "Objective" means a specific statement of what the student will know or be able to do.
- (8) "Proper test administration" means administration of tests adopted by the SBE for students, in accordance with Section .0300 of this Subchapter.
- (9) "Special education student" means a student enrolled in or eligible for participation in a special education program.
- (10) "Standard course of study" means the program of course work which must be available to all public school students in the state.
- (11) "Transcript" means that document which provides a record of:
  - (a) All courses completed and grades earned;
  - (b) scores achieved on standardized tests; and
  - (c) participation in special programs or any other matter determined by the LEA.

(e) LEAs decide to promote or retain a student based on local policy and discretion, but must consider test scores and other information that may indicate a student's grade-level proficiency.

(f) The department will monitor LEAs and schools annually for progress in increasing the number of students who meet the standard for grade-level proficiency. The department uses percentages of students who are above grade-level proficiency and of those who have moved from Level I to Level II to compare progress from year to year.

(g) The SBE uses district-level report cards to monitor the progress of LEAs. LEAs shall use school improvement reports to monitor schools in their district.

Statutory Authority G.S. 115C-12(9)c.; 115C-81(b)(4).

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 02B .0221.*

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

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.*

*Reason for Proposed Action: Amendment adds "Bed and Breakfast" establishments to General Motorist Services Signs program.*

*Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.*

## SECTION .0300 - TESTING PROGRAMS

### .0304 GRADE-LEVEL PROFICIENCY

(a) In grades K-2, teachers must identify those students who are not performing at grade-level expectations. In grades 3-8, grade-level proficiency is Level III or above on end-of-grade tests in reading and mathematics.

(b) LEAs shall issue the NC standardized high school transcript to high school students at the end of each school year to inform parents and students of student progress.

(c) LEAs shall provide focused intervention to all students who do not demonstrate grade-level proficiency. This intervention shall include extended instructional opportunities that are different from and supplemental to the normal instructional opportunities and that are specifically designed to improve the student's performance to grade-level proficiency. Strategies may include but are not limited to alternative learning models, special homework, smaller classes, tutorial sessions, extended school day, Saturday school, modified instructional programs, parental involvement, summer school instruction, or retention.

(d) LEAs shall use existing funding resources to provide focused assistance designed to improve student performance to grade-level proficiency.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0200 - TRAFFIC ENGINEERING

.0221 GENERAL MOTORIST SERVICES  
SIGNS

(a) General Motorist Services Signs mean signs that provide travelers with directional information for essential motorist services. The signs carry word legends GAS, DIESEL, LP (PROPANE) GAS, FOOD, LODGING, BED AND BREAKFAST, PHONE, HOSPITAL, and TOURIST INFORMATION CENTER with appropriate directional legend, and the exit number where applicable. The cost associated with General Motorist Services Signs is the responsibility of the Department of Transportation.

(b) Specific Services Signs mean signs erected under the Specific Information Signing Program as described in G.S. 136-140.7. These signs provide travelers with business identification and directional information for essential motorist services. The signs carry word legends GAS, FOOD, LODGING and CAMPING with appropriate directional legend, the exit number where applicable, and one or more business logos. The cost associated with Specific Services Signs is borne by the businesses whose logos are shown on the signs through initial and annual fees paid to the Department of Transportation.

(c) Signing for general motorist services shall be installed only on rural fully controlled access highways and shall be in conformance with the "Manual on Uniform Traffic Control Devices." Requests for signing for general motorist services shall be directed to the highway division engineer having jurisdiction in the county in which the sign is proposed. If approved, services signing shall be installed and maintained by the Department of Transportation.

(d) General Requirements for All Services. The requirements in this Paragraph shall be applied in determining the placement of service signs on the rural fully controlled access highways. Service signs shall be erected only at grade separated interchanges. A fully controlled access highway shall have neither a minimum length requirement nor minimum number of interchanges requirement to qualify for erection of service signs. A facility shall meet the specific requirements for signs in Paragraph (e). It shall have an outside coin-operated telephone in the immediate vicinity of the business (within the intersection area, at an

adjacent business or across the road), which is accessible. A business phone at an adjacent business is not a public telephone for a particular applicant business. The maximum distance that a "Gas", "Diesel", "LP (PROPANE) Gas", "Food", "Bed and Breakfast" or "Lodging" service can be located from the facility shall not exceed three miles in either direction via an all-weather road. Where no qualifying services exist within three miles, the maximum distance may be increased to six miles, provided the total travel distance to the business and return to the interchange does not exceed 12 miles. When the nearest qualifying service is located more than three miles from the facility, the distance to the service shall be shown on the service sign at the ramp terminal. The maximum distance for a "Camping" service shall not exceed 10 miles. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of the facility route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring. If the office (main building) of a business is located more than 0.2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.

(e) Specific Requirements for Erection of General Motorist Services Signs:

- (1) Gas, Diesel, LP (PROPANE) Gas, and Associated Services. Criteria for erection of a Gas service sign, a Diesel service sign, or an LP (PROPANE) Gas Service sign shall include:
  - (A) appropriate licensing to operate as required by law;
  - (B) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
  - (C) restroom facilities and drinking water suitable for public use;
  - (D) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs; and
  - (E) year-round operation at least 16 con-



- tinuous hours per day, 7 days a week.
- (2) Food. Criteria for erection of a Food service sign shall include:
    - (A) appropriate licensing to operate as required by law, and a permit to operate by the health department;
    - (B) year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), 7 days a week;
    - (C) indoor seating for at least 20 persons; and
    - (D) public restroom facilities.
  - (3) Lodging. Criteria for erection of a Lodging service sign shall include:
    - (A) appropriate licensing to operate as required by law, and a permit to operate by the health department;
    - (B) sleeping accommodations consisting of a minimum of 10 units, each including bathroom and sleeping rooms except a lodging business operating as a "Bed and Breakfast" establishment with fewer than 10 units may request "Bed and Breakfast" signs;
    - (C) off-street vehicle parking for each lodging room for rent; and
    - (D) year-round operation.
  - (4) Camping. Criteria for erection of a Camping service sign shall include:
    - (A) appropriate licensing to operate as required by law;
    - (B) meeting all state and county health and sanitation codes, and having water and sewer systems which have been duly inspected and approved by the local health authority. The operator shall present evidence of such inspection and approval;
    - (C) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
    - (D) parking accommodations to meet current demand;
    - (E) continuous operation, 7 days a week during business season.

A business sign shall be removed or masked by the Department during off seasons, if the campground is operated on a seasonal basis.
  - (5) Phone. Signs may be posted for a phone location only in respect to outdoor telephone booths where service is available on a twenty-four hour basis.

- (6) Hospital. Hospital signs shall consist of the word "Hospital" along the main roadway and the blue "H" at the end of the ramp. The blue "H" shall be used to trailblaze from the ramp terminal to the hospital where needed. The intent of providing "Hospital" signs along interstate or controlled access highways is to direct unfamiliar motorists to a hospital in case there is a need for emergency medical services. The blue "Hospital" sign shall be used on the interstate or controlled access highways. These hospital signs shall be used only for hospitals equipped to handle emergency cases with a physician on duty 24 hours each day and within a practical distance from the interchange. A blue sign showing the name of the hospital at the end of the ramp along with the proper directional arrow may be provided when a traffic engineering investigation has shown the need. Trailblazer signs where necessary shall mark the route to the hospital using the blue "H". Use of the name of the hospital on green directional signs along conventional (non-interstate or non-controlled access) type streets and roads when a traffic engineering investigation has shown they are needed may be permitted. These green directional signs apply only to those hospitals which do not provide the 24-hour emergency service.
- (7) Service signs shall not be erected on non-controlled or partially controlled access facilities or at locations within or near municipalities where it is obvious to the motorist that services are available.
- (f) Tourist Information Center. Tourist information center service signing may be approved and installed by the Department of Transportation when the following conditions are met:
  - (1) The motorist using the highway in a particular direction must be able to leave and return to the highway via the same interchange and continue in the same direction of travel.
  - (2) The service must be located in a rest area on the freeway or within one mile of the interchange off ramp and on a direct route from the freeway.
  - (3) The service must operate continuously



- for at least eight hours per day, seven days per week, and 360 days per year.
- (4) At least one separate and trained attendant with knowledge of tourist facilities in the state shall be on duty to service visitors during all hours of operation.
  - (5) The facility must have available at no charge to visitors complete information on tourist facilities in the state; such as lodging, auto service, food, medical, recreational, historical and scenic sites; and it must also be readily available when attendant is off duty.
  - (6) The service must be housed in a separated area from other facilities in an appropriate building to provide an area, heated in winter and cooled in summer, of not less than 625 square feet of floor area for displays and lounge devoted for providing this service.
  - (7) The service must have at least one 50 pocket rack for noncommercial public service materials and displays.
  - (8) The service must have rest room facilities available at no cost to the visitor and designed for use by handicapped individuals.
  - (9) The service must have drinking water approved by appropriate local authority.
  - (10) The service must have a public telephone designed for use by handicapped individuals.
  - (11) The service must have off-street parking at no cost to the motorist and must have curb cuts and ramps for the handicapped.
  - (12) Any displays, literature, magazines, etc., that would be judged by the Department to be offensive to visitors with children must not be readily visible.
  - (13) The service must provide designated facilities for pets.
  - (14) The name of the operating agency, community, group or enterprise shall not appear in the legend of any sign.
- (g) Removal of General Motorist Services Signs.
- (1) If municipal limits are revised so that an interchange is totally within a municipality, then existing general motorist services signs may be retained in place so long as they are in a serviceable appearance and are not in need of refurbishing maintenance. When the signs are no longer serviceable they shall be removed.

- (2) When specific services (Logo) signing is installed along a section of Interstate controlled access roadway, then the existing general motorist services signing shall be removed on that section of roadway except as covered in Subparagraph (g)(3) of this Rule. When general motorist services signs exist on an Interstate a controlled access roadway inside a municipality that does not qualify for specific services (Logo) signing, the general motorist services signs may remain in place, except as covered in Subparagraph (g)(1) above of this Rule, until such time that all rural sections of the Interstate controlled access route adjacent to the municipality are covered, then the general motorist services signs shall be removed except as covered in Subparagraph (g)(3) of this Rule.
- (3) The State Traffic Engineer may, at his discretion, authorize the retention or addition of General Motorist Services Signs along sections of controlled access roadways signed with Specific Services (Logo) Signs or within municipalities.

Statutory Authority G.S. 136-18(5); 136-30; 136-128; 136-140.7.

## TITLE 21 - OCCUPATIONAL LICENSING BOARD

### CHAPTER 46 - BOARD OF PHARMACY

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend rules cited as 21 NCAC 46 .1317, .1601, .1603 - .1606, .1703 - .1704, .1801, .1804, .1806 - .1807, .1809, .2006 - .2008, .2102, .2504, .2601 - .2606, .2702, .2704, .2803; and adopt rules cited as 21 NCAC 46 .1608 - .1611, .1810, .2109, .2505 - .2506, .2608 - .2610, .2705.*

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

*The public hearing will be conducted on the following dates, times and locations:*

April 17, 1995

2:00 p.m.

Institute of Pharmacy

109 Church Street

Chapel Hill, North Carolina

May 19, 1995

3:00 p.m.

Grove Park Inn

Asheville, North Carolina

# **Reason for Proposed Action:**

**21 NCAC 46 .1317** - to define certain medical equipment items.

**21 NCAC 46 .1601** - to allow pharmacies to use electronic balances instead of class A prescription balances.

**21 NCAC 46 .1603** - to specify when a new device and medical equipment permit is required.

**21 NCAC 46 .1604** - to specify when a device and medical equipment permit may be transferred.

**21 NCAC 46 .1605** - to add that the Board shall charge persons requesting verification for reinstatement of a device and medical equipment permit a fee of fifteen dollars (\$15.00).

**21 NCAC 46 .1606** - to require the person in charge of the facility applying for a device and medical equipment dispensing permit to personally appear at the Board office.

**21 NCAC 46 .1608** - to specify requirements for issuance of a device and medical equipment permit.

**21 NCAC 46 .1609** - to specify when permits issued by the Board expire and become invalid.

**21 NCAC 46 .1610** - to specify requirements for reinstatement of forfeited licensing privileges.

**21 NCAC 46 .1611** - to specify a penalty for submittal of a dishonored and returned check.

**21 NCAC 46 .1703:**

**Alternative 1** - to require that registered nurses authorized to dispense drugs shall only dispense drugs listed in the written standing protocols approved and signed by both the supervising physician(s) and the registered nurse and maintained in each approved practice site and to require that assistants to a physician authorized to dispense drugs shall be limited to the dispensing of drugs that are delegated by the supervising physician.

**Alternative 2** - to require that registered nurses or assistants to a physician authorized to dispense drugs shall only dispense those drugs listed on the formulary approved by the Board.

**21 NCAC 46 .1704** - to substitute the term "drug"

for the term "medication".

**21 NCAC 46 .1801** - to allow a device and medical equipment dispenser the right to refuse to fill or refill a

prescription order and to require the pharmacist or device and medical equipment dispenser to report such incident to the licensing board having jurisdiction over the prescriber.

**21 NCAC 46 .1804** - to require that prescription orders may be received for filling and refilling only by the person in charge of the facility holding the device and medical equipment permit or a bonafide employee of the facility and to require that the person in charge shall be ultimately responsible for the safe, lawful and secure receipt of prescription orders and delivery of prescription drugs, devices, and medical equipment.

**21 NCAC 46 .1806** - to allow the transfer of original prescription information for the purpose of refill dispensing between device and medical equipment permit holders as long as certain conditions are met.

**21 NCAC 46 .1807** - to add that no agreement between a prescriber and a device and medical equipment permit holder shall require that prescription orders be transmitted by Fax from the prescriber to only that device and medical equipment permit holder and to require the person in charge of the device and medical equipment permit holder to maintain security of the facsimile transmission of prescription orders.

**21 NCAC 46 .1809** - to allow a device and medical equipment permit holder, who receives a request for a prescription refill and is unable to obtain readily refill authorization from the prescriber, to dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication provided that certain conditions are met.

**21 NCAC 46 .1810** - to require all locations holding a pharmacy permit where ingredients are routinely compounded for dispensing to maintain a compounding log.

**21 NCAC 46 .2006** - to allow the Board to issue an order summarily suspending a device and medical equipment permit if certain determinations are made.

**21 NCAC 46 .2007** - to set out procedures for determining contested cases involving device and medical equipment permit holders.

**21 NCAC 46 .2008** - to allow the use of informal procedures in determining matters involving device and medical equipment permit holders.

**21 NCAC 46 .2102** - to specify eligible voters for the device and medical equipment subcommittee.

**21 NCAC 46 .2109** - to specify the members of the



device and medical equipment subcommittee.

**21 NCAC 46 .2504** - to require device and medical equipment permit holders to counsel patients.

**21 NCAC 46 .2505** - to specify that veterinary prescription drugs may be dispensed only by a licensed veterinarian or by a pharmacist from a pharmacy pursuant to a prescription or order of a licensed veterinarian.

**21 NCAC 46 .2506** - to specify requirements to be completed prior to granting a pharmacist authorization to administer drugs.

**21 NCAC 46 .2601** - to require that medical equipment may only be dispensed by a place registered with the Board pursuant to G.S. 90-85.22.

**21 NCAC 46 .2602** - to add that medical equipment shall be dispensed to outpatients only pursuant to an order from a practitioner.

**21 NCAC 46 .2603** - to require that persons other than pharmacists who are authorized to dispense medical equipment and who dispense medical equipment shall demonstrate to the Board's satisfaction that they have received sufficient education and training so that they can safely and properly dispense medical equipment.

**21 NCAC 46 .2604** - to require that all prescription and refill orders for devices and medical equipment shall be maintained for at least three years and to require that all device and medical equipment permit holders shall maintain a file copy of every item sold or rented with a serial number or tracking number or code in compliance with FDA Medical Device Tracking requirements.

**21 NCAC 46 .2605** - to add that device and medical equipment permits shall be issued by the Board to the person in charge of the location.

**21 NCAC 46 .2606** - to add that persons in charge or pharmacists dispensing medical equipment shall be responsible for promptly conveying to patients all pertinent warnings issued by government agencies or manufacturers.

**21 NCAC 46 .2608** - to require that compressed medical oxygen and liquid oxygen equipment shall be dispensed and controlled according to state and federal laws.

**21 NCAC 46 .2609** - to set out requirements for rehabilitation equipment suppliers.

**21 NCAC 46 .2610** - to set out requirements for medical gas, oxygen and respiratory related equipment suppliers.

**21 NCAC 46 .2702** - to revise the definitions of a qualified nuclear pharmacist, radiopharmaceutical service, and radiopharmaceuticals and to define quality control testing.

**21 NCAC 46 .2704** - to specify further require-

ments for pharmacies providing radiopharmaceutical services.

**21 NCAC 46 .2705** - to specify minimum equipment required for a nuclear pharmacy.

**21 NCAC 46 .2803** - to substitute the phrase "routinely compounded for dispensing" for the term "dispensed".

**Comment Procedures:** Persons wishing to present oral data, views or arguments on a proposed rule or rule change, may file a notice with the Board at least ten days prior to the public hearing at which the person wishes to speak. Comments should be limited to ten minutes. The Board's address is P.O. Box 459, Carrboro, NC 27510-0459. Written submission of comments or argument will be accepted at any time up to and until the close of the May 19, 1995 public hearing at which time the Board intends to act on the proposed rules.

## SECTION .1300 - GENERAL DEFINITIONS

### .1317 DEFINITIONS

The definitions of various terms used in these Rules are found in G.S. 90, Article 4A, and as follows:

- (1) **Approved School or College of Pharmacy.** A school or college of pharmacy accredited by the American Council on Pharmaceutical Education, or a foreign school with a professional pharmacy degree program of at least five years approved by the Board.
- (2) **Auxiliary Drug Inventory.** A secure, segregated, supplementary source for drugs to be used solely for the purpose of providing adequate drug availability when the pharmacy is closed or the pharmacist is unavailable.
- (3) **Board.** As defined in G.S. 90-85.3(b).
- (4) **Emergency Drugs.** Those drugs whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of unforeseen adverse changes in a patient's health or well-being.
- (5) **Executive Director.** The Secretary-Treasurer and Executive Director of the Board.
- (6) **Graduate of an Approved School or College of Pharmacy.** A person who has received an undergraduate professional degree in pharmacy from an approved school or college of pharmacy, or a



- person who has graduated from a foreign professional school of pharmacy and has successfully completed the Foreign Pharmacy Graduate Equivalency Examination offered by the National Association of Boards of Pharmacy and the Test of English as a Foreign Language.
- (7) Indulgence in the Use of Drugs. The use of narcotic drugs or other drugs affecting the central nervous system or the use of intoxicating beverages to an extent as to deprive the user of reasonable self-control or the ability to exercise such judgment as might reasonably be expected of an average prudent person.
- (8) Institutional Pharmacy. A pharmacy maintained in a hospital, clinic, nursing home, rest home, sanatorium, non-federal governmental institution, industrial health facility, or other like health service under the supervision of a pharmacist; or the central area in a hospital, clinic, or other health care facility where drugs are procured, stored, processed, or issued, or where pharmaceutical services are performed.
- (9) Limited Service Pharmacy Permit. A pharmacy permit issued by the Board to an applicant that wishes to render in an institutional setting pharmaceutical services not limited to scope and kind but to time and conditions under which such services are rendered.
- (10) Pharmacist. Any person within the definition set forth in G.S. 90-85.3(p), including any druggist.
- (11) Pharmacist-Manager. The person who accepts responsibility for the operation of a pharmacy in conformance with all statutes and regulations pertinent to the practice of pharmacy and distribution of drugs by signing the permit application, its renewal or addenda thereto.
- (12) Pharmacy. Any place within the definition set forth in G.S. 90-85.3(q), including any apothecary or drugstore.
- (13) Pharmacy Intern. Any person who is duly registered with the Board under the internship program of the Board to acquire pharmacy experience or enrolled in approved academic internship programs. A pharmacy intern working under a pharmacist preceptor or supervising pharmacist may, while under supervision, perform all acts constituting the practice of pharmacy.
- (14) President. The President of the Board.
- (15) Two Years College Work. Attendance at a college accredited by a recognized accreditation agency for two academic years of not less than eight and one-half months each and the completion of work for credit leading to a baccalaureate degree or its equivalent and that would permit the student to advance to the next class.
- (16) Undergraduate Professional Degree in Pharmacy. A B.S. or Pharm. D. degree.
- (17) Vice-President. The Vice-President of the Board.
- (18) Ambulation Assistance Equipment. Devices that aid in walking, excluding canes, crutches, and walkers.
- (19) Diagnostic equipment. Equipment used to record physiological information while a person goes about normal daily living or while asleep in order to document a disease process. EPTs, thermometers, and cholesterol equipment are not included as diagnostic equipment.
- (20) HMES. Home medical equipment supplier.
- (21) Mobility equipment. Devices that aid a person in selfmovement, other than walking, including manual or power wheelchairs and scooters.
- (22) Oxygen and respiratory care equipment. Equipment or devices used to administer oxygen or other legend drugs, maintain viable airways and/or monitor cardio-respiratory conditions or events, including, but not limited to, compressed medical gases; oxygen concentrators; liquid oxygen; nebulizers; compressors; aerosol therapy devices; portable suction machines; nasal continuous positive airway pressure (CPAP) machines; Bi-phasic positive pressure devices (BiPAP); infant monitors, such as apnea monitors and cardio-respiratory monitors; positive and negative pressure mechanical ventilators; and pulse oximeters.
- (23) Place of residence. Any place used as an individual's temporary or permanent home.
- (24) Rehabilitation Services. Services and equipment required to maintain or improve functional status and general health as prescribed by the physician which are uniquely specified for each individual's

- lifestyle. The people involved in this process include the patient, caregiver, physician, therapist, rehabilitation equipment supplier and others who impact on the individual's life style and endeavors.
- (25) Rehabilitation environmental control equipment. Equipment or devices which permit a person with disabilities to control his or her immediate surroundings.

*Statutory Authority G.S. 90-85.3; 90-85.6; 90-85.8; 90-85.13; 90-85.14; 90-85.15; 90-85.21; 90-85.38; 90-85.40.*

## SECTION .1600 - LICENSES AND PERMITS

### .1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) Adequate qualified personnel has been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.
- (2) Such personnel shall be maintained during that period for which the permit is issued.
- (3) Any and all unlicensed clerks have been instructed that they may render pharmaceutical service only as an aid to and under the immediate supervision of a registered pharmacist.
- (4) The following minimum technical equipment is maintained:
  - (A) Graduates. Capable of accurately measuring volumes from 1 ml to at least 500 ml;
  - (B) Mortars and pestles:
    - (i) one -- glass;
    - (ii) one -- "Wedgwood";
  - (C) Stirring Rods. Two -- assorted sizes, glass or rubber;
  - (D) Ointment slab or suitable substitute;
  - (E) Class A prescription or electronic balances and appropriate weights, suitable for all required weighings, at least one of which must be sensitive to six mg;
  - (F) Suitable facilities for recording and filing prescriptions as required by G.S. 90-85.26;
  - (G) Spatulas:

- (i) stainless steel, at least three assorted sizes;
- (ii) non-metallic, one of suitable size;
- (H) Useable Supplies. Adequate quantity of each and equipped with safety closures where required:
  - (i) prescription bottles, 1 to 32 fluid ounces;
  - (ii) dropper bottles, 1/2 to 2 fluid ounces;
  - (iii) assorted pill and tablet containers;
  - (iv) empty capsules, No. 00 to No. 3;
  - (v) powder papers;
  - (vi) ointment jars, assorted;
  - (vii) prescription labels;
  - (viii) all appropriate auxiliary labels;
- (I) Suitable heating apparatus;
- (J) Refrigerator;
- (K) Reference library, as follows:
  - (i) the latest edition of the United States Pharmacopoeia (USP) and National Formulary and supplements thereto or a standard commentary thereon;
  - (ii) a copy of the pharmacy laws of North Carolina, including the North Carolina Controlled Substances Act and the rules adopted pursuant thereto, and the North Carolina Pharmacy Practice Act and the rules of the Board;
  - (iii) a copy of the Federal Controlled Substances Act and the regulations adopted pursuant thereto;
  - (iv) a Schedule V controlled substances register (where these preparations are sold other than on prescriptions);
  - (v) a medical dictionary;
  - (vi) current editions of generally accepted reference books on the following subjects:
    - (I) drug interactions,
    - (II) clinical pharmacology, and
    - (III) USP Dispensing Information or its equivalent,
    - (IV) if IV admixture services are provided, a reference on Parenteral Incompatibilities.
- (5) The pharmacy is equipped with proper sanitary appliances including lavatory facilities with hot and cold running water, is adequately lighted, and is kept in a clean, orderly, and sanitary condition.

(6) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by a statute and by other rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner-pharmacist-patient relationship does not exist, until the Board is satisfied that:

- (1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;
- (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
- (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (4) The pharmacy complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications.

The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including, but not limited to, 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21. Provided, however, that this Rule shall not apply to the occasional mailing of prescription drugs to bona fide customers of any pharmacy when the practitioner-pharmacist-patient relationship is present.

(c) The Board shall not issue an original or renewal permit to any person to operate a drug-store or pharmacy as a department in or a part of any other business serving the general public except hospitals, nursing homes, and similar institutions subject to the provisions of .0300 of

this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

*Statutory Authority G.S. 90-85.6; 90-85.21; 150B-11.*

#### **.1603 WHEN PERMITS REQUIRED**

(a) A permit issued by the Board is required for a new pharmacy or a change of ownership of an established pharmacy to a successor business entity which results in a change in the controlling interest in the pharmacy.

(b) A new device or medical equipment permit is required for a new entity or a change of ownership of an established entity to a successor business entity which results in a change in the controlling interest of the established entity.

*Statutory Authority G.S. 90-85.6; 90-85.21; 90-85.22.*

#### **.1604 TRANSFER OF PERMITS ALLOWED**

(a) A valid pharmacy permit may be transferred and a new permit is not required where a change of ownership of a pharmacy with a permit results from a transfer to or from a sole proprietorship, a partnership, a corporation, or any other business entity if the transfer does not involve the acquisition of more than 50 percent interest in the pharmacy by any party who was not a signatory on the original pharmacy permit application.



(b) A valid device and medical equipment permit may be transferred and a new permit is not required where a change of ownership of the entity with a permit results from a transfer to or from a sole proprietorship, a partnership, a corporation, or any other business entity if the transfer does not involve the acquisition of more than 50 percent interest in the entity by any party who was not a signatory on the original device and medical equipment permit.

(c) (b) A transfer of ownership of a permit is not allowed where the permit is involved in a pending disciplinary proceeding.

*Statutory Authority G.S. 90-85.6; 90-85.21; 90-85.22.*

#### **.1605 CHARGE FOR VERIFICATION FOR REINSTATEMENT**

The Board shall charge persons requesting verification for reinstatement of a pharmacy license or permit or a device and medical equipment permit a fee of fifteen dollars (\$15.00) per verification.

*Statutory Authority G.S. 90-85.6; 90-85.17; 90-85.21; 90-85.22; 150B-19(5)(e).*

#### **.1606 REQUIREMENT OF PERSONAL APPEARANCE**

Prior to issuance of any original permit or device and medical equipment dispensing permit, or prior to approval for dispensing by a nurse practitioner or physician's assistant, the following persons must appear personally at the Board office on the first Monday of the month, the Monday before the monthly Board meeting, or such other time as scheduled with the Board's staff:

- (1) the pharmacist-manager for the applicant pharmacy;
- (2) the person in charge of the facility applying for the device and medical equipment dispensing permit;
- (3) the nurse practitioner applying for approval for dispensing and the supervising pharmacist; and
- (4) the physician's assistant applying for approval for dispensing and the supervising pharmacist.

*Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.3(a),(r); 90-85.6; 90-85.21; 90-85.22.*

#### **.1608 DEVICE AND MEDICAL EQUIPMENT PERMITS**

(a) Applications for device and medical equipment permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal device and medical equipment permit until the Board is satisfied that:

- (1) Adequate qualified personnel have been secured by the management of the facility to properly render device and medical equipment services in the manner prescribed by law.
- (2) Such personnel shall be maintained during the period for which the permit is issued.
- (3) If medical oxygen is dispensed, the following medical equipment is maintained:
  - (A) Sufficient backup of oxygen and supplies for equipment serviced to maintain continuation of therapy; and
  - (B) An oxygen analyzer, if concentrators are dispensed.
- (4) Suitable facilities shall be maintained to house inventory, to allow for fabrication work space, and to record and file prescription orders as required by law.
- (5) A copy of the pharmacy laws of North Carolina, including the North Carolina Pharmacy Practice Act and the rules of the Board shall be present in the facility at all times.
- (6) The facility is equipped with a functioning lavatory where hot and cold running water or hand washing appliances and/or waterless hand cleaner are available.
- (7) The facility is kept in a clean, orderly, and sanitary condition.
- (8) The applicants' services are accessible to its customer base.
- (9) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.
- (10) The applicant complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications, including medical oxygen.
- (11) The applicant's services are available 24 hours, seven days per week when essential to the maintenance of life or when the lack of such services might reasonably cause harm.

- (12) The applicant implements and maintains a written procedure at each location for handling complaints and problems, which includes a complaint file documenting complaints and problems and resolution of the complaints or problems.
- (13) The applicant complies with local/state fire and building laws.
- (14) The applicant complies with current Occupational Safety and Health Administration (OSHA) laws and requirements, including the approach to infection control known as "Universal Precautions."

(b) Device and medical equipment permits, whether original or renewal, shall be issued to the person in charge of the facility pursuant to a joint application of the owner and person in charge. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the person in charge as represented in the application. The permit so issued is valid only so long as the person in charge to whom it was issued assumes his duties and responsibilities. Permits may be reissued at any time to a successor person in charge pursuant to the proper amendment of the application for the permit.

(c) When a device and medical equipment dispensing facility is to be closed permanently, it is the responsibility of the person in charge to inform the Board of the closing and arrange for the proper disposition of devices and medical equipment and return the permit to the Board's offices within 10 days of the closing date. It is the responsibility of the person in charge, jointly held with the owner (if the owner is someone other than the person in charge), to provide for the orderly transfer of records to another permit holder for maintenance of patient therapy and to inform the public of such transfer by posted notice or otherwise.

(d) Charitable organizations providing devices and medical equipment at no charge must register with the Board and may request a waiver of the fee for device and medical equipment permits. Loaner closets providing device and medical equipment at no charge, excluding oxygen or other life support devices, must register with the Board but are exempt from the fee for device and medical equipment permits.

*Statutory Authority G.S. 90-85.6; 90-85.22.*

#### **.1609 PERMIT RENEWAL**

Permits issued by the Board expire on December 31 and become invalid 60 days following expiration.

*Statutory Authority G.S. 90-85.6; 90-85.21.*

#### **.1610 REINSTATEMENT OF FORFEITED LICENSING PRIVILEGES**

An individual whose licensing privileges have been forfeited pursuant to G.S. 15A-1331, shall immediately surrender to the Board office his or her permit or license, current renewal certificate, and wallet card. In order to have the licensing privileges reinstated, the individual must appear before the Board and submit evidence that it would be in the public interest to reinstate the licensing privileges and that he or she can safely and properly practice pharmacy.

*Statutory Authority G.S. 15A-1331; 90-85.19.*

#### **.1611 PENALTY FOR SUBMITTAL OF DISHONORED AND RETURNED CHECK**

(a) Any person, firm or corporation submitting to the Board a check which is subsequently returned to the Board because of insufficient funds or because there is no account open at the bank will be charged a penalty fee of twenty dollars (\$20.00) for processing the check.

(b) Until such time as the payor of the returned check pays the amount of the check and pays the prescribed penalty fee, the payor will not be eligible to take an examination, review an examination, obtain a license or permit or have his license or permit renewed.

(c) Any license or permit which has been issued based on the payment of a check which is subsequently returned to the Board for reasons stated in Paragraph (a) of this Rule will be declared invalid until such time as the payor pays the amount of the check and pays the prescribed penalty fee.

(d) Payment to the Board of the amount of the returned check and the prescribed penalty fee shall be made in the form of a cashier's check or money order.

(e) All examination, license and permit, and license and permit renewal applications provided by the Board shall contain information in a conspicuous place thereon clearly advising the applicant of the applicable penalty for returned checks.

*Statutory Authority G.S. 25-3-512; 150B-19(5)e.*



## SECTION .1700 - DRUGS DISPENSED BY NURSE OR PHYSICIAN'S ASSISTANT

### Alternative 1

#### **.1703 DRUGS TO BE DISPENSED**

(a) Such drugs as may be dispensed by the registered nurse ~~or assistant to a physician~~ who is authorized to prescribe or dispense drugs shall be limited to those drugs in the ~~formulary approved by the Board of Medical Examiners~~ written standing protocols approved and signed by both the supervising physician(s) and the registered nurse and maintained in each approved practice site. The written standing protocols shall include drugs that may be prescribed, ordered and implemented by the registered nurse, which lists drugs the registered nurse or assistant to a physician is authorized to prescribe. All drugs not listed in the ~~formulary~~ written standing protocols which might be prescribed by the physician supervising the registered nurse ~~or assistant to the physician~~ must be dispensed personally by the prescribing physician, by the pharmacist, or by a person acting under the supervision of the pharmacist.

(b) Such drugs as may be dispensed by an assistant to a physician who is authorized to prescribe or dispense drugs shall be limited to the dispensing of drugs that are delegated by the supervising physician.

*Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.*

### Alternative 2

#### **.1703 DRUGS TO BE DISPENSED**

(a) Such drugs as may be dispensed by the registered nurse or assistant to a physician who is authorized to prescribe or dispense drugs shall be limited to those drugs on the formulary approved by the Board of Medical Examiners which lists drugs the registered nurse or assistant to a physician is authorized to dispense.

(b) All drugs not listed in the formulary which might be prescribed by the physician supervising the registered nurse or assistant to the physician must be dispensed personally by the prescribing physician, by the pharmacist, or by a person acting under the supervision of the pharmacist.

*Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.*

## **.1704 PREPACKAGING OF DRUGS DISPENSED**

All drugs dispensed by the registered nurse or assistant to the physician shall be prepackaged in suitable safety closure containers and shall be appropriately prelabeled (including necessary auxiliary labels) by the pharmacist with all information required by law except the name of the patient and the directions for use. The name of the patient and directions for use of the ~~medication~~ drug shall be placed on the label by the registered nurse or assistant to the physician at the time it is delivered to the patient or his agent.

*Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.*

## SECTION .1800 - PRESCRIPTIONS

### **.1801 RIGHT TO REFUSE A PRESCRIPTION**

A pharmacist or device and medical equipment dispenser has the right and responsibility to refuse to fill or refill a prescription order if, in his judgment, it would be harmful to the recipient, is not in the recipient's best interests or if there is a question as to its validity. The pharmacist or device and medical equipment dispenser shall report such incident to the licensing board having jurisdiction over the prescriber.

*Statutory Authority G.S. 90-85.6; 90-85.32.*

### **.1804 PRESCRIPTION: RECEIVING AND DISPENSING**

(a) In order to assure that the practitioner-pharmacist-patient relationship exists and to promote the safe and secure distribution of drugs and devices, prescription orders may be received for filling and refilling only by a pharmacist or a bona fide employee of the pharmacy. The pharmacist-manager of the pharmacy shall be ultimately responsible for the safe, lawful and secure receipt of prescription orders and delivery of prescription drugs. Notwithstanding the provisions of this Rule, prescription drugs also may be delivered by mail in accordance with the provisions of 21 NCAC 46 .1601(7).

(b) In order to promote the safe and secure distribution of drugs, devices, and medical equipment, prescription orders may be received for filling and refilling only by the person in charge of the facility holding the device and medical equipment permit or a bona fide employee of the facility. The person in charge shall be ultimately



responsible for the safe, lawful and secure receipt of prescription orders and delivery of prescription drugs, devices, and medical equipment.

*Statutory Authority G.S. 90-85.6; 90-85.32.*

# **.1806 TRANSFER OF PRESCRIPTION INFORMATION**

(a) The transfer of original prescription information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

- (1) the transfer is communicated directly between two pharmacists and not by only one pharmacist gaining access to an information file containing data for several locations, unless all locations accessed are under common ownership or accessed pursuant to contractual agreement of the pharmacies;
- (2) the transferring pharmacist invalidates the prescription and any remaining refills by marking the word "void" or its equivalent on the face of the prescription;
- (3) the transferring pharmacist records the name and address of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information on the reverse of the invalidated prescription;
- (4) the transferring pharmacist records the date of the transfer and the name of the pharmacist transferring the information.

(b) The pharmacist receiving the transferred prescription information shall reduce to writing the following:

- (1) The word "transfer" on the face of the transferred prescription.
- (2) All information required to be on a prescription, including:
  - (A) Date of issuance of original prescription;
  - (B) Number of refills authorized on original prescription;
  - (C) Date and time of transfer;
  - (D) Number of valid refills remaining and date of last refill;
  - (E) Pharmacy's name, address and original prescription number from which the prescription information was transferred;
  - (F) Name of transferring pharmacist; and
  - (G) Manufacturer or brand of drug dispensed.

(c) The transferred prescription, as well as the original, must be maintained for a period of three years from the date of last refill.

(d) Dispensing is permitted only within the original authorization for refills and no dispensing on such transfer can occur beyond that authorized on the original prescription. Any dispensing beyond that originally authorized or one year, whichever is less, can occur only on a new prescription.

(e) The requirements of Paragraphs (a) and (b) of this Rule may be facilitated by use of a computer or data system without reference to an original prescription document. The system must be able to identify transferred prescriptions and prevent subsequent prescription refills at that pharmacy.

(f) This Rule applies to the transfer of prescriptions issued by prescribers in other states, provided that the pharmacist receiving the prescription is reasonably satisfied that a viable physician-patient relationship exists and dispensing the drug is in the patient's best interests.

(g) All records pertinent to this Rule shall be readily retrievable.

(h) A system must be in place that will allow only authorized access by a pharmacist to all records pertinent to this Rule and will indicate on the prescription record when and by whom such access was made.

(i) The transfer of original prescription information for the purpose of refill dispensing is permissible between device and medical equipment permit holders so long as the transferring permit holder provides all records and documentation necessary for dispensing and does not interfere with the service and claims processing procedures of the receiving permit holder.

*Statutory Authority G.S. 90-85.6(a); 90-85.32.*

# **.1807 FACSIMILE TRANSMISSION OF PRESCRIPTION ORDERS**

Prescription orders may be transmitted using a facsimile ("FAX") machine, provided that:

- (1) The order contains the date, time, telephone number and location of the transmitting machine, the name of the operator of the transmitting machine, and the signature of the prescriber;
- (2) Refill orders transmitted by FAX shall contain all information required for original prescription orders except for the prescriber's signature;
- (3) No agreement between a prescriber and a pharmacy or device and medical equip-

ment permit holder shall require that prescription orders be transmitted by FAX from the prescriber to only that pharmacy or device and medical equipment permit holder;

- (4) There shall be no additional charge to the patient because the prescription order was transmitted by FAX;
- (5) The use of FAX machines in hospitals to facilitate dispensing to inpatients shall be considered internal communication and not governed by this Rule;
- (6) An original prescription transmitted by FAX shall contain all information required of an original prescription by statute and rule, and corresponding information shall be retained by the prescriber;
- (7) Transfer of prescriptions by FAX is permitted provided that all the requirements of Rule .1806 of this Section are met; and
- (8) The pharmacist-manager or person in charge of the device and medical equipment permit holder maintains security of the process, including retention of readable records for the period of time required by law and verification of orders if indicated by the circumstances.

*Statutory Authority G.S. 90-85.6(a); 90-85.32.*

#### **.1809 EMERGENCY PRESCRIPTION REFILLS**

In the event a pharmacist or device and medical equipment permit holder receives a request for a prescription refill and the pharmacist or permit holder is unable to obtain readily refill authorization from the prescriber, the pharmacist or permit holder may dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication, provided that:

- (1) The prescription is not for a Schedule II controlled substance;
- (2) The medication is essential to the maintenance of life or to the continuation of therapy in a chronic condition;
- (3) In the pharmacist's or permit holder's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences;
- (4) The dispensing pharmacist or permit holder creates a written order containing all of the prescription information required by Section .2300 of these Rules

and signs that order;

- (5) The dispensing pharmacist or permit holder notifies the prescriber or the prescriber's office of the emergency dispensing within 72 hours after such dispensing.

*Statutory Authority G.S. 90-85.6; 90-85.32.*

#### **.1810 COMPOUNDING LOG**

All locations holding a pharmacy permit where ingredients are routinely compounded for dispensing, as defined in G.S. 90-85.3(c), must maintain a log showing the name or initials of the person who compounded the ingredients and the name or initials of the pharmacist who checked the compounded prescription drug. Such log shall be maintained for a period of three years.

*Statutory Authority G.S. 90-85.6; 90-85.32.*

### **SECTION .2000 - ADMINISTRATIVE PROVISIONS**

#### **.2006 NOTICE OF HEARING**

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address and telephone number of a person at the offices of the Board to contact for further information or discussion;
- (2) the date, time, and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license or permit. Upon service of the order, the licensee or permit holder to whom the order is directed shall immediately cease the practice of pharmacy or cease the dispensing of devices and medical equipment in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

*Statutory Authority G.S. 90-85.6; 150B-3(c); 150B-38.*



**.2007 WHO SHALL HEAR CONTESTED CASES**

(a) All administrative hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

(b) Matters involving device and medical equipment permit holders shall be initially heard by a device and medical equipment subcommittee. The subcommittee shall be elected pursuant to Section .2100 of these Rules. Prior to issuing a notice of hearing, the subcommittee and the party or parties may agree to follow the informal procedures set out in Rule .2008 of this Section.

(c) After hearing the matter, the device and medical equipment subcommittee shall propose a recommended decision to the Board. Sanctions shall be consistent with G.S. 90-85.38. If the Board accepts the recommended decision, it shall constitute a final agency decision for the right to judicial review. If the Board rejects the recommended decision, the Board may propose an alternative decision or schedule the matter for a formal hearing before the Board.

*Statutory Authority G.S. 90-85.6; 150B-38; 150B-40.*

**.2008 INFORMAL PROCEDURES**

(a) Prior to issuing a notice of hearing, the Board or the device and medical equipment subcommittee and the party or parties may agree to conduct a conference in which a member of the Board or the device and medical equipment subcommittee and the party or parties meet to consider the possibility of disposing of the dispute without a hearing, or any other matter as may aid in the prompt disposition of the dispute. If such a conference is held, the Board or the device and medical equipment subcommittee, with the consent of the party or parties, may issue a consent order which recites the action taken at the conference. This consent order may dispose of the dispute or set forth such matters as were agreed to between the parties that may expedite the hearing. All matters contained in the consent order must be agreed to by the party or parties and approved by the Board at its next regular meeting. The Board member who participated in the conference shall disqualify himself or herself in accordance with Rule .2011 of this Section from participation in any hearing or decision in the matter discussed in the conference if the matter results in a contested case hearing before the Board.

(b) After issuance of a notice of hearing, the Board or device and medical equipment subcommittee and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

*Statutory Authority G.S. 90-85.6; 150B-11; 150B-22; 150B-41.*

**SECTION .2100 - ELECTIONS**

**.2102 ELIGIBILITY TO VOTE**

(a) Eligible voters for Board members shall be the pharmacists licensed in North Carolina and residing in North Carolina on March 15 immediately prior to the election.

(b) Eligible voters for the device and medical equipment subcommittee shall be all device and medical equipment permit holders in North Carolina and residing in North Carolina on March 15 immediately prior to the election.

*Statutory Authority G.S. 90-85.7; 90-85.22.*

**.2109 DEVICE AND MEDICAL EQUIPMENT SUBCOMMITTEE REPRESENTATIVES**

(a) The device and medical equipment subcommittee shall consist of the following:

- (1) a representative of the medical equipment suppliers;
- (2) a representative of the medical oxygen suppliers;
- (3) a representative of the rehabilitation technology suppliers;
- (4) a Board member appointed by the President of the Board; and
- (5) the Board member representing the public.

(b) All device and medical equipment permit holders are eligible to vote for one representative in each category specified in Subparagraphs (a)(1) - (3) of this Rule. The representative must practice in the particular area for which he or she is nominated, but need not practice exclusively in that area.

*Statutory Authority G.S. 90-85.22.*



SECTION .2500 - MISCELLANEOUS  
PROVISIONS

.2504 PATIENT COUNSELING

(a) "Patient Counseling" shall mean the effective communication of information, as defined in this Rule, to the patient or representative in order to improve therapeutic outcomes by maximizing proper use of prescription medications, ~~and~~ devices, and medical equipment. This Rule shall apply to pharmacists and to registrants under G.S. 90-85.21. All provisions of this Rule shall apply to device and medical equipment permit holders, except Subparagraph (a)(8) of this Rule and except where otherwise noted. Specific areas of patient counseling include, but are not limited to, those matters listed in this Rule that in the exercise of the pharmacist's or registrant's professional judgment are considered significant:

- (1) name, description, and purpose of the medication;
- (2) route, dosage, administration, and continuity of therapy;
- (3) special directions for use by the patient;
- (4) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (5) techniques for self-monitoring drug therapy;
- (6) proper storage;
- (7) prescription refill information; and
- (8) action to be taken in the event of a missed dose.

(b) An offer to counsel shall be made on new or transfer prescriptions at the time the prescription is dispensed or delivered to the patient or representative. Ancillary personnel may make the offer to counsel, but the pharmacist or registrant must personally conduct counseling if the offer is accepted. Counseling by device and medical equipment permit holders must be conducted by personnel proficient in explaining and demonstrating the safe and proper use of devices and equipment. The person in charge shall be responsible for ensuring that all personnel conducting counseling are proficient in explaining and demonstrating the safe and proper use of devices and equipment and for documenting the demonstration of such proficiency. The offer shall be made orally and in person, whenever practicable, or through access to a telephone service that is toll-free for long-distance calls. A pharmacist or registrant whose primary patient population is accessible

through a local measured or toll-free exchange need not be required to offer toll-free service. Professional judgment shall be exercised in determining whether or not to offer counseling for prescription refills. An offer to counsel shall be communicated in a positive manner to encourage acceptance.

(c) In order to counsel patients effectively, a reasonable effort shall be made to obtain, record, and maintain, if significant, patient information, including, but not limited to:

- (1) name, address, telephone number;
- (2) date of birth (age), gender;
- (3) medical history:
  - (A) disease state(s),
  - (B) allergies/drug reactions,
  - (C) current list of non-prescription and prescription medications, ~~and~~ devices, and medical equipment.
- (4) pharmacist, ~~or~~ registrant, or permit holder comments relevant to the individual's drug therapy. A "reasonable effort" shall mean a good faith effort to obtain from the patient or representative the foregoing patient information. Ancillary personnel may collect, record, and obtain patient profile information, but the pharmacist, ~~or~~ registrant, or person in charge of the facility holding the device and medical equipment permit must review and interpret patient profile information and clarify confusing or conflicting information. Professional judgment shall be exercised as to whether and when individual patient history information should be sought from other health care providers.

(d) Once patient information is obtained, this information shall be reviewed and updated by the pharmacist, ~~or~~ registrant, or person in charge of the facility holding the device and medical equipment permit before each prescription is filled or delivered, typically at the point-of-sale or point of distribution to screen for potential drug therapy problems due to:

- (1) therapeutic duplication;
- (2) drug-disease contraindication;
- (3) drug-drug interactions, including serious interactions with prescription or over-the-counter drugs;
- (4) incorrect drug dosage or duration of drug treatment;
- (5) drug-allergy interactions; and
- (6) clinical abuse/misuse.

(e) Unless refused by the patient or representative, patient counseling shall be provided as follows:

- (1) counseling shall be "face to face" by the pharmacist, ~~or registrant, or personnel of a device and medical equipment permit holder~~ when possible or appropriate. If this is not possible, a reasonable effort shall be made to counsel the patient or representative;
- (2) alternative forms of patient information may be used to supplement patient counseling;
- (3) patient counseling, as described in this Rule, shall also be required for outpatient and discharge patients of hospitals, health maintenance organizations, health departments, and other institutions; however, compliance with this Rule in locations in which non-pharmacists are authorized by law or regulation to dispense may be accomplished by such authorized non-pharmacists; and
- (4) patient counseling, as described in this Rule, shall not be required for inpatients of hospitals or other institutions where a nurse or other licensed health care professional administers the medication(s).

(f) Pharmacies that distribute prescription medication by mail, and where the practitioner-pharmacist-patient relationship does not exist, shall provide counseling services for recipients of such medication in accordance with this Rule.

(g) Records resulting from compliance with this Rule, including documentation of refusals to receive counseling, shall be maintained for three years in accordance with Section .2300 of this Chapter.

(h) Personnel of device and medical equipment permit holders shall give written notice of warranty, if any, regarding service after the sale. The permit holder shall maintain documentation demonstrating that the written notice of warranty was given to the patient.

Authority G.S. 90-85.6; 90-85.21; 90-85.22; 90-85.32; 42 U.S.C. 1396r-8(g).

## .2505 VETERINARY PRESCRIPTION DRUGS

A drug that under federal law is required, prior to being dispensed, to be labeled with the state-

ment: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" may be dispensed only by a licensed veterinarian or by a pharmacist from a pharmacy pursuant to prescription or order of a licensed veterinarian.

Statutory Authority G.S. 90-85.3; 90-85.6.

## .2506 ADMINISTRATION OF DRUGS

A pharmacist is authorized to administer drugs, pursuant to G.S. 90-85.3(r), upon successful completion of a drug administration course approved by the Board and upon a showing before the Board of competency to administer drugs. Documentation of successful course completion must be kept on file at the pharmacist's practice site. Any administration of drugs in a hospital or other similar institution shall be under a protocol established by the medical staff and nursing administration.

Statutory Authority G.S. 90-85.3; 90-85.6.

## SECTION .2600 - DEVICES

### .2601 DISPENSING

Devices, as defined in G.S. 90-85.3(e), and medical equipment, as defined in G.S. 90-85.3(11), shall be dispensed only in a pharmacy as defined in G.S. 90-85.3(q) or other place registered with the Board pursuant to G.S. 90-85.22. Devices and medical equipment dispensed in hospitals are presumed to be the responsibility of the hospital pharmacy unless otherwise registered.

Statutory Authority G.S. 90-85.3(e), (11), (r); 90-85.6; 90-85.22.

### .2602 ORDERS

Devices as defined in G.S. 90-85.3(e), and medical equipment as defined in G.S. 90-85.3(11), shall be dispensed to outpatients only pursuant to an order from a practitioner. Such orders shall comply in all pertinent respects with G.S. 106-134.1(a) and G.S. 106-134.4(a) and (b). Use of devices and medical equipment for outpatients shall be in compliance with G.S. 90-85.3(t).

Statutory Authority G.S. 90-85.3(e), (11), (r); 90-85.6; 90-85.22.

### .2603 EDUCATION AND TRAINING

Persons, other than pharmacists, who are authorized to dispense devices and medical equipment and who dispense devices and medical equipment



shall demonstrate to the Board's satisfaction that they have received sufficient education and training in dispensing devices so that they can safely and properly dispense devices and medical equipment.

*Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.*

#### .2604 RECORDS

(a) All orders and records for devices and medical equipment shall conform in all pertinent respects with Board Rules .2301 through .2305 of this Chapter. In addition to the requirements of those rules, the serial numbers for all devices and medical equipment dispensed to outpatients shall be preserved as part of the records; provided, that this requirement shall not apply to disposable devices and medical equipment.

(b) All prescriptions and refill orders for devices and medical equipment shall be maintained for at least three years.

(c) All device and medical equipment permit holders shall maintain a file copy of every item sold or rented with a serial number or tracking number or code in compliance with FDA Medical Device Tracking requirements.

*Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.*

#### .2605 REGISTRATION OF NON-PHARMACISTS

Registration of persons other than pharmacists dispensing devices and/or medical equipment, pursuant to G.S. 90-85.22, shall be issued by the Board to the person in charge of the location dispensing the devices and/or medical equipment. This person shall have responsibilities comparable to those of a pharmacist-manager pursuant to Board Rule .2502 of this Chapter, as applicable. Persons in charge shall keep on file for three years on the premises of each place where devices and/or medical equipment are dispensed all information related to warranties provided by manufacturers and the availability of repairs; provided, that this requirement shall not apply to disposable devices and medical equipment.

*Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.*

#### .2606 CONVEYING WARNINGS

Persons in charge or pharmacists dispensing devices and/or medical equipment, as defined in G.S. 90-85.23 90-85.22, shall be responsible for

promptly conveying to patients all pertinent warnings issued by government agencies or manufacturers.

*Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.*

#### .2608 DISPENSING OF MEDICAL OXYGEN

Compressed medical oxygen and liquid oxygen equipment shall be dispensed and controlled according to state and federal laws.

*Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.*

#### .2609 REHABILITATION EQUIPMENT

(a) Rehabilitation equipment suppliers shall demonstrate to the Board's satisfaction a working knowledge of the services provided and how they relate to each patient's goals as prescribed by the physician.

(b) Rehabilitation equipment suppliers shall:

- (1) Actively solicit information from the physician, physical therapist, occupational therapist and other medical or educational personnel, as to the results of their assessment and evaluation of the patient's physical, functional and associated needs as well as the specific goals to be met by the enabling technology;
- (2) In close consultation with the referring health professional(s), patient, patient's family and other primary care providers, delineate the appropriate choices of commercially available and custom fabricated equipment to meet the specified needs of the patient;
- (3) Participate in the measurement of the patient, utilizing appropriate instruments and techniques to assure the fit and function of the selected equipment;
- (4) Deliver, fit and adjust the prescribed equipment;
- (5) Instruct the patient and family in the safe and proper use and care of the equipment provided;
- (6) Provide service and support for the equipment dispensed through knowledgeable, skilled and highly trained service personnel and within 72 hours, provide a response to patient requests for repair service on equipment supplied;
- (7) Provide a specific, written statement of



- warranty on the equipment provided, including commercial warranties and those for adapted or custom fabricated items;
- (8) Maintain liability insurance of up to one million dollars (\$1,000,000) worth of coverage and when involved in the design, fabrication or substantial modification of commercially available equipment, also maintain product liability insurance; and
- (9) Utilize extensive, written, quality assurance procedures including, but not limited to:
- (A) Reviewing custom designed and fabricated equipment and interfacing techniques with commercial equipment to assure compatibility and safety;
- (B) Understanding the properties of the materials being used in custom designed and modified equipment to assure long term durability;
- (C) Documenting goals and objectives of the referring medical or education personnel, as well as short and long term effectiveness of the equipment in meeting those goals and objectives; and
- (D) Documenting complaints and problems as required in Rule .1608(a)(12) of this Chapter.

Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.

## **.2610 MEDICAL GAS, OXYGEN AND RESPIRATORY RELATED EQUIPMENT**

(a) Medical gas, oxygen and respiratory related equipment suppliers shall:

- (1) Comply with all applicable home medical equipment laws of North Carolina;
- (2) If transporting oxygen and other medical gases in cylinder or liquid form, comply with all current Department of Transportation rules and regulations;
- (3) If transfilling medical oxygen systems, comply with Food and Drug Administration (FDA) and all state agency requirements regarding transfilling and repackaging;
- (4) Demonstrate that oxygen provided in cylinder or liquid form meets minimal purity standards for medical grade oxygen;

- (5) Comply with local/state fire and building laws; and
- (6) Meet the following safety inspection requirements:
- (A) Demonstrate that each piece of oxygen/respiratory equipment has been checked, is free of defect, and operates within the manufacturers' specifications;
- (B) Refrain from modifying equipment to the extent that the modification might reasonably cause harm;
- (C) Maintain all electrical components so that they do not present a fire or shock hazard; and
- (D) Ensure that all appropriate warning labels or labelling, including tags, are present on the equipment provided.

(b) Medical gas, oxygen and respiratory related equipment suppliers shall comply with the following recall procedures:

- (1) Ensure that lot numbers and expiration dates are affixed to each cylinder delivered;
- (2) Maintain a tracking system for all medical oxygen and gas delivered;
- (3) Document all equipment serial numbers and model numbers to ensure that equipment can be retrieved if a recall is initiated; and
- (4) Maintain records for equipment that requires FDA tracking.

(c) Medical gas, oxygen and respiratory related equipment suppliers shall comply with the following maintenance and cleaning requirements:

- (1) Maintain documentation demonstrating that a function and safety check of equipment was performed prior to set up;
- (2) Maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;
- (3) Maintain a Material Safety Data Sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;
- (4) Maintain segregated areas on the premises and in delivery vehicles for clean, dirty, and contaminated equipment;
- (5) Clean and disinfect equipment according to manufacturers' specifications; and
- (6) Instruct the patient on proper cleaning

techniques as specified by the manufacturer.

(d) Medical gas, oxygen and respiratory related equipment suppliers shall implement a comprehensive preventative maintenance program which includes the following:

- (1) Procedures for problem reporting, tracking, recall, and resolution;
- (2) Performance of service as specified by the manufacturer and the documentation of such performance in the service records; and
- (3) Routine inspection, service, and maintenance of equipment located in the patient's/customer's home according to manufacturers' specifications.

(e) Medical gas, oxygen and respiratory related equipment suppliers shall maintain repair logs to document repair and maintenance of equipment, including, but not limited to, oxygen concentrators, infant monitors, and mechanical ventilators. The following information should be documented in the repair log:

- (1) type of equipment;
- (2) manufacturer;
- (3) model;
- (4) serial number;
- (5) date of repair;
- (6) specific repair made; and
- (7) name of person or company performing the repair.

(f) Medical gas, oxygen and respiratory related equipment suppliers shall maintain testing equipment to ensure accurate calibration. Testing equipment should be appropriate for the level of service offered. Scales used to weigh liquid oxygen reservoirs should be properly maintained to ensure accuracy.

(g) Medical gas, oxygen, and respiratory related equipment suppliers shall implement a written procedure at each location for handling complaints and problems, which includes a complaint file documenting complaints and problems and resolutions of the complaints or problems.

(h) Medical gas, oxygen, and respiratory related equipment suppliers shall comply with the following counseling requirements:

- (1) Utilize orientation checklists to review:
  - (A) Instructions for use of the equipment,
  - (B) Safety precautions,
  - (C) Cleaning procedures,
  - (D) Maintenance procedures, and
  - (E) Return demonstrations on back up oxygen systems delivered;
- (2) Instruct the patient about emergency

and routine contact procedures; and

- (3) Deliver and review written instruction materials to ensure that the patient receives adequate information in order to properly operate the equipment.

(i) A written plan of service shall be developed, implemented, and documented in the patient record. The plan of service shall include, but is not limited to, an assessment of the safety of the home environment, the caregiver and/or patient ability to comply with the prescription, and the caregiver and/or patient ability to operate and clean the equipment as instructed.

*Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.*

## SECTION .2700 - NUCLEAR PHARMACY

### .2702 DEFINITIONS

(a) Qualified Nuclear Pharmacist. A pharmacist currently licensed by the Board who meets the following standards:

- (1) Meets minimum standards of training for "authorized user status" of radioactive material in accordance with the licensure guide of the United States Nuclear Regulatory Commission;
- (2) Has received a minimum of 200 contact hours of instruction in nuclear pharmacy and the safe handling and use of radioactive materials from an approved college of pharmacy, including instruction in the following areas: with the minimum 200 hours apportioned as follows:
  - (A) radiation physics and instrumentation (85 hours);
  - (B) radiation protection (45) hours;
  - (C) mathematics pertaining to the use and measurement of radioactivity (20 hours);
  - (D) radiation biology (20 hours); and
  - (E) radiopharmaceutical chemistry (30 hours); and
- (3) Has a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in the following areas:
  - (A) procuring radioactive materials;
  - (B) compounding radiopharmaceuticals;
  - (C) performing routine quality control procedures;
  - (D) dispensing radiopharmaceuticals;
  - (E) distributing radiopharmaceuticals;



(F) implementing basic radiation protection procedures;

(G) consulting and educating the nuclear medicine community, patients, pharmacists, other health professionals, and the general public; and

(4) Has submitted an affidavit of experience and training to the Board.

(b) Qualified Licensed Professional. A non-pharmacist, such as a physician, nurse or technologist, who possesses a current state license, if required, and who has sufficient training and experience to safely handle and dispense radiopharmaceuticals as defined by the respective requirements of the regulations of the NRC.

(c) Nuclear Pharmacy. A pharmacy, licensed by the Board, providing radiopharmaceutical services, including such areas in a hospital, nursing home, sanitarium or clinic pharmacy.

(d) Radiopharmaceutical Service. The procurement, storage, handling, preparation, transfer, labeling, quality assurance testing, dispensing, delivery, record-keeping and disposal of radiopharmaceuticals and other radioactive ancillary drugs. Also includes radiological health activities, any consulting activities associated with the use of radiopharmaceuticals, health physics, and any other activities required for provision of pharmaceutical care.

(e) Radiopharmaceutical Quality Assurance. The performance of appropriate chemical, biological and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history and the keeping of proper records.

(f) Internal Test Assessment. Conducting those tests of quality assurance necessary to insure the integrity of the test.

(g) Authentication of Product History. Identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other radioactive drug.

(h) Radiopharmaceuticals. ~~Radioactive drugs as defined by the United States Food and Drug Administration.~~ Any drug which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring

radionuclides. Also includes any biological product which is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

(i) Nuclear Pharmacy Practice. A patient-oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals.

(j) Quality Control Testing. The performance of appropriate chemical, biological and physical tests on compounded radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals.

*Statutory Authority G.S. 90-85.6.*

## **.2704 REQ FOR PHARMACIES PROVIDING RADIOPHARMACEUTICAL SERVICES**

(a) The permit to operate a pharmacy providing radiopharmaceutical services shall be issued by the Board only to a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the direct supervision of a qualified nuclear pharmacist. A qualified nuclear pharmacist shall be responsible for all operations of the pharmacy related to radiopharmaceutical services and shall be in personal attendance at all times that the pharmacy renders radiopharmaceutical services.

(b) In emergency situations, and in the absence of a qualified nuclear pharmacist, designated qualified licensed professionals may have access to the area designated as the nuclear pharmacy area, and these individuals may prepare single doses of radiopharmaceuticals for the immediate emergency only and must document such activities.

(c) The nuclear pharmacy area shall be secured from entry by unauthorized personnel and must be totally enclosed and lockable.

(d) Nuclear pharmacies shall maintain records of acquisition, inventory and disposition of all radiopharmaceuticals in accordance with Section .2300 of this Chapter and the applicable regulations of the North Carolina Division of Radiation Protection. A nuclear pharmacy, upon receiving an oral prescription order for a radiopharmaceutical, shall immediately have the prescription order reduced to writing, or recorded in a data processing system, which writing or record shall contain at least the following:

- (1) the name of the facility and prescriber, or prescriber's agent;
- (2) the date of dispensing and the calibra-



- tion time of the radiopharmaceutical;
- (3) the name of the procedure;
- (4) the name of the radiopharmaceutical;
- (5) the dose or quantity of the radiopharmaceutical;
- (6) the serial number assigned to the order for the radiopharmaceutical;
- (7) any specific instructions; and
- (8) the name or initials of the person who received the order.

Whenever an order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing. When a radiopharmaceutical is dispensed under the authority of an Investigational New Drug Application (IND), the nuclear pharmacy records shall include an investigator's protocol for the preparation of the radiopharmaceutical, a copy of the Institutional Review Board approval form (or letter), and a letter from the manufacturer (sponsor) indicating that the physician requesting the radiopharmaceutical is a qualified investigator.

(e) All pharmacies handling radiopharmaceuticals shall provide, at a minimum, the following areas: a radiopharmaceutical preparation/dispensing area; a radioactive material shipping/receiving area; a radioactive material storage area; and provide a radioactive waste decay area which provides sufficient protection from radioactivity of all areas surrounding the nuclear pharmacy area. ~~Detailed floor plans shall be submitted to the Board before approval of the nuclear pharmacy permit.~~

(f) Radiopharmaceuticals are to be dispensed only upon a prescription or medication order from a licensed medical practitioner authorized to possess, use and administer radiopharmaceuticals or from a qualified licensed professional acting on the practitioner's behalf. Otherwise, a radiopharmaceutical may be transferred to a person who is authorized to possess and use such drug for non-clinical applications.

(g) In addition to other labeling requirements of the Board for non-radioactive drugs described in this Chapter, the container of a radiopharmaceutical shall also be labeled with:

- (1) The standard radiation symbol;
- (2) The words "CAUTION - RADIOACTIVE MATERIALS";
- (3) The radionuclide of the radiopharmaceutical contained therein;
- (4) The chemical form of the radiopharmaceutical contained therein;
- (5) The amount of radioactivity of the radiopharmaceutical contained therein

and the date and time of the calibration of that radioactivity;

- (6) The date and time of the expiration of the radiopharmaceutical contained therein;
- (7) If the radiopharmaceutical is a liquid, the volume;
- (8) If the radiopharmaceutical is a solid, the number of capsules or weight contained therein;
- (9) If the radiopharmaceutical is a gas, the number of ampules, vials, or syringes contained therein;
- (10) The name, address and telephone number of the nuclear pharmacy dispensing the radiopharmaceutical;
- (11) The prescription or lot number; and
- (12) The name of the pharmaceutical;
- (13) Molybdenum 99 content to USP limits;
- (14) The name of the patient or the words "Physicians's Use Only" in the absence of a patient name;
- (15) The name of the dispensing pharmacist;
- (16) The name of the procedure; and
- (17) The serial number of the radiopharmaceutical.

(h) When the prescription is for a therapeutic or blood-product radiopharmaceutical, the patient name shall appear on the label. This requirement shall be met when the name of the patient is readily retrievable from the physician upon demand.

(i) The application for a permit to operate a nuclear pharmacy must be accompanied by certification that the applicant is the holder of a current approved license from the North Carolina Division of Radiation Protection and the number of that license. Copies of the Division's inspection report shall be made available upon request for inspection by Board personnel.

(j) The library of a nuclear pharmacy shall contain, in addition to the volumes required by Rule .1601(a)(4)(K) of this Chapter, copies of current state and federal regulations governing the safe storage, handling, use, dispensing, transport and disposal of radiopharmaceuticals.

(k) All pharmacies performing Radiopharmaceutical Services shall have in effect a procedures manual setting forth the procedures and policies of the pharmacy regarding Radiopharmaceutical Quality Assurance. This manual shall at all times be readily available for review by Board personnel.

(l) Nuclear pharmacies shall compound and dispense radiopharmaceuticals in accordance with

accepted standards of radiopharmaceutical quality assurance. The Board recognizes that the preparation of radiopharmaceuticals involves the compounding skills of the nuclear pharmacist to assure that the final drug product meets accepted professional standards.

Statutory Authority G.S. 90-85.6.

## **.2705 MINIMUM EQUIPMENT**

The professional area of the pharmacy shall have at least the following equipment:

- (1) Radionuclide Dose Calibrator;
- (2) Refrigerator;
- (3) Single or multiple channel scintillation counter with well-type NaI(Tl) or Ge(Li) detector;
- (4) Radiochemical fume hood and filter system with suitable air sampling equipment;
- (5) Area survey meter;
- (6) At least two GM survey meters (including one high-range meter);
- (7) Microscope and hemacytometer;
- (8) Laminar air flow hood and appropriate supplies to ensure sterile practices for parenteral solutions;
- (9) Syringe and vial radiation shields;
- (10) Lead-shielded drawing station;
- (11) Decontamination supplies;
- (12) Appropriate supplies to perform quality assurance testing;
- (13) Lead transport shields for syringes and vials; and
- (14) D.O.T. approved USA Type A, 7A approved transport containers and other labels and supplies for shipping radioactive materials.

Statutory Authority G.S. 90-85.6.

## **SECTION .2800 - STERILE PARENTERAL PHARMACEUTICALS**

### **.2803 REQ/PHARMACIES DISPENSING STERILE PARENTERAL PHARMACEUTICALS**

All locations holding a pharmacy permit where sterile pharmaceuticals are dispensed routinely compounded for dispensing must meet the following requirements:

- (1) The location shall have a designated area with entry restricted to designated personnel for preparing compounded sterile parenteral products. This area shall be

structurally isolated from other areas, with restricted entry or access, and must be designed to avoid unnecessary traffic and airflow disturbances from activity within the controlled facility. It shall be used only for the preparation of these specialty products. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.

- (2) The permit-holder preparing sterile parenteral products shall have the following equipment in addition to that required by Board Rule .1601 of this Chapter:
  - (a) Appropriate environmental control devices capable of maintaining at least Class 100 conditions in the work place where critical objects are exposed and critical activities are performed;
  - (b) Sink with hot and cold running water that is convenient to the compounding area for the purpose of hand scrubs prior to compounding;
  - (c) Appropriate disposal containers for used needles, syringes, etc., and if applicable cytotoxic waste from the preparation of chemotherapy agents and infectious wastes from patients' homes;
  - (d) When cytotoxic drug products are prepared, appropriate environmental control also includes appropriate bio-hazard cabinetry;
  - (e) Refrigerator-freezer with a thermometer;
  - (f) Temperature controlled delivery containers; and
  - (g) Infusion devices, if appropriate.
- (3) The permit-holder dispensing sterile pharmaceuticals shall maintain adequate inventories of the following supplies: Disposable needles, syringes, and other supplies need for aseptic admixture; disinfectant cleaning solution; handwashing agents with bactericidal action; disposable, lint-free towels or wipes; appropriate filters and filtration equipment; oncology drug spill kit; and disposable masks, caps, gowns, and gloves.
- (4) In addition to the requirements of Rule .1601(a)(4)(K) of this Chapter, a permit-holder dispensing sterile

pharmaceuticals shall have in its reference library the following reference materials: Handbook on Injectable Drugs (ASHP); King's Guide to Parenteral Admixtures; American Hospital Formulary Service; and Procedure for Handling Cytotoxic Drugs (ASHP).

*Statutory Authority G.S. 90-85.6.*



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

**Key:**

<i>Citation</i>	=	<i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	=	<i>Adopt</i>
<i>AM</i>	=	<i>Amend</i>
<i>RP</i>	=	<i>Repeal</i>
<i>With Chgs</i>	=	<i>Final text differs from proposed text</i>
<i>Corr</i>	=	<i>Typographical errors or changes that requires no rulemaking</i>
<i>Eff. Date</i>	=	<i>Date rule becomes effective</i>
<i>Temp. Expires</i>	=	<i>Rule was filed as a temporary rule and expires on this date or 180 days</i>

## NORTH CAROLINA ADMINISTRATIVE CODE

## FEBRUARY 95

TITLE	DEPARTMENT	TITLE	DEPARTMENT
4	Commerce	16	Education
10	Human Resources	17	Revenue
11	Insurance	19A	Transportation
12	Justice	21	Occupational Licensing Boards
13	Labor		4 - Auctioneers
15A	Environment, Health, and Natural Resources		19 - Electrolysis
		25	Personnel
		27	State Bar

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4 NCAC 19L .0103		✓				03/01/95	
.0105		✓		✓		03/01/95	
.0403		✓		✓		03/01/95	
.0407		✓		✓		03/01/95	
.0501 - .0502		✓				03/01/95	
.0505		✓				03/01/95	
.0802		✓				03/01/95	
.0902		✓		✓		03/01/95	
.0903		✓				03/01/95	
.0904			✓			03/01/95	
.0907		✓		✓		03/01/95	
.1012		✓				03/01/95	
.1701	✓			✓		03/01/95	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4	NCAC	19L	.1702	✓					03/01/95	
			.1703	✓			✓		03/01/95	
10	NCAC	15A	.0701	✓					03/01/95	
			.0702 - .0703	✓			✓		03/01/95	
			.0704 - .0705	✓					03/01/95	
		18F	.0313		✓				03/01/95	
			.0319		✓				03/01/95	
		18L	.1601 - .1606	✓					03/01/95	
		26H	.0211	✓			✓		03/01/95	
		49C	.0101		✓		✓		03/01/95	
			.0102		✓				03/01/95	
			.0104 - .0106		✓				03/01/95	
			.0201		✓				03/01/95	
			.0301 - .0302		✓				03/01/95	
			.0303	✓					03/01/95	
			.0401			✓			03/01/95	
11	NCAC	12	.1502		✓		✓		03/01/95	
12	NCAC	10B	.0103		✓		✓		03/01/95	
			.2105		✓				03/01/95	
		11	.0209		✓				03/01/95	
13	NCAC	7F	.0201					✓		
			.0201		✓				03/01/95	
		17	.0106					✓		
15A	NCAC	3I	.0015					✓		
		6C	.0417		✓		✓		03/01/95	
		10B	.0115		✓		✓		03/01/95	
		10G	.0206					✓		
		18A	.2801		✓				03/01/95	
			.2804					✓		
			.2810		✓		✓		03/01/95	
			.2821					✓		
16	NCAC	6C	.0101		✓				07/01/95	
17	NCAC	1C	.0504		✓				03/01/95	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	1C	.0506		✓				03/01/95	
19A	NCAC	2E	.1001 - .1002	✓			✓		03/01/95	
			.1003	✓					03/01/95	
			.1004 - .1007	✓			✓		03/01/95	
			.1008 - .1009	✓					03/01/95	
21	NCAC	4B	.0501 - .0502		✓		✓		03/01/95	
	19		.0103	✓			✓		03/01/95	
			.0203	✓			✓		03/01/95	
			.0701 - .0702	✓					03/01/95	
			.0703 - .0704	✓			✓		03/01/95	
25	NCAC	1D	.0100					✓		
27	NCAC	1A	.0101 - .0106	✓					12/08/94	
			.0201 - .0203	✓					12/08/94	
			.0301 - .0307	✓					12/08/94	
			.0401 - .0404	✓					12/08/94	
			.0501 - .0505	✓					12/08/94	
			.0601 - .0604	✓					12/08/94	
			.0701	✓					12/08/94	
			.0801 - .0805	✓					12/08/94	
			.1101	✓					12/08/94	
			.1201	✓					12/08/94	
			.1301	✓					12/08/94	
	1B		.0101 - .0130	✓					12/08/94	
			.0201 - .0217	✓					12/08/94	
	1C		.0101 - .0104	✓					12/08/94	
			.0201 - .0210	✓					12/08/94	
	1D		.0101 - .0104	✓					12/08/94	
			.0201 - .0207	✓					12/08/94	
			.0301 - .0303	✓					12/08/94	
			.0401 - .0406	✓					12/08/94	
			.0501 - .0510	✓					12/08/94	
			.0601 - .0609	✓					12/08/94	
			.0701 - .0704	✓					12/08/94	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
27	NCAC	1D	.0801 - .0808	✓					12/08/94	
			.0901 - .0904	✓					12/08/94	
			.1001 - .1011	✓					12/08/94	
			.1301 - .1316	✓					12/08/94	
			.1401 - .1420	✓					12/08/94	
			.1501 - .1527	✓					12/08/94	
			.1601 - .1610	✓					12/08/94	
			.1701 - .1726	✓					12/08/94	
			.1801 - .1806	✓					12/08/94	
			.1901 - .1908	✓					12/08/94	
			.2001 - .2006	✓					12/08/94	
			.2101 - .2107	✓					12/08/94	
			.2201 - .2207	✓					12/08/94	
			.2301 - .2307	✓					12/08/94	
			.2401 - .2407	✓					12/08/94	
			.2501 - .2507	✓					12/08/94	
		1E	.0101 - .0106	✓					12/08/94	
			.0201 - .0205	✓					12/08/94	
			.0301 - .0309	✓					12/08/94	
			.0401 - .0410	✓					12/08/94	
		2	0.1 - 0.3	✓					12/08/94	
			1.1 - 1.3	✓					12/08/94	
			2.1 - 2.8	✓					12/08/94	
			3.1 - 3.3	✓					12/08/94	
			4	✓					12/08/94	
			5.1 - 5.11	✓					12/08/94	
			6	✓					12/08/94	
			7.1 - 7.10	✓					12/08/94	
			8.1 - 8.2	✓					12/08/94	
			9.1 - 9.2	✓					12/08/94	
			10.1 - 10.3	✓					12/08/94	

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).*

**AGRICULTURE**

**Plant Industry**

2 NCAC 48D .0003 - Labeling Rule Withdrawn by Agency	02/16/95
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**COMMERCE**

**Community Assistance**

4 NCAC 19L .0407 - General Application Requirements Agency Revised Rule	RRC Objection 02/16/95 Obj. Removed 02/16/95
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**CORRECTION**

**Division of Prisons**

5 NCAC 2B .0111 - Good Time Agency Revised Rule	RRC Objection 01/19/95 Obj. Removed 01/19/95
5 NCAC 2B .0112 - Gain Time Agency Revised Rule	RRC Objection 01/19/95 Obj. Removed 01/19/95
5 NCAC 2B .0113 - Earned Time Agency Revised Rule	RRC Objection 01/19/95 Obj. Removed 01/19/95

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

**Environmental Health**

15A NCAC 18A .2801 - Definitions Rule Approved as Written	RRC Objection 01/19/95 Obj. Removed 02/16/95
15A NCAC 18A .2810 - Specifications for Kitchens, Based on Number/Children Agency Revised Rule	RRC Objection 01/19/95 Obj. Removed 02/16/95

**Environmental Management**

15A NCAC 2Q .0112 - Applications Requiring Professional Engineer Seal No Response from Agency Rule Returned to Agency Agency Filed Rule for Codification Over RRC Objection	RRC Objection 11/17/94 Obj. Cont'd 12/15/94 Obj. Cont'd 01/19/95 Eff. 02/01/95
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**General Procedures for Public Health Programs**

15A NCAC 24A .0404 - Reimbursement for Services Not Covered by Medicaid RRC Approved Motion to Reconsider Rule Returned to Agency Agency Filed Rule for Codification Over RRC Objection	RRC Objection 12/15/94 Obj. Cont'd 12/15/94 Obj. Cont'd 01/19/95 Eff. 02/01/95
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**Marine Fisheries**

<i>15A NCAC 3I .0017 - Fishery Resource Grant Program</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>15A NCAC 3O .0304 - Consideration of Appeal Petitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Wildlife Resources and Water Safety**

<i>15A NCAC 10G .0206 - Authority of Boat Registration Agents</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**HUMAN RESOURCES**

**Facility Services**

<i>10 NCAC 3H .0221 - Administrative Penalty Determination Process</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 3T .0102 - Definitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 3T .1109 - Resident Care Areas</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Individual and Family Support**

<i>10 NCAC 42C .3601 - Administrative Penalty Determination Process</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Medical Assistance**

<i>10 NCAC 26H .0211 - DRG Rate Setting Methodology</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>
<i>10 NCAC 26H .0212 - Exceptions to DRG Reimbursement</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 26H .0216 - Cost Reporting and Audits</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**INSURANCE**

**Actuarial Services Division**

<i>11 NCAC 16 .0705 - Claim Reserve Methodology and Actuarial Certification</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Agent Services Division**

<i>11 NCAC 6A .0801 - Definitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>11 NCAC 6A .0805 - Calculation of ICECs</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>11 NCAC 6A .0808 - Instructor Qualification</i>		
<i>Rule Withdrawn by Agency</i>		<i>01/19/95</i>
<i>11 NCAC 6A .0809 - Approval of Courses</i>		
<i>Rule Withdrawn by Agency</i>		<i>01/19/95</i>



**11 NCAC 6A .0811 - Sanctions for Noncompliance**

*Rule Withdrawn by Agency*

01/19/95

**LABOR**

**Private Personnel Services**

**13 NCAC 17 .0102 - Licensing Procedures**

*Agency Revised Rule*

*RRC Objection 01/19/95*

*Obj. Removed 01/19/95*

**13 NCAC 17 .0105 - Fee Reimbursement**

*Rule Withdrawn by Agency*

01/19/95

**LICENSING BOARDS AND COMMISSIONS**

**Board of Dietetics/Nutrition**

**21 NCAC 17 .0113 - Fees**

*Agency Revised Rule*

*RRC Objection 01/19/95*

*Obj. Removed 01/19/95*

**21 NCAC 17 .0201 - Definitions**

*Agency Revised Rule*

*RRC Objection 01/19/95*

*Obj. Removed 01/19/95*

**21 NCAC 17 .0202 - Requirement for Review**

*Agency Revised Rule*

*RRC Objection 01/19/95*

*Obj. Removed 01/19/95*

**21 NCAC 17 .0203 - Review and Board Action**

*Agency Revised Rule*

*RRC Objection 01/19/95*

*Obj. Removed 01/19/95*

**Board of Examiners of Electrical Contractors**

**21 NCAC 18B .0901 - Applicants Convicted of Crimes**

*No Response from Agency*

*RRC Objection 01/19/95*

*Obj. Cont'd 02/16/95*

**Board of Electrolysis Examiners**

**21 NCAC 19 .0203 - Application/Renewal, Reinstatement/Reactivation/License**

*Agency Revised Rule*

*RRC Objection 02/16/95*

*Obj. Removed 02/16/95*

**21 NCAC 19 .0704 - Time Limits on Credit**

*Agency Revised Rule*

*RRC Objection 02/16/95*

*Obj. Removed 02/16/95*

**Board of Opticians**

**21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration**

*Agency Revised Rule*

*RRC Objection 11/17/94*

*Obj. Cont'd 11/17/94*

*No Response from Agency*

*Obj. Cont'd 12/15/94*

*Agency Responded*

*Obj. Cont'd 01/19/95*

*No Response from Agency*

*Obj. Cont'd 02/16/95*

**PUBLIC EDUCATION**

**Elementary and Secondary Education**

**16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans**

*RRC Objection 02/16/95*

**SECRETARY OF STATE**

**Notary Public Division**

<i>18 NCAC 7 .0301 - Approved Course of Study</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>
<i>18 NCAC 7 .0302 - Instructors</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>

**TRANSPORTATION**

**Division of Highways**

<i>19A NCAC 2D .0825 - Confidentiality of Cost Estimates and Plan Holder Lists</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>19A NCAC 2E .1001 - Definitions</i>	<i>RRC Objection</i>	<i>02/16/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>
<i>19A NCAC 2E .1005 - Designation Process</i>	<i>RRC Objection</i>	<i>02/16/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>
<i>19A NCAC 2E .1007 - Removal Process</i>	<i>RRC Objection</i>	<i>02/16/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>

*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>
<b>ADMINISTRATION</b>				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
<i>Division of Purchase and Contract</i>				
Carolina Tel. & Telegraph Co. v. Admin., Div of Purchase & Contract	94 DOA 0516	Morrison	01/21/95	9:22 NCR 1943
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Daehae Chang	93 ABC 0775	Morrison	09/21/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
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	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
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	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. Tilghman's of Topsail, Inc.	94 ABC 0057	Chess	12/09/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Richard Wayne Barrow	94 ABC 0079	Gray	10/14/94	
Alcoholic Beverage Control Comm. v. Subhashbai C. Patel	94 ABC 0083	West	11/01/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poole Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
Aytes Investments, Inc. v. ABC Comm. and Ripley Hotch, et. al.	94 ABC 0291	West	01/25/95	
Christopher C. Gause, James A Jinwright v. Alcoholic Bev. Ctl. Comm.	94 ABC 0532	Gray	09/27/94	
Rajaddin Abdelaziz v. Alcoholic Beverage Control Commission	94 ABC 0600	Chess	09/22/94	
Alcoholic Bev. Control Comm. v. Partnership Robert Laurence McHenry	94ABC 0631 <sup>*15</sup>	Morrison	02/21/95	
Alcoholic Beverage Control Comm. v. Sherrie Rena Quick	94 ABC 0717	Gray	12/16/94	
Carol Hewitt v. Alcoholic Beverage Control Commission	94 ABC 0804	Gray	01/04/95	
Alcoholic Bev. Ctl. Comm. v. Partnership, T/A Price Downs Food Mart	94 ABC 0856	West	11/22/94	
Alcoholic Beverage Control Comm. v. Huyen Mong Le	94 ABC 0887	Mann	02/20/95	
Alcoholic Beverage Control Comm. v. Sheila Charlesine Hildebrand	94 ABC 0909	Becton	01/10/95	
Alcoholic Beverage Control Comm. v. James Earl Mullins, Sr.	94 ABC 0934	West	12/05/94	
Alcoholic Beverage Control Comm. v. Salch Ahmed Fadah	94 ABC 0952	Mann	02/06/95	
Alcoholic Bev. Control Comm. v. Partnership Robert Laurence McHenry	94ABC 1055 <sup>*15</sup>	Morrison	02/21/95	
Alcoholic Beverage Control Comm. v. Daniel Thomas Franklin	94 ABC 1059	Gray	02/10/95	
Nnamdi Lawrence Osakwe v. Alcoholic Beverage Control Commission	94 ABC 1363	Chess	02/21/95	
Alcoholic Beverage Control Commission v. Mark Rogers, Jr.	94 ABC 1566	Chess	02/20/95	



# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>COMMERCE</b>				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
<b>CORRECTION</b>				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	
<i>Crime Victims Compensation Commission</i>				
Mae H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
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	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
Jacqueline Shepard v. Victims Compensation Commission	93 CPS 1720	Chess	12/06/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
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	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Blanche J. Taylor v. William Hooks Jr., Crime Victims Comp. Comm.	94 CPS 0464	Mann	10/28/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Charlie E. McDonald v. Crime Victims Compensation Commission	94 CPS 0468	Gray	09/02/94	9:13 NCR 1056
Lillie Alford/behalf/estate/Venise Alford v. Crime Victims Comp. Comm.	94 CPS 0488	West	11/10/94	
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Torbit Smith v. Victims Compensation Commission	94 CPS 0535	Becton	10/26/94	
Maureen P. Wilson v. Crime Victims Compensation Commission	94 CPS 0567	Gray	09/23/94	
Kay Thompson Chambers v. Crime Victims Compensation Commission	94 CPS 0581	Morrison	09/28/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Pattie Hale v. Victims Compensation Fund	94 CPS 0734	West	09/06/94	
Dana Harris v. Crime Victims Compensation Commission	94 CPS 0832	Nesnow	09/26/94	
Dorian Walter St. Patrick Scott v. Victims Compensation Comm.	94 CPS 0883	Nesnow	10/04/94	
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Marvin C. Barnes v. Crime Victims Compensation Commission	94 CPS 0922	Mann	01/30/95	
Susan Cooley v. Crime Victims Compensation Commission	94 CPS 1004	Gray	12/27/94	
In the Matter of the Claim of Claimant: Shirley Robinson Victim: Dandre J. Lamont Offender Charles Fernandez v. Crime Victims Compensation Comm.	94 CPS 1070	Nesnow	12/12/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
Melissa C. Speer v. Crime Con. & Public Safety, Victims Comp. Comm.	94 CPS 1523	Nesnow	02/15/95	
Susan Wade v. Victims Compensation Commission	94 CPS 1685	Morrison	02/01/95	
Donna C. Garrison v. Crime Victims Compensation Commission	94 CPS 1690	Reilly	01/18/95	
Ray C. Jacobs v. Crime Control & Public Safety	94 CPS 1735	Chess	01/31/95	

# CONTESTED CASE DECISIONS

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
<b>EMPLOYMENT SECURITY COMMISSION</b>				
David Lee Bush v. Employment Security Commission	91 ESC 0395	Reilly	08/18/94	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Bobby Stallings v. Environment, Health, and Natural Resources	90 EHR 0612	Morgan	08/11/94	
James M. Lyles v. Brunswick County Office of Permits	92 EHR 0333	Chess	09/22/94	
Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	11/22/94	
William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNRR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
Robert, Stephanie & Joshua Campbell v. EHNRR; Child. Spel Hlth Svcs	93 EHR 1019	Becton	12/28/94	9:20 NCR 1688
Carnel D. Pearson Jr. v. Craven Co. Division of Health & DEHNR	93 EHR 1759	Mann	09/06/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Elbert L. Winslow v. EHNRR/Guilford Cty Health Dept. & Guilford Cty Planning & Zoning Board	94 EHR 0086	Chess	07/13/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Laney Oil Company, Inc. v. Environment, Health, & Natural Resources	94 EHR 0098	Nesnow	01/13/95	
Bobby Combs v. Public Water Supply Section	94 EHR 0202	West	10/19/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Scotland Water Co. v. Environment, Health, & Natural Resources	94 EHR 0239	Morrison	01/31/95	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Everhart & Associates., Inc. and Hettie Tolson Johnson v. Environment, Health, and Natural Resources and Zelig Robinson	94 EHR 0392	Reilly	10/18/94	9:15 NCR 1231
Richard A. Jenkins v. NC Water Pollution Ctl. Sys. Op. Cert. Comm.	94 EHR 0424	West	10/11/94	
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Joseph B. Leggett v. Environment, Health, & Natural Resources	94 EHR 0560	West	09/21/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
Thomas Taylor Fain v. Martin-Tyrrell-Wash. Dist. Health Dept., EHNRR	94 EHR 0736	West	11/22/94	
Marlen C. Robb, Jr. v. CAMA, Washington, NC EHNRR	94 EHR 0767	West	11/22/94	
Irene, Will, Eric Litaker v. Montgomery County Health Department	94 EHR 0776	Gray	09/06/94	
James Loder v. New Hanover Inspection Svcs., Local CAMA Permit Off.	94 EHR 0821	Chess	11/21/94	
H. W. Golding v. Environment, Health, & Natural Resources	94 EHR 0913	Reilly	01/23/95	
National Food Market v. Environment, Health, and Natural Resources	94 EHR 0998	Reilly	12/19/94	
Edna M. Blake v. EHNRR and Onslow County Health Department	94 EHR 1035	Becton	02/10/95	9:23 NCR 2060
Harvey Ted Hemilright, Wendy Leigh Hemilright v. EHNRR	94 EHR 1402	Reilly	02/09/95	
Browning-Ferris Ind. of S. Atlantic, Inc., and Sampson County Disposal, Inc. v. Environment, Health, and Natural Resources and Columbia Cty., American Refuse Sys., Inc. and ARS-Waste Mgmt., Ltd.	94 EHR 1516	West	02/28/95	
Lee E. Harrell v. Environment, Health, & Natural Resources	94 EHR 1663	Reilly	02/09/95	
Conbraco Industries, Inc. v. Environment, Health, & Natural Resources	94 EHR 1686	Reilly	02/14/95	
Briarcliffe Partnership, Barry R. Sidden v. Env., Health, & Nat. Res.	94 EHR 1730	West	02/09/95	
Carriage-Park Development Corp. v. Environment, Health, & Nat. Res.	94 EHR 1795	Gray	03/01/95	
Carriage-Park Development Corp. v. Environment, Health, & Nat. Res.	94 EHR 1796	Gray	03/01/95	
<b>Coastal Management</b>				
Roger Fuller v. EHNRR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378*	Gray	04/07/94	
Roger Fuller v. EHNRR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017*	Gray	04/07/94	
John R. Hooper v. EHNRR, Div./Coastal Mgmt & Bird's Nest Partnership	90 EHR 0455	Morgan	08/11/94	
Dave Dawson v. Division of Coastal Management	93 EHR 0817	Chess	01/06/95	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Gini Linn Ingram Abree v. EHNRR, Division of Coastal Management	94 EHR 0312	West	02/24/95	9:24 NCR 2209
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	
Jerry A. Cook, Marilyn S. Cook and John W. Sherrill v. EHNRR, Coastal Resources Commission	94 EHR 1793	Nesnow	02/27/95	

\* 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>Craven County Health Department</i>				
Cox Transport Equipment, Harvey A Cox v. County of Craven, EHNR	94 EHR 0487	West	11/01/94	
<i>Environmental Health</i>				
Jane C. O'Malley, Melvin L. Cartwright v. EHNR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebersold v. Jackson County Health Department & EHNR	93 EHR 1391	Chess	06/24/94	
Crab Shack Restaurant v. EHNR, Div. of Environmental Health	93 EHR 1609	Gray	12/27/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
George A. Waugh, Shirley A. Waugh v. Carteret Cty Health & Env. Hlth	94 EHR 0128	Chess	07/13/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
H.A. Lentz v. Department of Environment, Health, & Natural Resources	94 EHR 0235	Nesnow	07/19/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	
Robert Leon Snipes v. Environmental Health, Hillsborough NC	94 EHR 0529	Morrison	01/04/95	
Ralston Pound, Jr. & Deanie S. Pound v. Carteret Cty. Env. Health Dept.	94 EHR 1003	Reilly	12/07/94	
James E. Taylor, Marjorie M. Taylor v. Environmental Health Division	94 EHR 1071	Reilly	02/15/95	
<i>Environmental Management</i>				
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	
Raleigh-Durham Airport Authority v. EHNR, Div. of Env. Management	93 EHR 0684 <sup>*1</sup>	West	01/31/95	
Howell's Child Care Center, Inc. v. EHNR, Div. of Environmental Mgmt.	93 EHR 0955	West	11/02/94	
Spring Valley Meats, Inc. v. Environment, Health, & Natural Resources	93 EHR 0974	West	11/03/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
Wooten Oil Company v. EHNR, Div. of Environmental Management	94 EHR 0001	West	09/30/94	
John G. Owens & J.B.S. Mechanical Svcs, Inc. v. EHNR, Env. Mgmt.	94 EHR 0024	Mann	09/07/94	
Raleigh-Durham Airport Authority v. EHNR, Div. of Env. Management	94 EHR 0612 <sup>*1</sup>	West	01/31/95	
General Electric Co., Inc. v. EHNR, Env. Mgmt. Comm. & City/Mebane	94 EHR 1031	Reilly	11/30/94	9:19 NCR 1595
Vernon & Matoha Turbyfill, Elaine T. McCloud, Douglas A. Bare, and Annette Bare, et al v. EHNR, Div. of Environmental Management and The Town of Elk Park	94 EHR 1765	Gray	02/27/95	
G. and S. Industries, Inc. v. EHNR, Div. of Environmental Management	94 EHR 1804	Gray	02/24/95	
<i>Land Resources</i>				
Wallace B. Clayton, Dr. Marshall Redding v. Div. of Land Resources	93 EHR 1407	Morgan	08/09/94	
Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	
Robert L. Beadles, Acting as Atty-in-Fact for Thomas R. Hay v. EHNR	94 EHR 1733	Gray	02/24/95	
<i>Marine Fisheries</i>				
Robert I. Swinson, Virginia S. Swinson v. EHNR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Larry J. Batson v. Division of Marine Fisheries	93 EHR 0857	Morgan	07/22/94	
David W. Oglesby v. Division of Marine Fisheries	93 EHR 0930 <sup>#</sup>	West	07/25/94	9:10 NCR 758
David E. Oglesby v. Division of Marine Fisheries	93 EHR 0931 <sup>#</sup>	West	07/25/94	9:10 NCR 758
James Goodman v. EHNR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660
Billy Ervin Burton v. Division of Marine Fisheries	94 EHR 0504	Nesnow	09/01/94	
<i>Maternal and Child Health</i>				
<i>WIC Section</i>				
Anthony Awueah v. EHNR, Div. Maternal & Child Health, WIC Section	94 EHR 0718	Chess	09/23/94	
Orange Finer Food v. Environment, Health, and Natural Resources	94 EHR 0965	Reilly	12/19/94	
Salah Helu v. Environment, Health, and Natural Resources	94 EHR 0976	Reilly	12/20/94	
<i>Pender County Health Department</i>				
Milton Rudd v. Pender County Health Department	94 EHR 0874	Chess	01/26/95	



# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><i>Radiation Protection</i></b>				
Petya Lee Perkins, M.D. v. Radioactive Materials Section, EHNHR	94 EHR 0903	West	02/21/95	
<b><i>Rockingham County Department of Public Health</i></b>				
David Martin Shelton v. Rockingham Dept. of Public Health and EHNHR	94 EHR 1316	West	02/09/95	
<b><i>Solid Waste Management</i></b>				
Roger Sessoms v. EHNHR/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. EHNHR, 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
Bobby Benton v. EHNHR & Division of Solid Waste	94 EHR 0442	Gray	08/22/94	
<b>HUMAN RESOURCES</b>				
Timothy Creed v. Montgomery Cty Dept. of Social Svcs.	94 CSE 1007	Chess	01/24/95	
Jerome Triplin v. Department of Human Resources	93 DHR 0108	Reilly	08/19/94	
Helen J. Walls, Walls Young World v. Department of Human Resources	93 DHR 0965	Morgan	08/11/94	
Brenda C. Robinson v. Department of Human Resources	94 DHR 0365	West	06/01/94	
Betty King v. Department of Human Resources	94 DHR 0439	Chess	12/15/94	
Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
Mr. & Mrs. Richard Bullen v. Department of Human Resources	94 DHR 0811	Becton	11/14/94	
Bonnie Bircbfield v. Mecklenburg D.S.S. Youth & Family Svcs.	94 DHR 1559	Gray	01/24/95	
<b><i>Distribution Child Support</i></b>				
Mona L. Stanback v. DHR, Div/Social Svcs, Child Support Enf. Section	93 DCS 0969	Morgan	08/02/94	
Jachell D. Parker v. Department of Human Resources	93 DCS 0371	Morgan	07/14/94	
Earleen G. Tinsley v. Department of Human Resources	94 DCS 0651	Nesnow	09/15/94	
<b><i>Division of Child Development</i></b>				
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	
Laureen Holt, ID#26-0-00037 v. DHR, Div. of Child Development	93 DHR 1549	Becton	07/13/94	
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	
Scott's Loving Day Care & Nursery, Mrs. Willie L. Scott v. DHR	94 DHR 0106	Nesnow	06/29/94	
Belinda K. Mitchell v. Human Resources, Div. of Child Development	94 DHR 0119	Reilly	06/30/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
David G. Whitted, Pres., Toddlers Academy, Inc. v. Div of Child Dev.	94 DHR 0453	Mann	09/23/94	
Miriam C. Kircher v. Human Resources, Div. of Child Development	94 DHR 0615	Morrison	11/17/94	
Mary T. Hill v. Human Resources, Division of Child Development	94 DHR 0944	Chess	11/16/94	
Kid's World Creative School & Day Care v. DHR, Div of Child Dev.	94 DHR 1084	West	02/20/95	
<b><i>Facility Services</i></b>				
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Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR				
ABC Home Health Services, Inc. v. Human Resources, Div. of Facility Services, Certificate of Need Section v. Mecklenburg Home Health, Inc., d/b/a Home Health Professionals of Guilford	94 DHR 0254	Morrison	11/17/94	
Professional Nursing Services, Inc. and Betty Wallace v. Certificate of Need Section, Div. of Facility Services, Human Resources and	94 DHR 0609	West	11/21/94	
Duplin Home Care & Hospice, Inc.; Hometown Hospice, Inc.; Craven County Health Dept. Home Health-Hospice Agency; Hospice of Pamlico County, Inc.; Hospice of Carteret County; and Comprehensive Home Health Care I, Inc.				
<i>Licensure Section</i>				
Gary C. Griggs v. DHR, Div of Facility Services, Licensure Section	94 DHR 0517	Chess	12/01/94	
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<i>Division of Medical Assistance</i>				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
N.R. by & through her agt & personal rep E.C.J. v. DHR, Medical Assis.	93 DHR 0538	Chess	07/01/94	
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Henry L. Ward Jr. v. Department of Human Resources	93 CSE 1646	Morgan	08/02/94	
Jane V. Pettus v. Department of Human Resources	93 CSE 1647	Becton	10/31/94	
Benjamin J. Stroud v. Department of Human Resources	93 CSE 1648	Becton	05/19/94	
Charles Leonard Fletcher v. Department of Human Resources	93 CSE 1649	Becton	07/20/94	

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Arthur Glen Long v. Department of Human Resources	93 CSE 1650	Chess	12/05/94	
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	
Earl Newkirk Jr. v. Department of Human Resources	93 CSE 1680	Morrison	08/26/94	
Reginald Rorie v. Department of Human Resources	93 CSE 1683	Gray	10/14/94	
James Edward Penley v. Department of Human Resources	93 CSE 1714	Mann	09/26/94	
Joe C. Dean v. Department of Human Resources	93 CSE 1715	Gray	05/23/94	
Vernon Bullock v. Department of Human Resources	93 CSE 1743	Nesnow	07/07/94	
Nathaniel L. Hayes v. Department of Human Resources	93 CSE 1749	Nesnow	11/09/94	
Jessie Liles v. Department of Human Resources	93 CSE 1757	Morgan	08/02/94	
Raymond Scott Eaton v. Department of Human Resources	93 CSE 1761	Becton	06/29/94	
Karen M. Stogner v. Department of Human Resources	93 CSE 1785	Chess	11/08/94	
Nelson Fowler Jr. v. Department of Human Resources	94 CSE 0039	Mann	10/10/94	
Royston D. Blandford III v. Department of Human Resources	94 CSE 0095	West	04/19/94	
Kenneth B. Taylor v. Department of Human Resources	94 CSE 0113	Becton	10/11/94	
Jeffrey S. Anderson v. Department of Human Resources	94 CSE 0114	Chess	11/04/94	
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Michael L. Franks v. Department of Human Resources	94 CSE 0142	Chess	08/16/94	
Donnie W. Craghead v. Department of Human Resources	94 CSE 0163	Mann	09/26/94	
Billy D. Gibson v. Department of Human Resources	94 CSE 0166	Mann	09/26/94	
Ronald Garrett v. Department of Human Resources	94 CSE 0227	Reilly	08/22/94	
Ervin C. Harvey v. Department of Human Resources	94 CSE 0247	Becton	08/22/94	
Wanda Jean Lee Daniels v. Department of Human Resources	94 CSE 0266	Morgan	08/02/94	
Charles E. Colston v. Department of Human Resources	94 CSE 0280	Reilly	08/30/94	
Daron Wayne Smith v. Department of Human Resources	94 CSE 0300	Gray	06/27/94	
Maurice Franks v. Department of Human Resources	94 CSE 0310	West	10/27/94	
John D. Melton v. Department of Human Resources	94 CSE 0324	Nesnow	07/25/94	
Michael Lynn Jones v. Department of Human Resources	94 CSE 0402	Morgan	08/02/94	
Dennis Kearney v. Department of Human Resources	94 CSE 0411	Becton	12/13/94	
Grayson Kelly Jones v. Department of Human Resources	94 CSE 0433	West	09/15/94	
Larry Hayes v. Department of Human Resources	94 CSE 0456	Nesnow	08/22/94	
Richard Eugene Dunn v. Department of Human Resources	94 CSE 0494	West	07/29/94	
Warren F. Welch v. Department of Human Resources	94 CSE 0541	Mann	11/09/94	
Donas Lynn McDowell v. Department of Human Resources	94 CSE 0580	Mann	01/17/95	
Timothy R. Abraham v. Department of Human Resources	94 CSE 0595	Reilly	10/12/94	
Haywood C. Davis v. Department of Human Resources	94 CSE 0596*10	Mann	01/17/95	
Fred Thompson Jr. v. Department of Human Resources	94 CSE 0639	Morrison	08/31/94	
Donell Howard v. Department of Human Resources	94 CSE 0672	Reilly	10/27/94	
Lee Johnson Tillman v. Department of Human Resources	94 CSE 0906	West	12/08/94	
Haywood C. Davis v. Department of Human Resources	94 CSE 0930*10	Mann	01/17/95	
Reginald Jordan v. Department of Human Resources	94 CSE 1078	Nesnow	02/02/95	
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Charles R. Toler v. Department of Human Resources	94 CSE 1105	Reilly	02/27/95	
Richard D. Rhodes v. Department of Human Resources	94 CSE 1107	Nesnow	01/09/95	
Jasper L. Smallwood v. Department of Human Resources	94 CSE 1110	Gray	01/06/95	
Jubal Ben Stephenson v. Department of Human Resources	94 CSE 1111	Morrison	02/27/95	
Roberto I. Costillo v. Department of Human Resources	94 CSE 1115	Becton	02/28/95	
Dennis F. Crane Jr. v. Department of Human Resources	94 CSE 1117	Gray	02/27/95	
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Leon Tanner v. Department of Human Resources	94 CSE 1124	Mann	02/28/95	
Brian A. Wade v. Department of Human Resources	94 CSE 1126	Mann	02/28/95	
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Richard Clifton Bayse v. Department of Human Resources	94 CSE 1133	Nesnow	02/27/95	
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Sean Eric Swain v. Department of Human Resources	94 CSE 1139	Reilly	02/01/95	
Roy C. Bryant v. Department of Human Resources	94 CSE 1140	West	02/27/95	
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Carl Bernard Falls v. Department of Human Resources	94 CSE 1144	Mann	01/26/95	
Timothy A. Ratley (Jeanes) v. Department of Human Resources	94 CSE 1145	Gray	02/06/95	



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Franklin C. Rice v. Department of Human Resources	94 CSE 1146	Gray	02/27/95	
Pervis Graham v. Department of Human Resources	94 CSE 1147	Reilly	02/01/95	
Kenneth A. Dubamel v. Department of Human Resources	94 CSE 1151	Chess	02/14/95	
Russell M. Allen v. Department of Human Resources	94 CSE 1152	Mann	01/26/95	
Kelly Coleman v. Department of Human Resources	94 CSE 1154	Morrison	02/27/95	
Daniel W. Myles v. Department of Human Resources	94 CSE 1155	Reilly	02/27/95	
Tawanna Wheeler v. Department of Human Resources	94 CSE 1159	Chess	02/07/95	
Robert Junior Griffin v. Department of Human Resources	94 CSE 1162	Morrison	02/27/95	
Dale S. Barton v. Department of Human Resources	94 CSE 1163	Reilly	02/09/95	
Joe Martin Jr. v. Department of Human Resources	94 CSE 1164	West	02/27/95	
William D. Scott v. Department of Human Resources	94 CSE 1165	Nesnow	02/27/95	
Louis J. Chamblee v. Department of Human Resources	94 CSE 1166	Becton	02/03/95	
Thomas J. Halscy v. Department of Human Resources	94 CSE 1181	Chess	02/14/95	
Malcom K. Teague v. Department of Human Resources	94 CSE 1183	Chess	02/07/95	
Kirby M. Snider v. Department of Human Resources	94 CSE 1187	Mann	01/26/95	
Roy Morris Jr. v. Department of Human Resources	94 CSE 1190	Reilly	02/27/95	
Anthony J. Ceraso v. Department of Human Resources	94 CSE 1194	Chess	01/12/95	
Reginald Vincent French v. Department of Human Resources	94 CSE 1196	Gray	02/27/95	
Edward E. Furr v. Department of Human Resources	94 CSE 1198	Reilly	02/27/95	
Lanny R. Harner v. Department of Human Resources	94 CSE 1201	Becton	02/03/95	
Michael J. Paschall Sr. v. Department of Human Resources	94 CSE 1215	Mann	01/30/95	
Todd McCorbin v. Department of Human Resources	94 CSE 1216	Mann	02/28/95	
Larry Eugene Harbaugh v. Department of Human Resources	94 CSE 1223	Morrison	01/06/95	
Jerry McGlone v. Department of Human Resources	94 CSE 1226	Reilly	01/06/95	
Amos Sherman v. Department of Human Resources	94 CSE 1227	West	01/10/95	
David A. Hill v. Department of Human Resources	94 CSE 1234	Becton	02/03/95	
Gerald M. Harry v. Department of Human Resources	94 CSE 1240	Gray	02/17/95	
Todd W. Lane v. Department of Human Resources	94 CSE 1252	Reilly	02/01/95	
Donnie R. McKee v. Department of Human Resources	94 CSE 1265	Nesnow	01/09/95	
Roland Reeves v. Department of Human Resources	94 CSE 1268	Nesnow	01/09/95	
Manuel E. DeJesus, Jr. v. Department of Human Resources	94 CSE 1271	Nesnow	02/02/95	
Paul R. Grayson v. Department of Human Resources	94 CSE 1278	Becton	02/03/95	
Calvin Leon Shaw v. Department of Human Resources	94 CSE 1281	Chess	02/22/95	
Givens Jackson v. Department of Human Resources	94 CSE 1282	Chess	01/05/95	
Adolphus Laing v. Department of Human Resources	94 CSE 1299	Mann	01/26/95	
Willie B. Walker Jr. v. Department of Human Resources	94 CSE 1306	Gray	02/06/95	
Curtis Smith Jr. v. Department of Human Resources	94 CSE 1337	Nesnow	02/02/95	
Robert L. Rochelle v. Department of Human Resources	94 CSE 1349	Gray	02/09/95	
Ronald Fred Metzger v. Department of Human Resources	94 CSE 1353	Reilly	02/01/95	
David C. Riddle v. Department of Human Resources	94 CSE 1367	Chess	01/12/95	
Jerome Maddox, Jr. v. Department of Human Resources	94 CSE 1368	Chess	01/25/95	
Tommy Woods v. Department of Human Resources	94 CSE 1374	Gray	02/06/95	
James Sisk v. Department of Human Resources	94 CSE 1375	Morrison	01/06/95	
Barry Pfau v. Department of Human Resources	94 CSE 1390	Becton	02/03/95	
Raynard C. Terry v. Department of Human Resources	94 CSE 1411	Gray	01/06/95	
Reginald W. Taylor v. Department of Human Resources	94 CSE 1418	Morrison	01/06/95	
Gary G. Walker v. Department of Human Resources	94 CSE 1422	Reilly	02/01/95	
Elijah J. Vaughan v. Department of Human Resources	94 CSE 1428	West	02/01/95	
Scott Barnard v. Department of Human Resources	94 CSE 1443	Chess	02/07/95	
Edward B. Stamey v. Department of Human Resources	94 CSE 1448	West	01/10/95	
Danie L. Baker v. Department of Human Resources	94 CSE 1453	West	01/10/95	
Gerald L. Generette v. Department of Human Resources	94 CSE 1469	Mann	01/26/95	
Jane S. Stalcup v. Department of Human Resources	94 CSE 1483	Reilly	02/01/95	
Larry G. Guthrie v. Department of Human Resources	94 CSE 1540	Reilly	01/06/95	
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Christopher D. Scott v. Department of Human Resources	94 CSE 1574	West	02/09/95	
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Paul Horn, Jr. v. Department of Human Resources	94 CSE 1614	Chess	02/07/95	

## JUSTICE

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Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94
Thomas G. Lewis v. Alarm Systems Licensing Board	94 DOJ 0361	Nesnow	02/24/95
Patrick P. Sassman v. Alarm Systems Licensing Board	94 DOJ 0709	Chess	09/12/94

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Paul J. Allen v. Alarm Systems Licensing Board	94 DOJ 0964	West	10/31/94	
<i>Private Protective Services Board</i>				
Rex Allen Jefferies v. Private Protective Services Board	93 DOJ 0647	Reilly	08/01/94	
Larry C. Hopkins v. Private Protective Services Board	93 DOJ 1618	Morrison	03/07/94	
Gregory K. Brooks v. Private Protective Services Board	94 DOJ 0008	Nesnow	06/28/94	
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	
Dexter R. Usher v. Private Protective Services Board	94 DOJ 0648	Reilly	08/15/94	
Frankie L. McKoy v. Private Protective Services Board	94 DOJ 0706	Chess	09/09/94	
John F. Carmichael v. Private Protective Services Board	94 DOJ 0707	West	12/01/94	
Michael L. Bonner v. Private Protective Services Board	94 DOJ 0794	Morrison	09/14/94	
Edward A. Maguire v. Private Protective Services Board	94 DOJ 0795	West	12/09/94	
Johnny R. Dollar v. Private Protective Services Board	94 DOJ 0796	Morrison	08/24/94	
Bonita Nicole Hill v. Private Protective Services Board	94 DOJ 1633	Reilly	02/21/95	
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William E. Pendergrass v. Private Protective Services Board	95 DOJ 0019	Reilly	02/21/95	
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Glenn Travis Stout v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1409	Gray	03/03/94	
Steven W. Wray v. Sheriffs' Education & Training Standards Comm.	93 DOJ 1803	Chess	06/29/94	
J. Stevan North v. Sheriffs' Education & Training Standards Comm.	94 DOJ 0040	Chess	06/16/94	
Gregory Blake Manning v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0048	Gray	03/29/94	
Russell Pinkelton Jr. v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0118	Gray	08/10/94	
William Franklin Sheetz v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0196	Chess	06/16/94	
James Buster Mullins v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0321	Gray	02/15/95	
James M. Buie v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0401	Nesnow	08/26/94	
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Nelson Falcon v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0611	Mann	08/12/94	
Garron Rey Fischmann v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0742	Nesnow	02/09/95	
Edward M. Lefler v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0822	Nesnow	02/15/95	
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<b>PUBLIC EDUCATION</b>				
Donna M. Yedowitz v. Charlotte-Mecklenburg Bd. of Education	92 EDC 1432 <sup>*12</sup>	Nesnow	01/31/95	
Christopher Murch as Guardian Ad Litem for Angela D. Murch, a Minor v. Barbara Richardson, Admin. Except. Child. Prog.; Craven Cty School Sys.; Bradford L. Sneed, Superintendent	93 EDC 0161	Mann	11/28/94	
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	
Annie Granville, Phillip J. Granville v. Onslow County Bd. of Education	93 EDC 0742	Mann	08/01/94	9:11 NCR 863
Donna M. Yedowitz v. Charlotte-Mecklenburg Bd. of Education	93 EDC 1038 <sup>*12</sup>	Nesnow	01/31/95	
Milt Sherman & Rose Marie Sherman v. Pitt County Board of Education	93 EDC 1617	West	11/29/94	
Mary Ann Sciallo & Frank Sciallo on behalf of their minor child, Samuel W. Sciallo v. State Board of Education	94 EDC 0044	Gray	07/22/94	
George W. Stallings & Suzanne H. Stallings v. Charlotte-Mecklenburg Board of Education	94 EDC 0326	Mann	01/05/95	
Wayne Hogwood v. Department of Public Instruction	94 EDC 0653	West	10/20/94	9:16 NCR 1326
Norman Charles Creange v. State Bd. of Ed., Dept. of Public Instruction	94 EDC 0737	Morrison	11/04/94	
Donald L. Brickhouse v. Bertie County Schools	94 EDC 1176	Gray	01/25/95	
Charlotte-Mecklenburg Board of Education v. Lemuel and Patricia Gray, as Parents of Tanya and Daniel Gray	94 EDC 1629	Mann	01/17/95	

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<b>STATE HEALTH BENEFITS OFFICE</b>				
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Timothy L. Coggins v. Teachers' & St Emp Comp Major Med Plan	93 INS 0929	Morrison	03/04/94	
Sandra Tatum v. Teachers & State Employees Comp Major Medical Plan	94 INS 0028	Gray	10/25/94	9:16 NCR 1331
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<b>STATE PERSONNEL</b>				
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Delores Y. Bryant v. Department of Administration	94 OSP 0989	Gray	01/26/95	
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<i>Agricultural and Technical State University</i>				
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Thomas M. Simpson v. Agricultural and Technical State University	93 OSP 1393	Gray	03/24/94	
Peggy L. Cantrell v. A&T State University	93 OSP 1694	Reilly	01/06/95	9:21 NCR 1875
Pricella M. Curtis v. A&T State University Curriculum & Instruction	94 OSP 0748	Gray	08/17/94	
<i>Department of Agriculture</i>				
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<i>NC School of the Arts</i>				
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<i>Butner Adolescent Treatment Center</i>				
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<i>Catawba County</i>				
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<i>North Carolina Central University</i>				
Dianna Blackley v. North Carolina Central University	89 OSP 0494	Nesnow	09/14/94	
Ha-Yilyah Ha-She'B v. NCCU	93 OSP 0875	Becton	04/13/94	9:3 NCR 211
<i>Chapel Hill &amp; Carrboro City School</i>				
Brenda J. Parker v. Stella Nickerson, Chapel Hill & Carrboro City School	94 OSP 0568	West	10/06/94	
<i>Cherry Hospital</i>				
Charles F. Fields v. Cherry Hospital	94 OSP 0498	Morrison	06/15/94	
Gail Marie Rodgers Lincoln v. Cherry Hospital, Goldsboro, NC 27530	94 OSP 0578	West	10/07/94	
<i>Department of Commerce</i>				
Ruth Daniel-Perry v. Department of Commerce	93 OSP 0725	Chess	03/04/94	9:1 NCR 63
Delores Y. Bryant v. Department of Commerce	94 OSP 0983	Gray	02/01/95	
<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
Steven R. Kellison v. Department of Correction	93 OSP 0283	Chess	06/15/94	
Bert Esworthy v. Department of Correction	93 OSP 0711	Chess	04/21/94	
James J. Lewis v. Department of Correction	93 OSP 1121	West	08/31/94	



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Merron Burrus v. Department of Correction	93 OSP 1145	West	09/30/94	
Lewis Alsbrook v. Department of Correction, Morrison Youth Institution	93 OSP 1739	West	07/20/94	
Junius C. Page v. Dept. of Correction, Secy. Franklin Freeman	93 OSP 1794	Mann	07/08/94	
Grady Butler, Jr. v. Correction, Div./Prisons, Sampson Cty Ctl Laundry	93 OSP 1804	West	11/30/94	
Richard Hopkins v. Department of Correction	94 OSP 0041	Chess	06/16/94	
Alfred B. Hunt v. Department of Correction	94 OSP 0243	Reilly	04/20/94	
Charles Horne v. Equal Emp. Opportunity Officer & Dept. of Correction	94 OSP 0244	Nesnow	06/16/94	
Adrian E. Graham v. Intensive Probation/Parole	94 OSP 0261	Morrison	04/26/94	
E. Wayne Irvin, D.D.S. v. Div. of Prisons, Department of Correction	94 OSP 0334	Chess	10/03/94	
Thomas W. Creswell, Lisa K. Bradley v. Department of Correction	94 OSP 0407*	Chess	09/28/94	
Thomas W. Creswell, Lisa K. Bradley v. Department of Correction	94 OSP 0408*	Chess	09/28/94	
Barry Lee Clark v. Department of Correction	94 OSP 0437	Chess	09/12/94	
Clyde M. Walker v. Department of Correction, Div. of Prisons	94 OSP 0476	West	12/30/94	
Marietta A. Stancil v. Department of Correction	94 OSP 0652	West	11/22/94	
Edward E. Hodge v. Department of Correction	94 OSP 0829	Nesnow	09/15/94	
Phyllis K. Cameron v. Department of Correction	94 OSP 0896	Nesnow	10/27/94	
Brenda Yvonne Ewell v. Department of Correction	94 OSP 0959	Gray	12/12/94	
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<i>Guilford Correctional Center</i>				
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<i>McDowell Correctional Center</i>				
Michael Junior Logan v. Kenneth L. Setzer, McDowell Corr. Ctr.	94 OSP 0546	Gray	09/01/94	
<i>Polk Youth Institution</i>				
Joseph Mark Lewanowicz v. Department of Correction, Polk Youth Inst.	94 OSP 0926	Nesnow	11/07/94	
<i>Cosmetic Art Examiners</i>				
Mary Quaintance v. N.C. State Board of Cosmetic Art Examiners	94 OSP 0372	Chess	06/14/94	
<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	
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J.D. Booth v. Department of Crime Control & Public Safety	92 OSP 0953	Morrison	10/18/94	
Sylvia Nance v. Department of Crime Control & Public Safety	92 OSP 1463	Reilly	03/21/94	
Jerry Lewis v. Dept. of Crime Control & Public Safety, Highway Patrol	93 OSP 1058	West	12/30/94	
Anthony R. Butler v. Highway Patrol	93 OSP 1079	West	08/30/94	
Ruth P. Belcher v. Crime Control & Public Safety, State Highway Patrol	94 OSP 0190	Gray	09/06/94	
Lewis G. Baker v. Crime Control & Public Safety, Office Adj. General	94 OSP 0572	Mann	07/12/94	
William Smith v. State Highway Patrol	94 OSP 0816	Morrison	09/09/94	
Delores Y. Bryant v. Crime Control & Public Safety	94 OSP 0986	Gray	12/14/94	
<i>Dorothea Dix Hospital</i>				
Bettie Louise Boykin v. Dorothea Dix Hospital	94 OSP 0831	Nesnow	09/28/94	
Ernest Akpaka v. Scott Stephens, Dorothea Dix Hospital	94 OSP 0962	Gray	11/01/94	
<i>Durham County Health Department</i>				
Lylla Denell Stockton v. Durham County Health Department	93 OSP 1780	Gray	05/25/94	
<i>East Carolina School of Medicine</i>				
Gloria Dianne Burroughs v. ECU School of Medicine	93 OSP 0909	Becton	10/26/94	
Lillie Mercer Atkinson v. ECU, Dept of Comp. Med., Dr. William H. Pryor Jr., Sheila Church	94 OSP 0162	Gray	10/06/94	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
William Lee Perkins v. ECU Sch of Med. Comp. Med. L. Blankenship, Tammy Barnes, Wm Pyroe	94 OSP 0741	West	09/30/94	
<i>East Carolina University</i>				
Lois Toler Wilson v. East Carolina University	94 OSP 0143	Gray	12/06/94	9:19 NCR 1591
<i>Elizabeth City State University</i>				
John Franklin Simpson & Wayne Tyrone Barclift v. Eliz. City St. U.	93 OSP 0356 <sup>*13</sup>	Mann	01/30/95	
John Franklin Simpson & Wayne Tyrone Barclift v. Eliz. City St. U.	93 OSP 0358 <sup>*13</sup>	Mann	01/30/95	
James Charles Knox v. Elizabeth City State University	94 OSP 0207	Gray	06/17/94	
<i>Employment Security Commission of North Carolina</i>				
Dan G. Smith v. Employment Security Commission of N.C.	93 OSP 0865	Becton	11/23/94	
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>				
Steven P. Karasinski v. Environment, Health, and Natural Resources	93 OSP 0940	West	09/02/94	
<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>Fayetteville State University</i>				
Bessie Carpenter Locus v. Fayetteville State University	86 OSP 0202	Morrison	11/18/94	9:18 NCR 1500
Roscoe L. Williams v. Fayetteville State University	93 OSP 0487	West	06/22/94	
<i>Department of Human Resources</i>				
Inez Latta v. Department of Human Resources	93 OSP 0830	Becton	03/28/94	
Judith C. Kurzer v. Department of Human Resources/Broughton Hospital	93 OSP 1230	Chess	02/16/95	
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	94 OSP 0047	Gray	05/06/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
Dr. Patricia Sokol v. James B. Hunt, Governor and Human Resources	94 OSP 0357	Chess	08/22/94	
Bruce B. Blackmon, M.D. v. DHR, Disability Determination Services	94 OSP 0410	Nesnow	09/14/94	
<i>Craven County Department of Social Services</i>				
Shirley A. Holland v. Craven Cty. Dept./Social Services & Craven Cty.	93 OSP 1606	Gray	07/01/94	
Nettie Jane Godwin (Lawhorn) v. Craven Cty. DSS & Craven Cty.	93 OSP 1607	Gray	07/18/94	9:9 NCR 655
Violet P. Kelly v. Craven Cty. Dept. of Social Services & Craven Cty.	93 OSP 1805	Reilly	07/05/94	
June Carol Jerkins v. Craven County Department of Social Services	94 OSP 0758	Nesnow	01/11/95	
<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	
Ralph A. Williams v. Durham County Department of Social Services	94 OSP 0167	Reilly	09/13/94	
<i>Haywood County Department of Social Services</i>				
Dorothy Morrow v. Haywood County Department of Social Services	94 OSP 0186	West	06/17/94	
<i>Pamlico County Department of Social Services</i>				
Mrs. Dietra C. Jones v. Pamlico Department of Social Services	94 OSP 0251	Chess	08/09/94	
<i>Lee County Health Department</i>				
James Shackleton v. Lee County Health Department	94 OSP 0344	Gray	08/17/94	
<i>Lenoir County Health Department</i>				
Nino A. Coley v. Lenoir County Health Department	94 OSP 0503	West	01/13/95	

# 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>Robeson County Department of Social Services</i>				
Patricia A. Hammonds v. Robeson County Dept. of Social Services	94 OSP 0236	Morrison	02/03/95	
<i>Medical Assistance</i>				
Delores Y. Bryant v. DHR, Division of Medical Assistance	94 OSP 0991	Gray	10/27/94	
Delores Y. Bryant v. DHR, Division of Medical Assistance	94 OSP 0992	Gray	10/27/94	
<i>Mental Health/Mental Retardation</i>				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Sandhills Center for Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
Steve LeGrand Avant v. Sandhills Ctr. for MH/DD/SAS	94 OSP 0655	Chess	12/30/94	9:22 NCR 1949
<i>Services for the Blind</i>				
Donna L. Williams v. DHR, Division of Services for the Blind	93 OSP 1610	Morrison	10/25/94	
<i>Wake County Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
Julia Morgan Brannon v. Wake County MH/DD/SAS	94 OSP 0214	Reilly	04/14/94	
<i>Wayne County Department of Social Services</i>				
Brently Jean Carr, Nancy Carol Carter v. Wayne County/Wayne County Department of Social Services	94 OSP 0539* <sup>8</sup>	Mann	11/07/94	
Brently Jean Carr, Nancy Carol Carter v. Wayne County/Wayne County Department of Social Services	94 OSP 0540* <sup>8</sup>	Mann	11/07/94	
<i>Youth Services</i>				
David R. Rodgers v. DHR, Div./Youth Services, Stonewall Jackson Sch.	94 OSP 0306	Chess	10/24/94	
<i>Insurance</i>				
Delores Y. Bryant v. Department of Insurance	94 OSP 0985	Gray	02/08/95	
<i>Justice</i>				
Delores Y. Bryant v. Department of Justice	94 OSP 0984	Gray	10/27/94	
<i>Labor</i>				
Sydney Sutton Mercer v. Department of Labor	94 OSP 1318	Reilly	02/15/95	
<i>Public Instruction</i>				
Elaine M. Sills v. Department of Public Instruction	94 OSP 0781	Gray	10/06/94	
Delores Y. Bryant v. Department of Public Instruction	94 OSP 0981	Gray	11/28/94	
Delores Y. Bryant v. Department of Public Instruction	94 OSP 0982	Gray	11/28/94	
<i>Real Estate Appraisal Board</i>				
Earl Hansford Grubbs v. Appraisal Board	94 OSP 0753	Nesnow	08/24/94	
<i>Revenue</i>				
Jeanette D. Olson v. Department of Revenue	94 OSP 0768	Nesnow	02/03/95	
<i>Smoky Mountain Center</i>				
Betty C. Bradley v. Smoky Mountain Center	93 OSP 1505	Becton	09/26/94	9:14 NCR 1141



# 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>N.C. State University</i>				
Albert S. Provenzano v. N.C. State University	91 OSP 0867 <sup>*14</sup>	Nesnow	02/14/95	
Albert S. Provenzano v. N.C. State University	92 OSP 0519 <sup>*14</sup>	Nesnow	02/14/95	
Laura K. Reynolds v. N.C. State University - Dept. of Public Safety	92 OSP 0828	Morgan	05/26/94	
Albert S. Provenzano v. N.C. State University	93 OSP 0594 <sup>*14</sup>	Nesnow	02/14/95	
Ashraf G. Khalil v. N.C.S.U.	93 OSP 1666	Nesnow	09/19/94	
Robin Lazenby Boyd v. NC State University Human Res./Seafood Lab	94 OSP 0779	Nesnow	12/01/94	
Patsy E. Harris v. N.C. State University	94 OSP 0845	Nesnow	02/10/95	
<i>Department of Transportation</i>				
Phyllis W. Newnam v. Department of Transportation	92 OSP 1799	Morgan	08/11/94	
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0297 <sup>*1</sup>	Morrison	03/10/94	9:1 NCR 60
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0500 <sup>*1</sup>	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Arnold Craig v. Samuel Hunt, Secretary Department of Transportation	93 OSP 0586	Nesnow	07/11/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	07/15/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	10/07/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
Angela Trueblood Westmoreland v. Department of Transportation	93 OSP 1001	Morrison	09/30/94	9:14 NCR 1136
Bobby R. Mayo v. Department of Transportation	93 OSP 1004	Nesnow	09/01/94	
Tony Lee Curtis v. Department of Transportation	93 OSP 1037	Reilly	08/26/94	
Darrell H. Wise v. Department of Transportation	93 OSP 1353	Gray	07/26/94	
Henry C. Puegh v. Department of Transportation	93 OSP 1710	Nesnow	05/24/94	
Kenneth Ray Harvey v. Department of Transportation	94 OSP 0423	Morrison	08/17/94	
Bobby R. Mayo v. Transportation, Ferry Div. Jerry W. Gaskill, Director	94 OSP 0479	Nesnow	01/24/95	
Jean Williams v. Department of Transportation	94 OSP 0502	Morrison	11/22/94	9:18 NCR 1504
R. Stanley Morgan v. Department of Transportation	94 OSP 0586 <sup>*1</sup>	Reilly	12/13/94	
Bobby R. Mayo v. Department of Transportation	94 OSP 0632	Gray	08/23/94	
A. Dean Bridges v. Department of Transportation	94 OSP 0654 <sup>*1</sup>	Reilly	12/13/94	
Michael Bryant v. Department of Transportation	94 OSP 0728	Chess	08/15/94	
Pearlie M. Simuel-Johnson v. Department of Transportation	94 OSP 0844	Gray	11/14/94	
Danny Lee Taylor v. Department of Transportation	94 OSP 0979	Chess	01/23/95	
Freddie R. Lewis, Jr. v. Department of Transportation	94 OSP 1023	Reilly	01/04/95	
<i>University of North Carolina at Chapel Hill</i>				
William Paul Fearrington v. University of North Carolina at Chapel Hill	91 OSP 0905	Reilly	10/19/94	
Paulette M. McKoy v. University of North Carolina at Chapel Hill	92 OSP 0380 <sup>*7</sup>	Becton	10/24/94	
Paulette M. McKoy v. University of North Carolina at Chapel Hill	92 OSP 0792 <sup>*7</sup>	Becton	10/24/94	
Eric W. Browning v. UNC-Chapel Hill	93 OSP 0925	Morrison	05/03/94	9:5 NCR 342
Beth Anne Miller, R.N.-C v. UNC James A. Taylor Std Health Svc.	94 OSP 0800	Nesnow	09/26/94	
Larry Torain v. Transportation & Parking, UNC - Chapel Hill	94 OSP 1403	Chess	01/25/95	
<i>Department of Medicine</i>				
Ella Washburne v. Aids Clinical Trials Unit, Dept of Medicine, UNC-CH	94 OSP 1772	Becton	02/22/95	
Ella Washburne v. Aids Clinical Trials Unit, Dept of Medicine, UNC-CH	94 OSP 1787	Becton	02/22/95	
<i>University of North Carolina at Greensboro</i>				
James S. Wilkinson v. UNCG Police Agency	93 OSP 0850	Chess	08/22/94	
<i>UNC Hospitals</i>				
Barry Alonzo Nichols v. UNC Hospitals Central Dist. Sect.	94 OSP 0509	Morrison	06/15/94	
<i>Wake County School System</i>				
Lula Mae Freeman v. Wake County School System	94 OSP 0576	Morrison	06/28/94	
<i>The Whitaker School</i>				
Dwayne R. Cooke v. The Whitaker School	94 OSP 0328	Chess	06/02/94	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Winston-Salem State University</i>				
David Phillip Davis v. Winston-Salem State University	93 OSP 0947	Reilly	09/28/94	
Tonny M. Jarrett v. Winston-Salem State University Campus Police	93 OSP 0953	Reilly	09/12/94	
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
Judith A. Dorman v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0223	Morgan	08/11/94	
Nathan Fields v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0161	Morrison	05/18/94	
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
Marion Franklin Howell v. Teachers' & State Employees' Retirement Sys.	93 DST 0475	Nesnow	08/04/94	9:12 NCR 941
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Connie B. Grant v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0883	Chess	06/15/94	
James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./Trustees/N.C. Local Govt. Emp. Ret. System	93 DST 1054	Becton	05/31/94	9:7 NCR 490
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys.	93 DST 1474	Nesnow	03/28/94	
Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys.	93 DST 1612	Morrison	05/18/94	
Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 1731	Becton	05/25/94	
Deborah W. Stewart v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. and Anthony L. Hope & Derrick L. Hope	94 DST 0045	Nesnow	07/25/94	9:10 NCR 768
Raymond G. Gurley v. Bd./Trustees/Teachers' & State Emp. Ret. Sys.	94 DST 0876	Gray	02/09/95	9:23 NCR 2054
TRANSPORTATION				
Taylor & Murphy Construction Co., Inc. v. Department of Transportation	93 DOT 1404	Chess	08/24/94	
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION				
Robert Tolbert v. U.S. Equal Employment Opportunity Commission	94 USE 1410	Gray	12/14/94	
UNIVERSITY OF NORTH CAROLINA				
Heather Anne Porter v. State Residence Committee	92 UNC 0799	Nesnow	08/23/94	
Nixon Omolodun v. UNC Physicians and Associates	94 UNC 0295	Chess	06/27/94	

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
94 EHR 0312

GINI LINN INGRAM ABEE,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENT, HEALTH, AND NATURAL  
RESOURCES, DIVISION OF COASTAL  
MANAGEMENT,  
Respondent.

RECOMMENDED DECISION

This contested case was heard in Burgaw on November 3, 1994. Closing arguments were made by counsel in Raleigh on November 7, 1994.

#### APPEARANCES

Petitioner was represented by John Randolph Ingram, II of the law firm of Brady, Schilawski, Earls and Ingram in Cary.

Respondent was represented by Attorney General Michael F. Easley in the person of Assistant Attorney General David G. Heeter.

#### ISSUES

On February 21, 1993, Respondent denied Petitioner's application for a permit to build a house on Lot 11, Shell Island, Wrightsville Beach. Petitioner alleges the denial:

1. Constitutes a taking without just compensation in violation of the Constitutions of North Carolina and the United States of America;
2. Is in excess of Respondent's authority or jurisdiction because the action is in violation of the state and federal Constitutions;
3. Is erroneous because the application is consistent with existing erosion setback regulations, 15A NCAC 7H .0300 et. seq., and G.S. 113A-100 et. seq.;
4. Is arbitrary and capricious because it is not based upon existing statutory or regulatory law;
5. Is contrary to administrative rules promulgated by Respondent and General Statutes.

Petitioner also applied for a variance from the permitting requirements of the Coastal Area Management Act. Respondent denied the variance. Petitioner alleges the denial was erroneous and that she is entitled to a variance pursuant to G.S. 113A-120.1, 15A NCAC 7H .0309, and 15A NCAC 7J .0700.

#### BURDEN OF PROOF

The burden is on Petitioner to prove her case by the greater weight of the evidence.



WITNESSES

The following persons testified for Petitioner:

- Sherwin Cribb - Registered Land Surveyor
- John R. Ingram - Petitioner's father
- Gini Linn Ingram Abee - Petitioner
- William Manley - CAMA Local Permitting Officer
- Charles Robert Stroud - Wilmington District Manager, Division of Coastal Management

The following person testified for Respondent:

- Preston Pate - Assistant Director of the Division of Coastal Management for Permitting and Enforcement of CAMA

EXHIBITS

The following exhibits were introduced into evidence in support of Petitioner's case:

- P1 - Plat of Shell Island, Section II, Wrightsville Beach.
- P2 - Warranty Deed for Lot 11 from Petitioner to John F. Gaylord, Jr.
- P3 - Contract of Sale of Lot 11 from Petitioner to Gaylord.
- P4 - Long Term Average Annual Erosion Rates Updated Through 1986 for Carolina Beach Inlet to Old Topsail Inlet.
- P5 - Certified copy of 15A NCAC 7H .0300 et. seq. effective May 7, 1990, as those rules existed on February 20, 1992.
- P7 - Vegetation Line Survey of Lot 11, Section II, Shell Island done on December 5, 1992.
- P8 - CAMA Minor Development Permit filed by Petitioner.
- P9 - CAMA Variance Request filed by Petitioner.
- P12 - Aerial photo of Section II, Shell Island taken in June 1992.
- P15 - Aerial Photo of Shell Island taken in June 1992.
- P16 - Long Term Average Annual Erosion Rates Updated Through 1980 for Carolina Beach Inlet to Old Topsail Inlet.
- P17 - Aerial Photo of Shell Island taken September 1984 showing Ocean Erodible Area and Flood Hazard Area as of November 1, 1988.
- P18 - Aerial Photo of Shell Island taken in January 1977 showing Ocean Erodible Area and Flood Hazard Area as of July 1979.

- P19 - Series of photographs of Lot 11 and vicinity taken on November 16, 1992.
- P20 - Series of photographs of Lot 11 and vicinity taken on June 26, 1994.
- P21 - Series of photographs of Lot 11 and vicinity taken on September 12, 1993.
- P22 - Series of photographs of Lot 11 and vicinity taken on October 27, 1994.
- P23 - Warranty Deed dated May 11, 1973 of Lot 11 into John R. Ingram and wife, Virginia B. Ingram.
- P24 - Deed dated June 12, 1975 of Lot 11 from John R. Ingram and wife Virginia B. Ingram into Gini Linn Ingram, Trustee.
- P25 - 1990 Land Use Plan, Town of Wrightsville Beach.
- P26 - 1994 publication of the Town of Wrightsville Beach entitled, "Beach Renourishment" discussing the Shore and Hurricane Wave Protection Project.
- P27 - "A Methodology Report on 'Delineation of an Ocean Hazard Zone for North Carolina'" published July 1, 1979 by the Department of Marine Science and Engineering, North Carolina State University.
- P28 - "Average Annual Long Term Erosion Rate Update, Methods Report" published by Respondent on November 3, 1983.
- P29 - "Average Annual Long Term Erosion Rate Update, Methods Report" published by Respondent on September 1, 1988.
- P35 - Wrightsville Beach Renourishment Plan for FY 1990.

The following exhibits were introduced by Respondent:

- R3 - Letter dated February 21, 1993 (sic) denying application for a CAMA Minor Development permit.
- R6 - Final Decision and Recommended Decision in T.B. Doe v. DEHNR, 89 NRC 0014.
- R8 - Aerial photo of Lot 11 and vicinity taken August 30, 1979.
- R10 - Aerial photo of Lot 11 and vicinity taken February 2, 1980.
- R11 - Aerial photo of Lot 11 and vicinity taken June 22, 1980.
- R12a - Series of four ground level photos taken of Lot R12d 11 on February 9 or 10, 1988.
- R14 - Memorandum to I&S Committee of the Coastal Resources Commission from staff member Charles Pattison.

JUDICIAL NOTICE

Judicial notice is taken of the following exhibits identified at the hearing:

P12 - Water Resources Development Act of 1986 (Public Law 99-662).

R5 - 15A NCAC 7H .0300 et. seq.

R13 - 15A NCAC 7J .0700 et. seq.

STIPULATIONS

The parties stipulated to the following facts:

1. Lot 11, Section 2, Shell Island Development, is located adjacent to the Atlantic Ocean in the Town of Wrightsville Beach, County of New Hanover, State of North Carolina.
2. Lot 11 is shown on a map entitled "Shell Island, Section II" recorded in Map Book 9, Page 50, New Hanover County Registry of Deeds on May 6, 1967.
3. Robert E. Scott and wife Ruth E. conveyed Lot 11 to John Randolph Ingram and wife Virginia B. in a Warranty Deed recorded in Book 970, Page 749, New Hanover County Registry of Deeds, on May 11, 1973.
4. In a letter dated February 8, 1982, John Nesbitt, Director, Department of Public Works, Town of Wrightsville Beach, declared Lot 11 unbuildable under the Coastal Area Management Act regulations and Town of Wrightsville Beach codes and ordinances.
5. Gini Linn Ingram Abee, Trustee, conveyed Lot 11 to John F. Gaylord, Jr., in a Warranty Deed recorded in Book 1336, Page 1553, New Hanover County Registry of Deeds, on July 24, 1986.
6. In an application for a CAMA Minor Development Permit dated January 25, 1994, Gini Linn Ingram Abee, Trustee, proposed to construct a 3,500 sq. ft. single family residence on Lot 11 with 1,750 sq. ft. on both the first and second floors.
7. In a letter dated February 2, 1993, (sic), William R. Manley, Wrightsville Beach Local Permit Officer, denied Gini Linn Ingram Abee's permit application because he determined that the erosion setback established by the Coastal Resources Commission could not be complied with based on the measurement line as determined by him.
8. Gini Linn Ingram Abee, Trustee, timely filed a Contested Case Hearing Petition with the Office of Administrative Hearings to challenge the denial of her application for a CAMA Minor Development Permit.
9. Gini Linn Ingram Abee, Trustee, also seeks a variance from the Coastal Resources Commission to modify its rules governing development on the oceanfront and particularly the erosion setback requirement in Rule 15A NCAC 7H. 0306(a)(1).
10. Lot 11 is the only lot in Shell Island, Section II, which has not been developed.

Based upon a preponderance of the evidence admitted at the hearing, the Administrative Law Judge finds the following to be the facts:



FINDINGS OF FACT

I.

1. In 1965, Moore's Inlet between Wrightsville Beach and Shell Island was closed. Also in that year, the Army Corps of Engineers began the Wrightsville Beach Renourishment Project.
2. As a result of the inlet closure, Lot 11, Section II, Shell Island, Town of Wrightsville Beach, as well as surrounding lots, was created. Lot 11 was not actually part of the inlet, but was adjacent to the inlet where the beach was enlarged to connect Wrightsville Beach with Shell Island.
3. Lot 11 is shown on a plat introduced into evidence as Exhibit P1. Lot 11 is 200 feet wide by 100 feet deep.
4. As initially constructed in 1965, the Wrightsville Beach Renourishment Project stopped some 1,000 feet south of Lot 11. However, transitional fill was placed oceanward of Lot 11 and tied into the beachfront somewhat north of Lot 11. Exhibit P35 is a map of the renourishment project which took place in 1990. Although not evidence of the 1965 project, the Exhibit illustrates the manner in which a renourishment project transitions back onto existing beachfront.
5. On June 12, 1975, John Randolph Ingram and wife Virginia B. Ingram deeded Lot 11 to their daughter Gini Linn Ingram as Trustee for herself and their other three children.
6. As established in Stipulation #5, Gini Linn Ingram, who had since married and assumed the surname, Abee, deeded Lot 11 to John F. Gaylord, Jr. on July 24, 1986. Gaylord owns Lot 16, Section II, Shell Island, immediately north of Lot 11. Gaylord owns a large house on Lot 16.
7. The deed from Abee to Gaylord contains a restriction whereby Abee is entitled to re-purchase Lot 11 should it become eligible for a building permit within fifty years after May 20, 1986.
8. On January 25, 1994, Abee filed an Application for a CAMA Minor Development Permit with the Wilmington Regional Office of the Division of Coastal Management, N.C. Department of Environment, Health, and Natural Resources. Abee sought a permit to build a 3500 sq. ft. house on Lot 11 with a "footprint" of 1750 sq. ft. Lot 11 is designated by the 1990 Land Use Plan for the Town of Wrightsville Beach for use as a single family residence.
9. Respondent is that agency of the State of North Carolina charged with enforcing the Coastal Area Management Act (hereafter "CAMA"). Because Lot 11 is located in an Ocean Hazard Area of Environmental Concern, CAMA requires a landowner to obtain a CAMA Minor Development Permit in order to build a house of the size planned by Abee. See G.S. 113A-118.
10. Pursuant to CAMA, applications for minor development permits can be considered and determined by a designated local official. William R. Manley is an employee of the Town of Wrightsville Beach. Manley has been designated, pursuant to CAMA, since 1986 to review and determine applications for CAMA Minor Development Permits within the Town of Wrightsville Beach. Manley is known in his role with Respondent as the Local Permitting Officer (LPO).
11. On February 21, 1994, Manley wrote Abee a letter denying her application for a CAMA permit. The letter is erroneously dated "1993".
12. Manley wrote that Abee's application was denied because she applied to "...erect a structure in an ocean hazard area oceanward of the erosion setback line which is inconsistent with 15A NCAC 7H .0306(a)(1).... Your erosion setback determination was taken from the pre-renourishment escarpment

or vegetation line, as is the DCM policy where wide scale beach re-nourishment has occurred. This line is based on 1980 photography and available through our office. (see attachment)".

13. Attached to the denial letter is an aerial photo taken of Lot 11 and vicinity in 1980. Immediately parallel to the ocean is a solid black line running from Lot 36 of Section II, Shell Island to Lot 1, Section II, Shell Island. The line represents the average first line of stable natural vegetation as it existed in 1980. The next line back, which is parallel to the first line and is located on Lot 11, is 60 feet back from the first line.
14. The line is ten feet oceanward of the rear of Lot 11. If Abee were required to build behind this setback line, there would not be enough room to build a house on Lot 11.

## II.

15. 15A NCAC 7H .0305(e) defines "Vegetation Line" as "...the first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks....In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line."
16. The erosion rate in the area of Lot 11 is less than two feet per year. As a result, and because there are no frontal dunes on or around Lot 11, Abee's proposed house must be located 60 feet back from the "vegetation line". See 15A NCAC 7H .0306(a)(1). Thus, interpretation of the phrase "first line of stable natural vegetation" is critical to the outcome of this contested case.
17. Between 1970 and 1980, the Corps of Engineers did not renourish Wrightsville Beach. As a result, and because of natural phenomena, the beach in front of Lot 11 eroded so that in November, 1979, the erosion escarpment on Lot 11 was located ten feet oceanward of the rear property line. "Erosion escarpment" is defined at 15A NCAC 7H .0305(f).
18. The Corps of Engineers renourished Wrightsville Beach in April 1980. As a result of this renourishment project, Respondent had a series of aerial photographs taken of Wrightsville Beach for the purpose of establishing the then existing "first line of stable natural vegetation".
19. Respondent takes the position that the "first line of stable natural vegetation" on beaches that have been renourished is the first line of stable natural vegetation that existed prior to renourishment. In the case of Lot 11, this line is the line of vegetation that existed in 1980.
20. Respondent takes the position that under its interpretation of the term "first line of stable natural vegetation", no development will ever be possible on Lot 11.
21. Respondent has interpreted the term "first line of stable natural vegetation" in the manner it does in this case since 1980. Respondent uses the pre-renourishment vegetation line that existed in 1980 because of the uncertainty of funding for renourishment projects.
22. This interpretation is not reduced to writing in any document published by Respondent.
23. 15A NCAC 7H .0305(e) makes no distinction between natural and renourished beaches.

## III.

24. Sherwin Cribb has been a registered land surveyor since 1963. Ninety-nine percent of his surveying is of land in New Hanover County. Cribb is an expert in the field of land surveying.

25. Cribb surveyed Lot 11 on December 5, 1992. On that day, Cribb observed beach grass on Lot 11 that runs parallel to the ocean between 30 to 40 ft. back from the front lot line. Cribb observed shrub like vegetation at the front lot line which ran south along the lot line for about 100 ft. and then tapered toward Lot 6 to about 50 ft. back from the front of Lot 11. The vegetation lines are depicted on Exhibit P7.
26. By November 2, 1994, the beach grass had migrated seaward so that it formed a rough line starting at the northern corner of the front of Lot 11 and ran gradually back to a point on the southern boundary of Lot 11 approximately 25 ft. back from the front of Lot 11. This line of beach grass is shown on Exhibit P7 as a yellow line.
27. The grass on Lot 11 has not been planted or artificially nourished by anyone.
28. In February 1988, John Gaylord dumped fill on Lot 11. The fill had a higher clay content than the soil naturally occurring on Lot 11. The fill is able to retain moisture better than the naturally occurring soil. Respondents took enforcement action against Gaylord, but did not require Gaylord to remove the soil.
29. Manley believes vegetation is "stable" if it has been in place for 8 to 10 years. This is the amount of time it takes roots to stabilize sand dunes. According to Respondent's interpretation of 15A NCAC 7H .0305(e), no vegetation on Lot 11 can ever become stable, no matter how long it exists on the lot and how many dunes may form.
30. Charles Robert Stroud is the Wilmington District Manager for the Division of Coastal Management ("DCM"). Stroud does not believe the kind of beach grass that is growing on Lot 11 is a stable species because it does not flourish south of Cape Lookout, North Carolina, and usually dies out within three years of becoming established. Stroud believes that bitter panicum and sea oats are stable, natural vegetation in Ocean Hazard areas such as Lot 11. Stroud believes the beach grass growing on Lot 11 is responding to the clay content of the fill placed on the lot by Gaylord. Under DCM's interpretation of 15A NCAC 7H .0305(e), no bitter panicum or sea oats that may grow on Lot 11 can ever be characterized as stable, natural vegetation.
31. According to Manley, there is stable natural vegetation on Lot 6 and on the northern corner of Lot 16.
32. If a line were drawn by connecting the oceanward points on Lot 16 where there is stable, natural vegetation with the oceanward points on Lot 6 where there is stable, natural vegetation, the line would run roughly along the yellow line drawn on Exhibit P7, roughly twenty-five feet back from the oceanward boundary of Lot 11.

IV.

33. Wrightsville Beach was renourished in 1965, 1966 and 1970. Wrightsville was not renourished during the decade between 1970 and 1980, but was renourished again beginning on May 11, 1980, April 11, 1981, and June 1, 1986.
34. Lot 11 eroded between the time the Ingrams purchased it in 1973 and 1980, with the most significant erosion taking place between August 1979 and June 13, 1980. In 1980, and again in 1986, when Respondent studied Long Term Average Annual Erosion Rates for Wrightsville Beach and neighboring beaches, Lot 11 was accreting due to renourishment.
35. The Water Resources Development Act of 1986 (P.L. 99-662) (hereafter "Act") became effective November 17, 1986. The Act authorizes federal funding for beach renourishment at Wrightsville for the purpose of shore and hurricane wave protection. The Act authorizes the expenditure of federal



funds for the next 50 years for beach renourishment at Wrightsville Beach. The economic life of a house is 30 years.

36. In June, 1991 and during 1994, Wrightsville Beach was renourished pursuant to the Act. Pursuant to the Act, the cost was shared by the Town of Wrightsville Beach and the State of North Carolina. The extent of the renourishment is shown on Exhibit P35. Lot 11 is designated on the exhibit by a red dot. Lot 11 is in a transition zone where the fill is transitioned from the full renourishment project back into the natural beach.
37. Since 1938, Wrightsville Beach has accreted as the result of renourishment projects. By 1986, this accretion was roughly two feet in the area of Lot 11.
38. Beaches that have been renourished erode between renourishments largely because the grains of sand that are deposited are finer and smaller than naturally occurring beach sand and are, thus, more easily carried away by wind and wave.
39. The assessed tax value of property in Wrightsville Beach in 1994 was \$638 million. The cost of the 1994 renourishment project was estimated to be \$1,883,200.
40. Seventy-five per cent of the New Hanover County Room Occupancy Tax is designated for use in controlling beach erosion.
41. The Corps of Engineers estimated for the 1994 renourishment an annual cost-benefit ratio of 1 to 4.
42. The Town of Wrightsville Beach is committed to beach renourishment for obvious financial reasons. The State of North Carolina has committed funds to renourishment at Wrightsville. Statutory authority exists to commit funds to beach renourishment in the future.

V.

43. The southern tip of Wrightsville Beach has accreted approximately 5 ft. due to the natural phenomena of wave action carrying sand into Masonboro Inlet. Masonboro Inlet is a navigable water of the United States of America and it is from this inlet that sand is dredged and deposited onto Wrightsville Beach. Thus, a navigable waterway is maintained as well as the beach.
44. On un-renourished beaches, Respondent determines the "vegetation line" by on-site inspection. At Wrightsville's renourished beach, Respondent uses aerial photos taken in 1980 to determine the average first line of stable natural vegetation for the entire beachfront. This average becomes the "vegetation line".
45. On the south end of Wrightsville Beach, which is accreting naturally, Respondent allows landowners to install sand fences and artificially plant and nourish vegetation. Respondent considers this vegetation to be stable and natural for purposes of establishing the "vegetation line".
46. Respondent treats naturally accreting beaches and artificially accreting beaches differently because of an anxiety that funding for renourishment projects will not always be available and the gains made in the renourished areas will literally be washed away.
47. No duly promulgated administrative rule exempts renourished beaches from on-site calculation of the vegetation line and consideration of artificially planted and nourished vegetation.
48. In 1981, there was discussion by the Implementation and Standards committee of the Coastal Resources Commission regarding measurement of the "vegetation line" on renourished beaches. In a memo admitted as Exhibit R14, it appears that the consensus of that committee is that the rules would not allow renourishment projects to alter the vegetation line.

49. Since the discussion in 1981, the Coastal Resources Commission has never promulgated an administrative rule excepting renourished beaches from 15A NCAC 7H .0305(c).

VI.

50. A person who has received a denial of an application of a CAMA minor development permit may petition for a variance.
51. Variances may only be granted following affirmative findings by the Coastal Resources Commission on each of the following points:
- i) enforcement of the applicable development guidelines or standards will cause the petitioner practical difficulties or unnecessary hardships;
  - ii) such difficulties result from conditions peculiar to the petitioner's property;
  - iii) such conditions could not reasonably have been anticipated by the Commission when the applicable guidelines or standards were adopted; and
  - iv) the proposed development is consistent with the spirit, purpose and intent of the Commission's rules. See 15A NCAC 7J .0703(f).
52. Preston Pate is the Assistant Director of the Division of Coastal Management (hereafter "DCM") for Permitting and Enforcement of CAMA. Mr. Pate testified in support of the denial of Petitioner's permit and application for a variance. In his testimony, Mr. Pate stated DCM's interpretation of the four criteria established by administrative rule set forth in Finding #50 above.
53. DCM interprets whether a variance request meets 15A NCAC 7J .0703(f)(1) by asking whether the petitioner can physically complete the development and whether the difficulty and hardship caused the petitioner by enforcement of the applicable development standard is unique to petitioner or shared by others in the AEC or type of AEC. DCM does not believe Abee's proposed development meets the first standard because there are many lots along the North Carolina coast which have been rendered unbuildable by CAMA.
54. Lot 11 is zoned by the Town of Wrightsville Beach for a single family residence. There is no other oceanfront lot in Wrightsville Beach upon which development has been precluded.
55. DCM does not believe the difficulties Abee is experiencing in developing Lot 11 result from conditions peculiar to Lot 11. There are other oceanfront lots with high erosion rates. Beach renourishment has occurred or is ongoing at Atlantic Beach, Carolina Beach, Bald Head Island, and Figure 8 Island. Other inlets have filled in, although only two others, one in Buxton filled by the National Park Service and one at Tubbs Inlet on Sunset Beach have been filled in by man.
56. Lot 11 is the only lot on a North Carolina beach, created by man filling in an inlet, which is the subject of an ongoing renourishment project.
57. Mr. Pate testified that the conditions on Abee's Lot 11, were reasonably anticipated by the Commission because the Commission thoroughly debated the issue of how to define the "vegetation line" on renourished beaches. Mr. Pate testified there are no circumstances that have not been debated with regard to ocean setback rules.
58. No renourishment project had been undertaken at Wrightsville Beach for over seven years when the administrative rule defining "vegetation line" was promulgated in 1977. The Water Resources Act of 1986 had not been enacted when the administrative rule was promulgated.

59. The Commission did not anticipate that the Act would authorize funds for beach renourishment for a period of 50 years.
60. Mr. Pate testified that the proposed development of a single family house on the lot was not consistent with the spirit, purpose and intent of the Coastal Resources Commission's rules because the house would be in a high hazard area and closer to the ocean than the required set back line. Mr. Pate testified that the development would have an adverse impact on the public health and safety and an adverse impact on the public trust area.
61. Lot 11 is zoned for single family housing. All lots surrounding Lot 11 contain single family houses.
62. The proposed development on Lot 11 would be on the rear third of the lot and would not interfere with the public's use of the public beach in front of Lot 11.
63. The proposed development on Lot 11 would be consistent with construction requirements for development in an Ocean Hazard AEC.

Based on the foregoing, the undersigned concludes as follows:

CONCLUSIONS OF LAW

1. As a result of the passage of CAMA, Respondent's promulgation of administrative rules pursuant to the authority of CAMA, and Respondent's interpretation of the law, Petitioner is prevented from using Lot 11 in the manner permitted by the Land Use Plan of the Town of Wrightsville Beach, that is, for a single family dwelling.
2. As a result of Respondent's interpretation of 15A NCAC 7H .0305(e) defining "Vegetation Line", Petitioner is prevented from using Lot 11 for all time in the manner permitted by the Land Use Plan of the Town of Wrightsville Beach, that is, for a single family dwelling.
3. The beach grass currently growing on Lot 11 is natural vegetation. The grass was not artificially planted or nourished and is of a type that naturally pioneers stable plants such as bitter panicum and sea oats. The fact that Lot 11 contains some degree of higher clay content soil than would naturally occur does not render the beach grass un-natural since there is no evidence Petitioner caused or participated in causing the soil to be deposited on Lot 11, and because for reasons that would seem to be abundantly prudent, the Coastal Resources Commission did not require the soil to be removed once it was deposited.
4. The beach grass is not a stable vegetation. The grass tends to die out a few years after it appears and mainly serves as a pioneering species for bitter panicum and sea oats. Bitter panicum and sea oats are stable species because of their survivability and their ability to aid in the natural building of sand dunes.
5. Stable natural vegetation is present on Lot 16 adjacent to Lot 11 on the north and on Lot 6 adjacent to Lot 11 on the south. When these lines are connected, pursuant to 15A NCAC 7H .0305(e), a vegetation line is established on Lot 11 from the very front of the Lot at its northern edge to 25 ft. back from the front of the Lot at its southern edge.
6. Respondent acted erroneously when it failed to apply 15A NCAC 7H .0305(e) to Lot 11.

Respondent has taken the position for over 13 years that the vegetation line on renourished beaches must be determined on the basis of the pre-renourishment vegetation line, but has never promulgated an administrative rule to that effect.



Nothing in the text of the rule would lead one to believe it did not apply to renourished beaches. Respondent's interpretation of the rule amounts to de facto rulemaking in that it nullifies the rule in a circumstance known and extensively debated by Respondent without putting the public on notice, conducting a public hearing and publishing the very significant exception to the rule.

7. Respondent's interpretation of 15A NCAC 7H .0305(e) is arbitrary and capricious.

Pursuant to Respondent's interpretation, if bitter panicum and sea oats were to begin growing along the front line of Lot 11, a line of dunes were to form, and the beach were to continue to accrete, Lot 11 would never be developable because it lies in the transition zone of a renourishment project. Assuming, arguendo, that the renourishment project will end at some time in the future, there is no reason to believe that a Lot 11 which contains stable natural vegetation and frontal dunes would be any more vulnerable to the hazards that result in this area being classified as an Ocean Hazard AEC. Yet, pursuant to Respondent's interpretation, Lot 11 would be undevelopable because it was undevelopable in 1980.

8. Respondent's denial of Petitioner's application for a CAMA minor development permit was contrary to the plain meaning of 15A NCAC 7H .0305(e).

9. Neither the Administrative Law Judge, nor the final administrative decisionmaker have the authority to declare CAMA unconstitutional on its face or as applied.

However, it is well established that where a statute is capable of two interpretations, one which would render it unconstitutional and one which would preserve the statute, that courts construe the statute in such a way as to preserve the constitutionality. Respondents have interpreted 15A NCAC 7H .0305(e) in such a way as to render their action capable of being adjudicated to be a taking without just compensation because there is no circumstance under which Petitioner will ever be able to use Lot 11 for the purpose set forth in the Town of Wrightsville Beach Land Use Plan. On the other hand, Respondent could apply the rule according to its plain meaning; determine if there is a "vegetation line"; if so, where it is; and whether development can be accomplished behind the setback line. This interpretation would not be arbitrary and capricious and would place on Petitioner a much tougher burden of showing that CAMA denied all economically beneficial or productive use of Lot 11.

10. Petitioner satisfies the requirements for a variance:

- a. Enforcement of the applicable development guidelines or standards will cause Petitioner practical difficulties and unnecessary hardship;
- b. The difficulties and hardships result from conditions peculiar to Petitioner's property;
- c. The conditions were not anticipated by the Coastal Resources Commission. The Commission could not have anticipated the passage of the Water Resources Development Act. The Commission has never adopted DCM's interpretation that 15A NCAC 7H .0305(e) does not apply to renourished beaches. The Commission has never, by any vote, adopted the I & S Committee's report on vegetation lines on renourished beaches. The Doe case is so factually dissimilar to this case, that it cannot be said to be an adoption by the Commission of DCM's interpretation of 15A NCAC 7H .0305(e).
- d. The proposed development is consistent with the spirit, purpose and intent of the Commission's promulgated rules.

11. Because Petitioner's proposed development would be more than 60 ft. behind the "vegetation line", the development meets the requirements of 15A NCAC 7H .0309(b) and can be developed as an exception from the Use Standards for Ocean Hazard Areas.

- a. The "lot size" referred to in 15A NCAC 7H .0309(b)(4)(B) is the size specifically described in a recorded plat as of June 1, 1979.
12. The mere existence of the exception set forth in 15A NCAC 7H .0309(b) may be evidence that the Coastal Resources Commission does not intend lots that existed before the 1980 Corps renourishment projects to be forever precluded from development. The exception applies to lots existing as of June 1, 1979. The exception does not state that it doesn't apply to renourished beaches. The exception is meaningless with regard to Lot 11 if the vegetation line is that which existed in 1980, rather than that which may come into existence after 1980.

Based on the foregoing, the undersigned makes the following:

**RECOMMENDED DECISION**

The Coastal Resources Commission should reverse the decision of the Local Permitting Officer to deny Petitioner's application for a CAMA Minor Development Permit, and grant the permit. The decision to deny the variance would, thus, become moot. If the Commission does not reverse denial of the permit, the variance should be granted.

**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 Coastal Resources Commission.

This the 24th day of February, 1995.

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Thomas R. West  
Administrative Law Judge

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
94 DOJ 1636

COUNTY OF WAKE

TERRY SUGGS  
Petitioner,

vs.

NORTH CAROLINA PRIVATE PROTECTIVE  
SERVICES BOARD  
Respondent.

PROPOSAL FOR DECISION

The above-captioned matter was heard before Dolores O. Nesnow, duly-appointed Administrative Law Judge, on December 13, 1994, in Raleigh, North Carolina.

**APPEARANCES**

**For Petitioner:** Terry Suggs  
Petitioner - *Pro Se*

**For Respondent:** Charles F. McDarris  
Attorney at Law  
Attorney for Respondent

**ISSUE**

Did the North Carolina Private Protective Services Board (Board) err in denying the Petitioner's application for an unarmed security guard registration?

**STATUTES AND RULES IN ISSUE**

G.S. 74C-2  
G.S. 74C-3(a)(16)  
G.S. 74C-8  
G.S. 74C-9  
G.S. 74C-11  
G.S. 74C-12  
12 NCAC 7D .0700 *et seq.*

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

**FINDINGS OF FACT**

1. On July 3, 1994, Petitioner applied to the Board for an unarmed security guard registration.
2. A criminal history check indicated that the Petitioner has the following convictions:

August 1992 - 41 counts of worthless checks



3. On August 5, 1994, the Board sent Petitioner a letter denying her application based upon the above convictions.
4. In 1981, Petitioner was married and had a small baby. At the Christmas season, Petitioner's husband took money out of their checking account. They had written a large number of checks which would no longer be covered by the money in their checking account.
5. After they became aware that numerous checks had bounced, Petitioner's husband convinced her to leave the State and move to Florida, which they did.
6. Petitioner's husband told her that they would eventually pay off the outstanding checks but that did not occur.
7. In approximately 1992, Petitioner returned to North Carolina, found an attorney, Christina Rivenbark, and directed her attorney to locate the warrants.
8. Ms. Rivenbark went to the District Attorney and tried to find the warrants. At first, the D.A. was unable to locate the warrants but eventually they located them on microfiche.
9. Petitioner directed her attorney to plead guilty to all of the worthless check charges because she wanted her record cleared and she wanted to pay off the outstanding amounts.
10. The total amount owed on the worthless checks was \$3,619.30.
11. Subsequently, Petitioner was divorced.
12. Petitioner had no criminal record prior to these warrants and no criminal record after these warrants.
13. Petitioner went to insurance school and passed the licensing test. She was going to receive a license if she could find an employer who would hire her knowing her criminal record.
14. In the meantime, Petitioner began to work at Carolina Security Patrol in payroll/accounting for Charlie Joyce. Mr. Joyce stated that he would hire her as a supervisor of guards if she was able to get registered.
15. Petitioner testified that her goal is to become involved in fraud investigations.
16. Petitioner stated that while she was still in Florida and after she had made a trip to North Carolina to retain an attorney, she began making payments on the attorney fees. Subsequently, once she had pled guilty and a payment schedule was arranged, she began making payments according to the schedule.
17. Petitioner testified that her husband had had a problem with handling money and stated: "Andy was a habitual check writer." She also testified that her husband had led her into the problem and that the money had been in the account when she wrote the checks, but when the checks began to come in, the money was gone.
18. Petitioner testified that she would not be pursuing this permit and going through the "embarrassment and humiliation" of this hearing unless she had goals and wanted to clear her record and pursue the career she has chosen.

Based upon the above Findings of Fact, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. N.C. Gen. Stat. 74C-8 and 12 NCAC 7D .0703 requires that an applicant for registration shall be of good moral character and temperate habits.

2. The evidence presented at the hearing indicates that the Petitioner has had one incident during which she participated in the worthless check activity as outlined above and also in the avoidance of prosecution.

3. The Petitioner was not the sole culpable party but was at least an "aider and abetter" along with her husband.

The Petitioner's return to North Carolina and her efforts to have the warrants found, to plead guilty, and to agree to a payment schedule some 10 years after the events, are efforts which are highly commendable. While the Petitioner may have had many motives for clearing her record in North Carolina, she nevertheless presented herself to the Prosecutor on some very old warrants, submitted herself to the enforcement of the law, and sustained legal fees in the process.

While the issuance of worthless checks amounting to \$3,619.30 cannot be overlooked, neither can the Petitioner's efforts to rectify this wrong.

Petitioner does not seek a license to operate her own business. Rather, she seeks a registration to work under the supervision of a licensee. The evidence presented indicates that she has developed a professional relationship with a licensee who is prepared to hire Petitioner not merely to work as an unarmed guard, but to supervise his guards.

It appears, based on the evidence presented at the hearing, that the Petitioner has successfully rebutted any indication that she may, at this point and time, have a lack of good moral character.

Based upon the above Conclusions of Law, the undersigned makes the following:

**PROPOSAL FOR DECISION**

That the Board grant the Petitioner's application for an unarmed security guard registration with the following provisions:

- a. That Petitioner submit to the Board on a six month basis a criminal history check and that this be provided to the Board for a period of two years;
- b. That the Petitioner prepare a brief report of her employment status for the signature of her supervisor, Charles Joyce, for submission to the Board and that this report be prepared every six months for a period of two years.

**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 and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

## *CONTESTED CASE DECISIONS*

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A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy of the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

This the 23rd day of February, 1995.

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Dolores O. Nesnow  
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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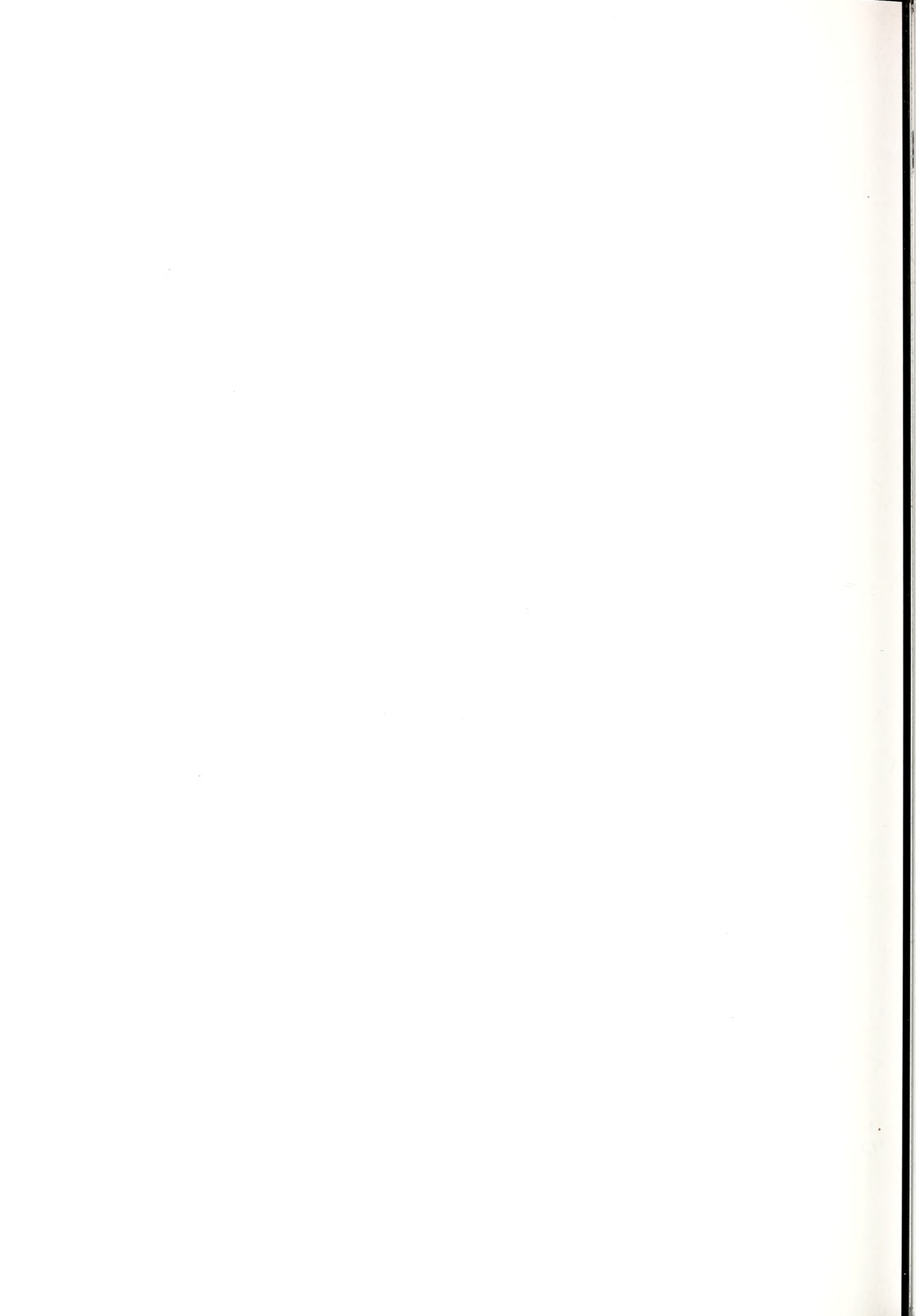
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