

NORTH CAROLINA REGISTER

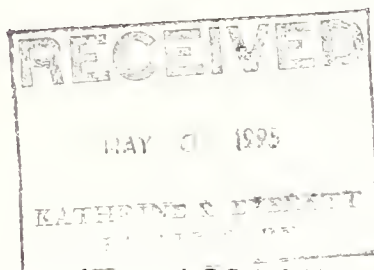
**VOLUME 10 • ISSUE 3 • Pages 191 - 227
May 1, 1995**

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Nursing Home Administrators, Board of
RRC Objections
Contested Case Decisions

PUBLISHED BY

***The Office of Administrative Hearings
Rules Division
PO Drawer 27447
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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

The *North Carolina Administrative Code* (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, PO Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, FAX (919) 733-3462.

NORTH CAROLINA REGISTER



**Volume 10, Issue 3
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May 1, 1995

This issue contains documents officially
filed through April 17, 1995.

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NORTH CAROLINA REGISTER
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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
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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
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10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
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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.

**EXECUTIVE ORDER NO. 75
CREATION OF REGIONAL COUNCILS
AND A COORDINATING COUNCIL TO
SUPPORT SOUND ENVIRONMENTAL
MANAGEMENT IN THE ALBEMARLE-
PAMLICO ESTUARINE STUDY REGION**

WHEREAS, the Albemarle-Pamlico Estuarine Study (APES) was a cooperative effort by the State of North Carolina and the U.S. Environmental Protection Agency to preserve water quality, habitats, and fisheries in eastern North Carolina; and

WHEREAS, APES was the first of 21 National Estuary Programs to be started under the Clean Water Act; and

WHEREAS, APES has provided extensive information and scientific research about the environmental issues facing the Albemarle-Pamlico estuary since 1987; and

WHEREAS, that scientific information was combined with extraordinary involvement by citizens to develop a Comprehensive Conservation and Management Plan (CCMP) entitled "A Guide to Environmental and Economic Stewardship in the Albemarle-Pamlico Region"; and

WHEREAS, the CCMP also recognizes that, from an ecological and an economic standpoint, the best way to ensure the general environmental health of the Albemarle-Pamlico watershed is to manage and protect the five river basins of the watershed; and

WHEREAS, the CCMP also recognizes the importance of involving the public in making decisions regarding environmental management; and

WHEREAS, the CCMP recommends the establishment of Regional Councils to foster public input from each of the five river basins in the Albemarle-Pamlico region, and a Coordinating Council to support the implementation process of the CCMP;

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

Section 1. Establishment.

Five Regional Councils of citizens ("Councils"), one for each river basin in the Albemarle-Pamlico watershed, are hereby established to advise agencies responsible for environmental management on concerns and issues relative to that basin.

A Coordinating Council consisting of representatives from each Regional Council, citizen commissions, federal resource agencies, and state government is hereby established to evaluate and support implementation of the CCMP.

Section 2. Regional Councils.

A. Composition.

1. Basins to be represented by the Councils. Five

separate Regional Councils shall represent each of the following river basins, with the area of the river basin being defined by the hydrologic boundaries ascribed to it by the N.C. Division of Environmental Management (DEM):

- a. Neuse (including areas of the White Oak River basin that drain to Core and Bogue Sounds)
 - b. Tar-Pamlico (including areas draining directly into the northern Pamlico Sound)
 - c. Roanoke (the portion of the basin below Lake Gaston dam)
 - d. Chowan
 - e. Pasquotank/Alligator (including smaller rivers and areas that drain directly into the Albemarle, Currituck, Croatan, and Roanoke Sounds)
2. Membership of the Regional Councils.
 - a. Each county in the basin shall have at least three representatives on the Council for that basin. In instances where a county lies in more than one basin, that county shall have at least three representatives on each Council that serves a basin of which the county is a part.
 - b. Membership from each county shall include:
 - (1) one elected or appointed county official selected by the board of county commissioners;
 - (2) one elected or appointed municipal official selected by the board of county commissioners in consultation with municipalities in the county (counties without municipalities shall appoint a second county official); and
 - (3) one person appointed by the Secretary of the N.C. Department of Environment, Health, and Natural Resources (DEHNR). In making his appointments to each Council, the Secretary shall, to the greatest extent possible, seek to ensure demographic and social balance, as well as balance among the following interests:
 - (a) agriculture
 - (b) silviculture
 - (c) conservation
 - (d) environmental science
 - (e) commercial fishing
 - (f) business/industry
 - (g) recreational fishing
 - (h) tourism
 - (i) Soil and Water Conservation Districts
 - (j) at large
 - c. Each Regional Council may expand its membership as it deems necessary.
 - d. Members shall serve for a five-year term to coincide with the five-year cycle of discharge permit renewals in the river basins. Vacancies shall be filled by the appointing authority.

B. Duties.

1. The Regional Councils shall advise and consult with local, state, and federal governments, as well as the general public and different interest groups within the basin, on the implementation of environmental management programs in the river basins. Because

different basins are likely to face different concerns and problems, the Council for a particular basin shall work to prioritize the problems to be addressed in that basin and to design and build consensus support for the most cost-effective strategies for dealing with those problems. The councils shall also advise the public and local governments of actions and information relevant to environmental management in the basin. The Councils will have no authority other than as advisory bodies.

2. Federal and state agencies with environmental management responsibilities in the basin shall be invited to participate in meetings of the Regional Councils.
3. Each council shall be responsible for determining its own rules of order, chairmanship, attendance regulations, quorums, and other matters of protocol.
4. DEHNR shall assist the councils and serve as a conduit for information between the councils, state and federal agencies, local government, and the public.
5. Each council shall work with DEHNR in preparing an annual public report on the progress of environmental protection and related concerns in the five river basins.

C. Meetings.

Each Regional Council shall meet within three months of its formation by the Secretary of DEHNR and local governments. Each Council shall meet at least two times each year, or more frequently if deemed appropriate.

Section 3. Coordinating Council.

A. Membership.

Membership of the Coordinating Council shall include:

1. Fifteen representatives of the five Regional Councils.
(Each Regional Council will select two of the elected and/or appointed government officials and one other representative from any background.)
2. Seven representatives of citizen commissions and councils. The Chair of each of the following groups shall select a representative:
 - a. Marine Fisheries Commission
 - b. Soil and Water Conservation Commission
 - c. Environmental Management Commission
 - d. Coastal Resources Commission
 - e. Wildlife Resources Commission
 - f. Forestry Advisory Council
 - g. Sedimentation Control Commission
3. Four representatives of federal resource agencies, to be selected by the appropriate federal administrators, are invited to participate:
 - a. U.S. Environmental Protection Agency
 - b. U.S. Army Corps of Engineers
 - c. U.S. Fish and Wildlife Service
 - d. National Oceanic and Atmospheric Administra-

tion

4. Three representatives of state government:
 - a. Secretary of DEHNR, or his designee (Chair of the Coordinating Council)
 - b. Secretary of the N.C. Department of Commerce, or his designee
 - c. Commissioner of the N.C. Department of Agriculture, or his designee, is invited to participate.

B. Duties.

1. The role of the Coordinating Council shall be to evaluate and support the implementation process to ensure the highest level of cooperation and coordination among agencies, local governments, and public and private interest groups.
2. The Coordinating Council shall consult the Regional Councils for guidance on coordinating implementation strategies at a local level.
3. The Coordinating Council shall set annual priorities for implementing sections of the CCMP and make recommendations based on progress and success, and shall identify and prioritize information needs as described in the CCMP.
4. The Coordinating Council shall pursue a Memorandum of Agreement between North Carolina and Virginia to ensure continued cooperation and coordination in implementing the CCMP.
5. Each participating agency, institution, and organization of the Coordinating Council shall submit annual reports evaluating the progress made in implementing CCMP recommendations and the success of implementation strategies.

Section 4. Compensation, Per Diems and Expenses.

Members of the Regional Councils and the Coordinating Council shall serve voluntarily and without compensation, per diems or expenses.

Section 5. Effect of Other Executive Orders.

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

This Order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 30th day of March, 1995.

**EXECUTIVE ORDER NO. 76
NORTH CAROLINA MOTOR CARRIER
ADVISORY COMMITTEE**

WHEREAS, the motor carrier industry is an important industry to North Carolina and to the United States; and

WHEREAS, coordination with other states' laws and federal laws benefit the motor carrier industry, businesses served by the motor carrier industry, and the citizens of North Carolina.

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

ORDERED:**Section 1. Establishment.**

There is hereby established the North Carolina Motor Carrier Advisory Committee.

Section 2. Membership.

The Advisory Committee shall be composed of not less than eighteen (18) members as follows:

- A. The Secretary of the Department of Transportation;
- B. The Highway Administrator;
- C. Commissioner, Division of Motor Vehicles;
- D. Director, Motor Fuel Division, Department of Revenue;
- E. Director, Governor's Highway Safety Program;
- F. North Carolina State Highway Patrol representative;
- G. North Carolina State Ports Authority representative;
- H. At least six members from the motor carrier industry representing the following areas: heavy duty and rigging, truckload, less than truckload, trucking association, private carrier, and tank/bulk;
- I. At least three (3) members representing the interests of intra-state truck users;
- J. National Motor Carrier Advisory Committee members shall serve as ex-officio members of the North Carolina Advisory Committee.

All members not specifically named herein shall be appointed by and serve at the pleasure of the Secretary of the Department of Transportation (DOT). They shall serve two-year terms. The Secretary of DOT or his designee shall chair the Advisory Committee. The Secretary may designate a co-chair from among the public members of the Committee.

Section 3. Duties.

The Advisory Committee shall have the following duties:

- A. To review current laws, policies, and procedures regarding taxation, regulation, and safety of the motor carrier industry in North Carolina;
- B. To determine the extent to which these laws, poli-

cies, and procedures are consistent with those in other states;

- C. To work cooperatively with the National Governors' Association, the Federal Highway Administration, North Carolina Board of Transportation, and other organizations in an effort to streamline and improve uniformity and efficiency among the states in motor carrier taxation regulation, and other related matters; and
- D. To advise the Governor and make recommendations concerning the motor carrier industry.

Section 4. Administration.

DOT shall provide the planning, technical, and administrative support for the Advisory Committee.

Section 5. Expenses.

Members of the Committee shall be compensated for their per diem expenses as provided in N.C.G.S. 138-5 and 138-6. These expenses shall be provided from funds made available from DOT.

Section 6. Agency Cooperation.

Every agency and department of state government is directed to cooperate with the Committee by providing necessary information requested by the Committee and to provide the Committee on a timely basis departmental directives and procedures applied within the agency or department which affect the motor carrier industry.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 3rd day of April, 1995.

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:MAP:JSS:emr
DJ 166-012-3
94-3209

April 3, 1995

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

Dear Mr. Crowell:

This refers to Chapter 583 (1994), insofar as it provides for a change to a nonpartisan election system (with a plurality vote requirement, elections conducted at the same time as party primaries, and a change in the date on which new terms of office commence) for the board of Education of Onslow 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 responses to our October 3, 1994, request for additional information on December 5 and 19, 1994, and January 10, 23, 25, and 31, 1995.

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

North Carolina Wildlife Resources Commission

512 N. Salisbury Street, Raleigh, North Carolina 27604-1188, 919-733-3391

Charles R. Fullwood, Executive Director

PROCLAMATION

Charles R. Fullwood, Executive Director, North Carolina Wildlife Resources Commission, acting pursuant to North Carolina General Statute §113-292 (c) and authority duly delegated by the Wildlife Resources Commission, hereby declares that effective at 12:00 midnight on April 14, 1995 the season for harvesting striped bass by hook-and-line is closed in all inland and joint waters of the Roanoke River Striped Bass Management Area.

The Roanoke River Striped Bass Management Area is defined as the inland and joint fishing waters of the Roanoke River, extending from its mouth to Roanoke Rapids Dam and all tributaries of the Roanoke River, including but not limited to, the Cashie, Middle, and Eastmost Rivers and their tributaries.

This proclamation shall remain in effect until a new proclamation reopening the described waters or portions thereof for striped bass fishing is issued.

NOTES:

- a) This Proclamation is issued under the authority of N.C.G.S. §§113-132; 113-134; 113-292; 113-304; and 113-305.
- b) The striped bass harvest quota for the hook and line sport fishery of the Roanoke River Striped Bass Management Area has been met, and the area is closed for striped bass fishing until reopened as prescribed herein.
- c) All striped bass regardless of condition taken subsequent to the effective date and time of this Proclamation shall be immediately returned to the waters where taken and no striped bass may be possessed.
- d) Any person who violates this Proclamation also violates applicable law and is subject to the sanctions provided by law.

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

by: Charles R. Fullwood
Executive Director

Date: 04/10/95

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

REGULATIONS AND PROCEDURES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 41F .0706 and .0812.

Proposed Effective Date: August 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on June 7, 1995 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: The rules are being revised to reflect the age change from 14 to 13 years old, at which juveniles may be tried as adults for certain felonies, and to require criminal record checks be conducted on all foster parent applicants and household members 13 years and older and by disqualifying applicants and household members 13 years and older who have been convicted of certain crimes from licensure.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, 919-733-3055.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 41 - CHILDREN'S SERVICES

**SUBCHAPTER 41F - LICENSING OF
FAMILY FOSTER HOMES**

**SECTION .0700 - STANDARDS
FOR LICENSING**

.0706 CRIMINAL CONVICTIONS

An applicant shall not be eligible for licensure as a foster parent if the applicant, or any member of the applicant's household 14-13 years or older, has been convicted or entered a plea of no contest to a crime, and there is a relationship between the nature of the crime and the ability of the prospective foster parent to assure the health, safety and well being of foster children; provided a license shall be denied if the applicant or any member of the household 14 13 years or older has been convicted or entered a plea of no contest to a felony involving violent behavior, unlawful sexual conduct, minor children or controlled drugs.

Statutory Authority G.S. 131D-10.5; 143B-153.

SECTION .0800 - LICENSING

.0812 CRIMINAL BACKGROUND CHECKS

The supervising agency shall conduct a criminal background investigation through access of the Department of Corrections Inmate/Probation Inquiry System for all members of the foster family household 14 13 years and older at the time of initial application and annually thereafter. The results of the criminal background investigation shall be reported to the Division of Social Services on the application form.

Statutory Authority G.S. 131D-10.5; 143B-153.

**TITLE 13 - DEPARTMENT OF
LABOR**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Occupational Safety & Health, NC Department of Labor, intends to adopt rules regarding administration of the Hazardous Chemicals Right to Know Act (NCGS 95-173 et seq.) including provisions regarding General Provisions, Hazardous Substance List, Labeling, Emergency Information, Exemptions, and Hazardous Substance Trade Secrets. The agency will subsequently publish in the Register the text of the rules it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority: G.S. 95-4; 95-133; 95-175.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on May 17, 1995 at the NCDOL/OSHA Office, 319 Chapanoke Road, Suite 105, Conference Room A, Raleigh, NC.

Reason for Proposed Action: The Division of Occupational Safety & Health desires to obtain public comment on the subject of what rules should be established pursuant to the Hazardous Chemicals Right to Know Act (NCGS 95-173 et seq.)

Comment Procedures: Please submit written comments to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432, FAX (919) 662-4582. You may present oral or written comments at the May 17 hearing; however, time limits may be imposed by the Chair. The deadline for written comments is June 30, 1995.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Occupational Safety & Health/NC Department of Labor, intends to adopt more current permissible exposure limits in addition to those adopted at 13 NCAC 07F .0101(a)(4), (Subpart Z, 29 CFR 1910.1000, Air Contaminants). The more current PELs under consideration are those listed as substances relating to Avoidance of Neuropathy, Avoidance of Narcosis, Cardiovascular Effects, Systemic Toxicity and Metabolic Effects. The agency will subsequently publish in the Register the text of the rules it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Statutory Authority: G.S. 95-133.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on May 18, 1995 at the NCDOL/OSHA Office, 319 Chapanoke Road, Suite 105, Conference Room A, Raleigh, NC.

Reason for Proposed Action: The Division of Occupational Safety & Health of the NC Department of Labor desires to obtain public comment on the subject of adoption of more current PELs (permissible exposure limits.)

Comment Procedures: Please submit written comments to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432, FAX (919) 662-4582. You may present oral or written comments at the May 18 hearing; however, time limits may be imposed by the Chair. The deadline for written comments is June 30, 1995.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNH - Coastal Resources Commission intends to amend rule cited as 15A NCAC 7H .0208.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 4:00 p.m. on the following dates and locations:

May 25, 1995
Beaufort County Community College
Continuing Education Bldg. Auditorium
Building #8
Highway 264 East
Washington, NC 27889

July 27, 1995

Crystal Coast Civic Center
3505 Arendell Street
Morehead City, NC 28557

Reason for Proposed Action: To develop specific guidelines for mooring installation to control proliferation of this type of development that heretofore has not been closely regulated.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than August 2, 1995. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings for the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Kris M. Horton, Division of Coastal Management, PO Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-2293.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent will not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent may include: utility easements; docks; wharfs; boat ramps; dredging; bridges and bridge approaches; revetments, bulkheads; culverts; groins; navigational aids; mooring pilings; navigational channels; simple access channels and drainage ditches.
- (2) Before being granted a permit by the CRC or local permitting authority, there shall be a finding that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved must be consistent with the stated management objective.
 - (B) Before receiving approval for location of a use or development within these AECs, the permit-letting authority shall find that no

suitable alternative site or location outside of the AEC exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).

- (C) Development shall not violate water and air quality standards.
 - (D) Development shall not cause major or irreversible damage to valuable documented archaeological or historic resources.
 - (E) Development shall not measurably increase siltation.
 - (F) Development shall not create stagnant water bodies.
 - (G) Development shall be timed to have minimum adverse significant affect on life cycles of estuarine resources.
 - (H) Development shall not impede navigation or create undue interference with access to, or use of, public trust areas or estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits clearly outweigh the long range adverse effects of the project, that there is no reasonable and prudent alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and will be implemented at the applicant's expense. These measures taken to mitigate or minimize adverse impacts may include actions that will:
- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or
 - (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are officially designated and described by the N.C. Marine Fisheries Commission in 15A NCAC

3B .1405 and by the N.C. Wildlife Resources Commission in 15A NCAC 10C .0110.

- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission pursuant to Title 15A, Subchapter 2B .0216 of the N.C. Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance. In those estuarine waters and public trust areas classified as ORW by the Environmental Management Commission (EMC), no permit required by the Coastal Area Management Act will be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or Marine Fisheries Commission (MFC) for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit will be issued if the activity would, based on site specific information, materially degrade the water quality or outstanding resource values unless such degradation is temporary.
 - (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules. In defining SAVs, the CRC recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the SAV definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.
- (b) Specific Use Standards
- (1) Navigation channels, canals, and boat basins must be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.
 - (A) Navigation channels and canals may be allowed through narrow fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
 - (B) All spoil material from new construction

- shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or marsh.
- (C) Spoil from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by an acceptable method having no significant, long term wetland impacts. Under no circumstances shall spoil be placed on regularly flooded wetlands.
 - (D) Widths of the canals and channels shall be the minimum required to meet the applicant's needs and provide adequate water circulation.
 - (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
 - (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting channels.
 - (G) Canals for the purpose of multiple residential development shall have:
 - (i) no septic tanks unless they meet the standards set by the Division of Environmental Management and the Division of Environmental Health;
 - (ii) no untreated or treated point source discharge;
 - (iii) storm water routing and retention areas such as settling basins and grassed swales.
 - (H) Construction of finger canal systems will not be allowed. Canals shall be either straight or meandering with no right angle corners.
 - (I) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include bulkheading, vegetative stabilization, or adequate setbacks based on soil characteristics.
 - (J) Maintenance excavation in canals, channels and boat basins within primary nursery areas and beds of submerged aquatic vegetation should be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application. This Rule does not affect restrictions placed on permits issued after March 1, 1991.
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation; and
 - (ii) There exists a previously permitted channel which was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there must be clear evidence that the channel was continuously used for a specific purpose; and
 - (iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and beds of submerged aquatic vegetation; and
 - (iv) The original depth and width of a human-made or natural channel will not be increased to allow a new or expanded use of the channel.
- (2) Hydraulic Dredging
- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow adequate settlement of suspended solids.
 - (B) Dredge spoil must be either confined on high ground by adequate retaining structures or if the material is suitable, deposited on beaches for purposes of renourishment, with the exception of (G) of this Subsection (b)(2).
 - (C) Confinement of excavated materials shall be on high ground landward of regularly and irregularly flooded marshland and with adequate soil stabilization measures to prevent entry of sediments into the adjacent water bodies or marsh.
 - (D) Effluent from diked areas receiving disposal from hydraulic dredging operations must be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below mean low water.
 - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.
 - (F) A water control structure must be installed at the intake end of the effluent pipe.
 - (G) Publicly funded projects will be considered by review agencies on a case-by-case basis with respect to dredging methods and spoil disposal.
 - (H) Dredge spoil from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches

- (A) Drainage ditches located through any marshland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary for adequate drainage.
 - (B) Spoil derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Spoil derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on nonwetlands wherever feasible. Non-wetland areas include relic disposal sites.
 - (C) Excavation of new ditches through high ground shall take place landward of a temporary earthen plug or other methods to minimize siltation to adjacent water bodies.
 - (D) Drainage ditches shall not have a significant adverse effect on primary nursery areas, productive shellfish beds, beds of submerged aquatic vegetation, or other documented important estuarine habitat. Particular attention shall be placed on the effects of freshwater inflows, sediment, and nutrient introduction. Settling basins, water gates, retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.
 - (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.
 - (C) Drainage ditches shall not create stagnant water pools or significant changes in the velocity of flow.
 - (D) Drainage ditches shall not divert or restrict water flow to important wetlands or marine habitats.
- (5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall also comply with these standards for all development other than maintenance and repair necessary to maintain previous service levels.
- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb valuable shallow water, submerged aquatic vegetation, and wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing adequate flushing by tidal or wind generated water circulation;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in the significant degradation of existing fishery, shellfish, or wetland resources and the basin design shall provide adequate flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
 - (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas will be considered on a case-by-case basis.
 - (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
 - (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 sq. ft. of public trust areas for every one lin. ft. of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 sq. ft. allocation shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.

- (E) To protect water quality of shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that Section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish which have been harvested or are available for harvest in the area where harvest will be affected by the development.
 - (F) Marinas shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.
 - (G) Marina basins shall be designed to promote flushing through the following design criteria:
 - (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.
 - (H) Marinas shall be designed to minimize adverse effects on navigation and public use of public trust areas while allowing the applicant adequate access to deep waters.
 - (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
 - (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
 - (K) Marinas which require dredging shall provide acceptable areas to accommodate disposal needs for future maintenance dredging. Proof of the ability to truck the spoil material from the marina site to an acceptable disposal area will be acceptable.
 - (L) Marina design shall comply with all applicable requirements for management of storm-water runoff.
 - (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining the availability of information on local pump-out services.
 - (N) Boat maintenance areas must be designed so that all scraping, sandblasting, and painting will be done over dry land with adequate containment devices to prevent entry of waste materials into adjacent waters.
 - (O) All marinas shall comply with all applicable standards for docks and piers, bulkheading, dredging and spoil disposal.
 - (P) All applications for marinas shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of marina development.
 - (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the preceding rules are complied with to the maximum extent possible, with due consideration being given to replacement costs, service needs, etc.
- (6) Docks and Piers
- (A) Docks and piers shall not significantly interfere with water flows.
 - (B) To preclude the adverse effects of shading coastal wetlands vegetation, docks and piers built over coastal wetlands shall not exceed six feet in width. "T"s and platforms associated with residential piers must be at the waterward end, and must not exceed a total area of 500 sq. ft. with no more than six feet of the dimension perpendicular to the marsh edge extending over coastal wetlands. Water dependent projects requiring piers or wharfs of dimensions greater than those stated in this Rule shall be considered on a case-by-case basis.
 - (C) Piers shall be designed to minimize adverse effects on navigation and public use of waters while allowing the applicant adequate access to deep waters by:
 - (i) not extending beyond the established pier length along the same shoreline for similar use; (This restriction shall not apply to piers 200 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);

- (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-third the width of a natural water body or man-made canal or basin. Measurements to determine widths of the channels, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The one-third length limitation will not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line.
 - (D) Pier alignments along federally maintained channels must meet Corps of Engineers District guidelines.
 - (E) Piers shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to an approved diagram illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.
 - (F) Docks and piers shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct a dock or pier shall provide notice of the permit application or exemption request to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend.
- (7) Bulkheads and Shore Stabilization Measures
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate mean high water or normal water level.
 - (B) Bulkheads shall be constructed landward of significant marshland or marshgrass fringes.
 - (C) Bulkhead fill material shall be obtained from an approved upland source, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.
 - (D) Bulkheads or other structures employed for shoreline stabilization shall be permitted below approximate mean high water or normal water level only when the following standards are met:
 - (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
 - (ii) the bulkhead alignment extends no further below approximate mean high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
 - (iii) the bulkhead alignment will not result in significant adverse impacts to public trust rights or to the property of adjacent riparian owners;
 - (iv) the need for a bulkhead below approximate mean high water or normal water level is documented in the Field Investigation Report or other reports prepared by the Division of Coastal Management; and
 - (v) the property to be bulkheaded is in a nonoceanfront area.
 - (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than vertical seawalls.
- (8) Beach Nourishment
- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use.
 - (B) Beaches may be created or maintained in areas where they have historically been

found due to natural processes. They will not be allowed in areas of high erosion rates where frequent maintenance will be necessary.

- (C) Placing unconfined sand material in the water and along the shoreline will not be allowed as a method of shoreline erosion control.
- (D) Material placed in the water and along the shoreline shall be clean sand free from pollutants and highly erodible finger material. Grain size shall be equal to or larger than that found naturally at the site.
- (E) Material from dredging projects can be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with rules governing spoil disposal;
 - (ii) it is allowed to dry for a suitable period; and
 - (iii) only that material of acceptable grain size is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- (F) Beach creation shall not be allowed in any primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
- (G) Material shall not be placed on any coastal wetlands or beds of submerged aquatic vegetation.
- (H) Material shall not be placed on any submerged bottom with significant shellfish resources.
- (I) Beach construction shall not create the potential for filling adjacent or nearby navigation channels, canals, or boat basins.
- (J) Beach construction shall not violate water quality standards.
- (K) Permit renewal of these projects shall require an evaluation of any adverse impacts of the original work.
- (L) Permits issued for this development shall be limited to authorizing beach nourishment only one time during the life of the permit. Permits may be renewed for maintenance work or repeated need for nourishment.
- (9) Wooden and Riprap Groins
 - (A) Groins shall not extend more than 25 ft. waterward of the mean high water or normal water level unless a longer structure is justified by site specific conditions, sound engineering and design principals.
 - (B) Groins shall be set back a minimum of 15 ft. from the adjoining property lines. This setback may be waived by written agreement

of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.

- (C) Groins shall pose no threat to navigation.
- (D) The height of groins shall not exceed 1 ft. above mean high water or the normal water level.
- (E) No more than two structures shall be allowed per 100 ft. of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
- (F) "L" and "T" sections shall not be allowed at the end of groins.
- (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant in other than non-harmful quantities and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Free Standing Moorings"
 - (A) A "free standing mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).
 - (B) Free standing moorings shall be permitted only:
 - (i) to riparian property owners within their riparian corridors; or
 - (ii) as a publicly sponsored project providing a suitable area for access to any mooring(s) and other land based operations which shall include but not be limited to wastewater pumpout, trash disposal and vehicle parking.
 - (C) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for

human consumption since November 28, 1975 or that shellfish apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish which have been harvested or are available for harvest in the area where harvest will be affected by the development.

- (D) Moorings shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.
- (E) Moorings shall be designed and maintained to minimize adverse effects on navigation and public use of public trust areas while allowing the applicant adequate access to deep waters.
- (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
- (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
- (H) Moorings and the associated land based operation design shall comply with all applicable requirements for management of storm-water runoff.
- (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and explaining the availability of information on local pump-out services and waste disposal.
- (J) All applications for moorings shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of moorings development.
- (K) Free standing moorings associated with public service or temporary construction/salvage operations can be permitted without a public sponsor and shall be evaluated on a case-by-case basis.
- (L) Free standing mooring buoys and piles are to be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere

with the access of any riparian owner nor shall it block riparian access by blocking channels, deep water, etc. which allows riparian access. Free standing moorings shall not interfere with the ability of any riparian owner to place a pier for access.

- (M) Free standing moorings shall be marked or colored in compliance with U.S. Coast Guard and N.C. Wildlife Resource Commission requirements and the required marking maintained for the life of the mooring(s).
- (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (O) Existing free standing moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the moorings(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s) then must comply with those guidelines of the Division in place at that time. In any event, existing moorings must comply with these Rules within two years.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR - Coastal Resources Commission intends to adopt rules cited as 15A NCAC 7H .2201 - .2205.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 4:00 p.m. on the following dates and locations:

May 25, 1995

Beaufort County Community College
Continuing Education Bldg. Auditorium
Building #8
Highway 264 East
Washington, NC 27889

July 27, 1995

Crystal Coast Civic Center
3505 Arendell Street
Morehead City, NC 28557

Reason for Proposed Action: These Rules will establish a procedure for authorizing the installation of private moorings in response to an increasing demand for such facilities over the past 48 months. This is a new permit

requirement for a type of development that has not previously required permits.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than August 1, 1995. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings for the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Kris M. Horton, Division of Coastal Management, PO Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-2293.

Fiscal Note: Rule .2203 affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. Rules .2201 - .2202, .2204 - .2205 do not affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.

SECTION .2200 - GENERAL PERMIT FOR CONSTRUCTION OF FREE STANDING MOORINGS IN ESTUARINE WATERS AND PUBLIC TRUST AREAS

.2201 PURPOSE

This permit will allow the construction of free standing moorings in the estuarine waters and public trust areas AECs according to the authority provided in 15A NCAC 7J .1100 and according to the following guidelines. This permit will not apply to waters adjacent to the Ocean Hazard AEC.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2202 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development.

(b) The applicant must provide:

- (1) information on site location, dimensions of the project area, and his/her name and address;
- (2) a dated plat(s) showing existing and proposed development; and
- (3) confirmation that:
 - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
 - (B) the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting offi-

cial to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments. If DCM determines that:

- (i) the comments are relevant to the potential impacts of the proposed project; and
- (ii) the permitting issues raised by the comments are worthy of more detailed review, the applicant will be notified that he/she must submit an application for a major development permit.

(c) Approval of individual projects will be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit must be completed within 90 days of permit issuance or the general authorization expires and a new permit shall be required to begin or continue construction.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2203 PERMIT FEE

The applicant must pay a permit fee of fifty dollars (\$50.00). This fee may be paid by check or money order made payable to the Department.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2204 GENERAL CONDITIONS

(a) A "free standing mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).

(b) Free standing moorings authorized by this permit shall be for the exclusive use of the riparian landowner(s) in whose name the permit is issued, and shall not provide either leased or rented moorings or any other commercial services.

(c) There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of free standing moorings authorized by this permit.

(d) This general permit may not be applicable to proposed construction when the Department determines that the proposal might significantly affect the quality of the human environment or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

(e) Development carried out under this permit must be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

(f) Individuals shall allow authorized representatives of the Department of Environment, Health, and Natural

Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.

(g) Free standing mooring(s) shall not be transferable or assignable. Upon transfer of riparian property ownership, the mooring(s) must be removed by the original permittee unless a new permit is issued to the new riparian owner.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2205 SPECIFIC CONDITIONS

(a) Free standing moorings may be located up to a maximum of 400 feet from the mean high water line, or the normal water line, whichever is applicable.

(b) Free standing moorings along federally maintained channels must meet Corps of Engineers guidelines.

(c) Free standing moorings in no case shall extend more than 1/3 the width of a natural water body or man-made canal or basin.

(d) Free standing mooring buoys and piles are to be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of free standing moorings. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge.

(e) The total number of docking/mooring facilities to be authorized via a CAMA General permit, a Certificate of Exemption or any combination of the two may not exceed four per property.

(f) Free standing moorings shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct free standing moorings shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.

(g) Free standing moorings may not be established in submerged cable/pipe crossing areas or in a manner which interferes with the operation of an access through any bridge.

(h) Free standing moorings shall be marked or colored

in compliance with U.S. Coast Guard and N.C. Wildlife Resource Commission requirements and the required marking maintained for the life of the mooring(s).

(i) Free standing moorings must bear owner's name, vessel State registration numbers or U.S. Customs Documentation numbers. Required identification must be legible for the life of the mooring(s).

(j) The type of material used to anchor a proposed mooring buoy(s) must be acceptable to the Division of Coastal Management.

(k) If use of any free standing mooring authorized by this General permit is discontinued for a period of 12 months or more, it must be removed by the permittee.

(l) Mooring buoys authorized by this General permit must be a minimum 12" in diameter and shall not exceed 36" inches in diameter.

(m) Existing free standing moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the mooring(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s) then must comply with those guidelines of the Division in place at that time. In any event, existing moorings must comply with these Rules within two years.

Statutory Authority G.S. 113A-107; 113A-118.1.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Examiners For Nursing Home Administrators intends to amend rules cited as 21 NCAC 37 .0302, .0404, .0502, .0603, .0912, .0914.

Proposed Effective Date: August 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any request for a public hearing must be submitted, in writing, to Jane Abernathy, N.C. State Board of Examiners for Nursing Home Administrators, 3701 National Drive, Suite 123, Raleigh, NC 27612 by 4:00 p.m. on May 16, 1995.

Reason for Proposed Action:

21 NCAC 37 .0302 - Increases fee required for initial licensure.

21 NCAC 37 .0404 - Increases fee charged for administering continuing education courses.

21 NCAC 37 .0502 - Increases fee required for administrator-in-training application.

21 NCAC 37 .0603 - Increases fees required to take the national and state licensing examinations.

21 NCAC 37 .0912 - *Increases fee required for reciprocity.*

21 NCAC 37 .0914 - *Increases fee required for issuing a duplicate license or certificate of registration.*

Comment Procedures: *Written comments on these Rules must be submitted to the Board office by 9:00 a.m. on June 13, 1995.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

SECTION .0300 - APPLICATION FOR LICENSE

.0302 INITIAL LICENSURE FEE

The applicant will send to the Board, prior to licensure, an initial licensure fee of ~~two hundred fifty dollars (\$250.00)~~ three hundred dollars (\$300.00) when applicant has successfully passed the examinations as required by the Board under Rule .0208 of this Chapter.

Statutory Authority G.S. 90-280.

SECTION .0400 - COURSES OF STUDY

.0404 CONTINUING EDUCATION PROGRAMS OF STUDY

(a) The Board shall certify and administer courses in continuing education for the professional development of nursing home administrators and to enable persons to meet the requirements of these Rules. It is the responsibility of the licensee to keep a record of his continuing education hours. Certified courses, including those sponsored by the Board, an accredited university, college or community college, associations, professional societies, or organizations shall:

- (1) contain a minimum of two classroom hours of academic work and not more than eight classroom hours within a 24-hour period; and
- (2) include instruction in the following general subject areas or their equivalents:
 - (A) Resident Care Management;
 - (B) Personnel Management;
 - (C) Financial Management;
 - (D) Environmental Management;
 - (E) Regulatory Management;
 - (F) Organizational Management.

(b) Certified courses not administered by the Board shall:

- (1) be submitted to the Board for approval at least 30 days prior to the presentation of the program;
- (2) be accompanied with a fee of ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) to cover the cost of reviewing and maintaining records associated with the continuing education program; and

- (3) be approved for a period of one year from the date of initial presentation.

(c) The Board shall charge a fee pursuant to G.S. 90-280 for continuing education courses.

Statutory Authority G.S. 90-278; 90-280; 90-285; 90-286.

SECTION .0500 - ADMINISTRATOR -IN-TRAINING

.0502 APPLICATION TO BECOME ADMINISTRATOR-IN-TRAINING

(a) The applicant will submit to the Board an application, which shall contain such information as name, education, employment history, questions pertaining to moral character, and any other information the Board may require to process an application according to these Rules, and an affidavit stating that the applicant, if granted a license, will obey the laws of the state and the rules of the Board, and will maintain the honor and dignity of the profession.

(b) The applicant will submit a background resume indicating the areas in which he is competent or lacking.

(c) The applicant will submit three reference forms which shall certify to his or her good moral character as required and defined by Rule .0303 of this Chapter.

(d) The applicant will supply a certified copy of each college transcript indicating the courses completed and hours earned, specifying whether semester or quarter hours. Instead of a transcript the applicant will supply documentation of his supervisory experience in a nursing home if he is utilizing the experience substitute for the education requirement as allowed by G.S. 90-278(1)b.

(e) The preceptor shall submit to the Board three weeks prior to the personal interview, a recommended number of weeks and an individualized curriculum for the AIT program that shall provide the AIT with on the job experience in the six subject areas outlined in Section .0700 of this Chapter.

(f) A fee of ~~one hundred dollars (\$100.00)~~ one hundred fifty dollars (\$150.00) shall be submitted with the application.

(g) An AIT applicant must maintain at all times a current mailing address with the Board office.

Statutory Authority G.S. 90-278; 90-280; 90-285.

SECTION .0600 - EXAMINATION

.0603 EXAMINATION

(a) There shall be a charge of ~~one hundred seventy-five dollars (\$175.00)~~ two hundred dollars (\$200.00) to take the national examination and ~~sixty dollars (\$60.00)~~ seventy five dollars (\$75.00) to take the state examination.

(b) If the applicant does not pass the examination, no refund will be made.

(c) The applicant will be required to pay the appropriate

fee each time he takes the examination.

(d) Upon the third failure of any examination required by the Board, the AIT and the preceptor must submit to the Board a program to strengthen the candidate's weakness as demonstrated by the previous test results. Upon approval by the Board of the program and completion thereof by the candidate, he shall be allowed to take the examinations.

Statutory Authority G.S. 90-278; 90-280; 90-284; 90-285.

SECTION .0900 - LICENSES

.0912 RECIPROCITY/ENDORSEMENT

(a) The Board may issue a license, to a nursing home administrator who holds a nursing home administrator license issued by the proper authorities of any other state, upon payment of the current licensing fee, successful completion of the state examination, and submission of evidence satisfactory to the Board as to the following:

- (1) such applicant for licensure must have personal qualifications, education, training or experience at least substantially equivalent to those required in this state;
- (2) such applicant must be licensed in another state that gives similar recognition and reciprocity/endorsement to nursing home administrator licenses of this state; and
- (3) such applicant for license by reciprocity/endorsement holds a valid license as a nursing home administrator in the state from which he is transferring.

(b) An applicant for reciprocity/endorsement shall submit a completed application, background resume, certified college transcript(s), three reference forms (one of which must be from a previous employer) from individuals who shall certify to the good moral character of the applicant as defined in Rule .0303 of this Chapter, licensing questionnaire(s) from every state where the applicant has held a license, a ~~seventy-five dollar (\$75.00)~~ one hundred twenty five dollar (\$125.00) application fee, and appear before the Board for a personal interview.

(c) The Board shall have the power, after due notice and an opportunity to be heard at a hearing, to revoke or suspend the nursing home administrator license issued to any person under this Rule upon evidence satisfactory to the Board that the duly constituted authorities of any other state have lawfully revoked or suspended the nursing home administrator license issued to such person by such state.

(d) All persons who hold a valid provisional license or who have completed the requirements for a provisional license as of the amended effective date of this Rule shall be issued a full license upon submission (within 12 months from the effective date of this Rule) to the Board their provisional license or payment of the licensing fee is applicable.

Statutory Authority G.S. 90-280; 90-285; 90-287.

.0914 DUPLICATE LICENSES

Upon receipt of satisfactory evidence that a license or certificate of registration has been lost, mutilated, or destroyed, the Board may issue a duplicate license or certificate of registration upon payment of a fee of ~~ten dollars (\$10.00)~~ twenty five dollars (\$25.00).

Statutory Authority G.S. 90-280(d).

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Community Colleges intends to adopt rules cited as 23 NCAC 2C .0108, .0211 and .0306.

Proposed Effective Date: September 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on May 31, 1995 at the NC Community College System, Caswell Building - State Board Room, 200 W. Jones Street, Raleigh, NC 27603-1379.

Reason for Proposed Action:

23 NCAC 2C .0108 - To authorize community colleges to adopt educational guarantee policies.

23 NCAC 2C .0211 - To regulate contract buy outs of community college employee contracts.

23 NCAC 2C .0306 - To develop a system-wide plan for accommodating students and preserving student records in the event a community college closes.

Comment Procedures: Individuals who plan to make oral presentations must submit their remarks in writing to the hearing officer. A ten-minute or less time limit per person may be imposed for oral presentations. Interested persons may submit written statements from the date of this notice until May 31, 1995, delivered or mailed to Morris W. Johnson, Jr., Hearing Officer, NC Community College System, 200 W. Jones Street, Raleigh, NC 27603-1379.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0100 - TRUSTEES AND COLLEGES

.0108 EDUCATIONAL GUARANTEE

(a) The North Carolina State Board of Community Colleges believes in the quality of its students, faculty, and staff. It further believes that all colleges in the system should provide the knowledge and the skills needed to succeed in today's workplace and at other colleges and universities.

(b) The State Board encourages and authorizes local boards of trustees to adopt educational guarantee policies for their colleges. Any educational guarantee policy adopted by a board of trustees shall:

- (1) Be developed in an atmosphere that provides maximum input from faculty, staff, students, employers, university representatives, and community leaders.
- (2) Identify the programs or activities to be guaranteed. This may include the entire program or specific courses. The goal of the system is to include all programs at all community colleges.
- (3) Define the skills, knowledge, or credits to be guaranteed. This may include the guarantee to transfer earned credits taken in transfer programs and the guarantee of technical knowledge and skills needed for successful employment in occupations for graduates of vocational and technical programs.
- (4) Define the population of students who will receive guarantees. This would include the identification of students, both full-time and part-time, for which the guarantee applies.
- (5) Define any special conditions of the guarantee. This would include a time limit and grade achievement.
- (6) Describe how the guarantee may be invoked and how it will be honored.
- (7) Define the educational services or other benefits a student who seeks the guarantee will receive. This could include reimbursement from non-state funds, re-enrollment, tutoring, or counseling.
- (8) State that re-enrolled students shall not pay tuition or fees associated with re-enrollment or other related services. Budget FTE shall not be earned for re-enrolled students.
- (9) Set forth the process to be used by students to invoke the guarantee and the steps to be used by the college to improve the programs in question.

Statutory Authority G.S. 115D-5.

SECTION .0200 - PERSONNEL

.0211 CONTRACT BUY OUTS

(a) Contracts entered into by boards of trustees may not be bought out with state funds, unless required by a court of competent jurisdiction. The parties entering into a

contract are responsible for implementing the contract. Therefore, should it become necessary to terminate employment prior to the expiration of a contract and if it is necessary to buy out the contract, such payment shall not be paid from state funds.

(b) An individual in a state-funded position whose employment is terminated prior to the expiration of a contract may not be re-employed by the college to offset the lost wages which the employee would have received under the contract. All efforts should be made to prevent terminations which require the buying out of contracts.

(c) If an individual whose employment contract has been terminated enters into another employment agreement with the college, such employment shall be for a salary commensurate with the services being performed. Such employment shall not be to provide the employee the same level of compensation he or she would have received under the former contract.

Statutory Authority G.S. 115D-5; 115D-20.

SECTION .0300 - STUDENTS

.0306 COMMUNITY COLLEGE CLOSURE: TEACH-OUT PLAN AND RECORDS PRESERVATION

(a) Any community college which closes shall inform each student and each applicant of its pending closure at least 90 days prior to closure.

(b) Prior to closure, college officials shall help students identify equivalent programs and provide assistance in transferring to other community colleges. A student who is displaced due to a community college closing may transfer to any other community college which offers the student's program without loss of credits or quality points. Community colleges shall give priority admission and placement to transfer students who have been displaced due to a community college closing.

(c) Before closing, the college shall file a copy of all student permanent academic and financial aid records with the Department of Cultural Resources in accordance with the records retention process.

Statutory Authority G.S. 115D-5.

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).

DEPARTMENT OF COMMERCE

Banking Commission

<p>4 NCAC 31 .0101 - Definitions; Filings Agency Revised Rule</p> <p>4 NCAC 31 .0402 - Annual Statement Agency Revised Rule</p>	<p>RRC Objection 04/20/95 Obj. Removed 04/20/95</p> <p>RRC Objection 04/20/95 Obj. Removed 04/20/95</p>
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DEPARTMENT OF CULTURAL RESOURCES

Art Works in State Buildings Program

<p>7 NCAC 12 .0002 - Transfer of Funds Rule Withdrawn by Agency</p> <p>7 NCAC 12 .0003 - Program Administration Rule Withdrawn by Agency</p> <p>7 NCAC 12 .0005 - Selection, Installation, and Maintenance Rule Withdrawn by Agency</p> <p>7 NCAC 12 .0006 - Maintenance, Repair and Conservation Rule Withdrawn by Agency</p>	<p>03/16/95</p> <p>03/16/95</p> <p>03/16/95</p> <p>03/16/95</p>
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Division of State Library

<p>7 NCAC 2E .0301 - Qualifications for Grants Agency Revised Rule</p>	<p>RRC Objection 04/20/95 Obj. Removed 04/20/95</p>
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ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

<p>15A NCAC 16A .0104 - Co-Payments Agency Revised Rule</p> <p>15A NCAC 16A .0109 - Covered Services Agency Revised Rule</p>	<p>RRC Objection 03/16/95 Obj. Removed 03/16/95</p> <p>RRC Objection 03/16/95 Obj. Removed 03/16/95</p>
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Coastal Management

<p>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas Rule Returned to Agency</p> <p>15A NCAC 7M .0202 - Policy Statements Rule Returned to Agency</p>	<p>RRC Objection 03/16/95 Obj. Cont'd 04/20/95</p> <p>RRC Objection 03/16/95 Obj. Cont'd 04/20/95</p>
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Environmental Health

<p>15A NCAC 18A .2801 - Definitions Rule Approved as Written</p> <p>15A NCAC 18A .2810 - Specifications for Kitchens, Based on Number/Children Agency Revised Rule</p> <p>15A NCAC 18A .3204 - Sewage Disposal Agency Revised Rule</p> <p>15A NCAC 18A .3209 - Tattooing Procedures Agency Revised Rule</p>	<p>RRC Objection 01/19/95 Obj. Removed 02/16/95</p> <p>RRC Objection 01/19/95 Obj. Removed 02/16/95</p> <p>RRC Objection 03/16/95 Obj. Removed 03/16/95</p> <p>RRC Objection 03/16/95 Obj. Removed 03/16/95</p>
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Environmental Management

15A NCAC 2D .0902 - Applicability Agency Revised Rule	RRC Objection 04/20/95 Obj. Removed 04/20/95
15A NCAC 2D .1204 - Reporting and Recordkeeping Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 2D .1404 - Recordkeeping: Reporting: Monitoring Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 2D .1407 - Non-Utility Boilers and Process Heaters Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 2D .1414 - Tune-Up Requirements Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 2K .0501 - Definitions Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 2D .0502 - Required Minimum Flow for Dams (Not Small Hydro Projects) Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95

Parks and Recreation Area Rules

15A NCAC 12K .0103 - Funding Cycle Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 12K .0104 - Application Schedule Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 12K .0105 - Evaluation of Applications Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 12K .0106 - Grant Agreement Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95
15A NCAC 12K .0111 - Program Acknowledgment Agency Revised Rule	RRC Objection 03/16/95 Obj. Removed 03/16/95

Radiation Protection

15A NCAC 11 .0104 - Definitions Agency Revised Rule	RRC Objection 04/20/95 Obj. Removed 04/20/95
15A NCAC 11 .0503 - Equipment Radiation Level Limits Agency Revised Rule	RRC Objection 04/20/95 Obj. Removed 04/20/95

Wildlife Resources and Water Safety

15A NCAC 10C .0205 - Public Mountain Trout Waters Agency Revised Rule	RRC Objection 04/20/95 Obj. Removed 04/20/95
15A NCAC 10F .0330 - Carteret County Agency Revised Rule	RRC Objection 04/20/95 Obj. Removed 04/20/95
15A NCAC 10K .0001 - Course Requirements Rule Withdrawn by Agency	04/20/95

HUMAN RESOURCES**Aging**

10 NCAC 22R .0202 - County Funding Plans Agency Revised Rule	RRC Objection 04/20/95 Obj. Removed 04/20/95
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Facility Services

10 NCAC 3R .3030 - Facility and Service Need Determinations	RRC Objection 03/16/95
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Agency Revised Rule
 10 NCAC 3U .1001 - Seat Restraints
Agency Revised Rule

Obj. Removed 03/16/95
RRC Objection 03/16/95
Obj. Removed 03/16/95

Medical Assistance

10 NCAC 26H .0104 - Cost Reporting: Auditing and Settlements
Rule Withdrawn by Agency
 10 NCAC 26M .0301 - Program Definition
Agency Revised Rule
 10 NCAC 26M .0302 - Access to Care
Agency Revised Rule
 10 NCAC 26M .0303 - Patient Informing
 10 NCAC 26M .0304 - Relationship with Carolina Access
Agency Revised Rule
 10 NCAC 26M .0305 - Relationship with EPSDT program
Agency Revised Rule
 10 NCAC 26M .0306 - Relationship with Sub-Contractors
Agency Revised Rule
 10 NCAC 26M .0307 - Utilization Review Requirements
Agency Revised Rule
 10 NCAC 26M .0308 - Enrollee and Sub-Contractor Appeals and Grievances

04/20/95
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INSURANCE

Actuarial Services Division

11 NCAC 16 .0601 - Definitions
Agency Revised Rule
 11 NCAC 16 .0602 - HMO General Filing Requirements
Agency Revised Rule
 11 NCAC 16 .0607 - HMO Incurred Loss Ratio Standards
Agency Revised Rule

RRC Objection 03/16/95
Obj. Removed 03/16/95
RRC Objection 03/16/95
Obj. Removed 03/16/95
RRC Objection 03/16/95
Obj. Removed 03/16/95

LICENSING BOARDS AND COMMISSIONS

Board of Cosmetic Art Examiners

21 NCAC 14F .0014 - Salon Renewal
No Response from Agency
 21 NCAC 14I .0401 - App. for Lic. by Individuals Who Have Been Convicted of a Felony
No Response from Agency
 21 NCAC 14I .0402 - Requests for Preapplication Review of Felony Convictions
No Response from Agency

RRC Objection 03/16/95
Obj. Cont'd 04/20/95
RRC Objection 03/16/95
Obj. Cont'd 04/20/95
RRC Objection 03/16/95
Obj. Cont'd 04/20/95

Board of Examiners of Electrical Contractors

21 NCAC 18B .0901 - Applicants Convicted of Crimes
No Response from Agency
Agency Revised Rule

RRC Objection 01/19/95
Obj. Cont'd 02/16/95
Obj. Removed 03/16/95

Licensing Board for General Contractors

21 NCAC 12 .0701 - Improper Practice
Rule Withdrawn by Agency

04/20/95

Board of Opticians

<p>21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration Agency Revised Rule No Response from Agency Agency Responded No Response from Agency Rule Returned to Agency</p>	<p>RRC Objection 11/17/94 Obj. Cont'd 11/17/94 Obj. Cont'd 12/15/94 Obj. Cont'd 01/19/95 Obj. Cont'd 02/16/95 03/16/95</p>
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PUBLIC EDUCATION

Elementary and Secondary Education

<p>16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans Agency Responded Agency Revised Rule</p>	<p>RRC Objection 02/16/95 Obj. Cont'd 03/16/95 Obj. Removed 04/20/95</p>
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REVENUE

Sales and Use Tax

<p>17 NCAC 7B .1123 - Certain Sales to Commercial Livestock and Poultry Farmers 17 NCAC 7B .5436 - Farmer's Certificate Form: E-599 Agency Repealed Rule 17 NCAC 7B .5437 - Veterinarian's Certificate Form: E-567 Agency Repealed Rule 17 NCAC 7B .5445 - Commercial Swine, Livestock/Poultry Farmers' Cert. Form: E-599S Agency Repealed Rule 17 NCAC 7B .5462 - Ice Certificate Form Rule Withdrawn by Agency</p>	<p>RRC Objection 03/16/95 Obj. Removed 04/20/95 RRC Objection 03/16/95 Obj. Removed 03/16/95 RRC Objection 03/16/95 Obj. Removed 03/16/95 RRC Objection 03/16/95 Obj. Removed 04/20/95 03/16/95</p>
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SECRETARY OF STATE

Notary Public Division

<p>18 NCAC 7 .0301 - Approved Course of Study No Response from Agency Rule Returned to Agency 18 NCAC 7 .0302 - Instructors No Response from Agency Rule Returned to Agency</p>	<p>RRC Objection 12/15/94 Obj. Cont'd 01/19/95 Obj. Cont'd 02/16/95 RRC Objection 12/15/94 Obj. Cont'd 01/19/95 Obj. Cont'd 02/16/95</p>
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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.

DECISION CITATION	AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED REGISTER
ADMINISTRATION					
<i>Division of Purchase and Contract</i>					
Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract		94 DOA 0803	Nesnow	03/06/95	
<i>State Construction Office</i>					
W. M. Piatt & Company v. State Construction Office, DOA		94 DOA 0738	Nesnow	04/11/95	10:3 NCR 221
ALCOHOLIC BEVERAGE CONTROL COMMISSION					
Norman D. Forbes v. Alcoholic Beverage Control Commission		94 ABC 0787	Gray	03/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission		94 ABC 1168	Becton	03/07/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.		94 ABC 1694	Mann	03/29/95	
Diamond Club, Inc. v. Alcoholic Beverage Control Commission		94 ABC 1803	Mann	04/07/95	
CRIME CONTROL AND PUBLIC SAFETY					
<i>Crime Victims Compensation Commission</i>					
John Pavlikianidis v. Victims Compensation Commission		94 CPS 0237	Morrison	03/21/95	10:2 NCR 176
Wayne L. Utley v. Crime Victims Compensation Commission		94 CPS 1180	Becton	03/07/95	
Thomasine Inman v. Crime Victims Compensation Commission		94 CPS 1731	Nesnow	03/09/95	
Irmgard Gordos v. Crime Victims Compensation Commission		94 CPS 1782	Gray	03/09/95	
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* Consolidated cases.

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Edwin A. Clarke v. Department of Human Resources	93 CSE 1319	Chess	03/08/95	
Lloyd Lane Speake v. Department of Human Resources	93 CSE 1451	Chess	03/22/95	
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JUSTICE

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<i>Iredell County Department of Social Services</i>				
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<i>Orange-Person-Chatham Mental Health</i>				
Patricia A. Harris v. Orange-Person-Chatham Mental Health	95 OSP 0162	West	04/11/95	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Michael E. Kornegay v. Department of Transportation	93 OSP 1700	Gray	03/24/95	
<i>UNC Hospitals</i>				
David Patrick Malone v. Univ. of NC Hospital at Chapel Hill	94 OSP 0771	Becton	03/14/95	

**STATE CONSTRUCTION OFFICE, NORTH
CAROLINA DEPARTMENT OF ADMINISTRATION,
Respondent.**

RECOMMENDED DECISION

APPEARANCES

ISSUES

1. Did the State of North Carolina (State) amend the terms of its contract with the Petitioner to include the design of an alum sludge disposal facility and thereafter breach the contract by refusing to pay Petitioner for such design?
2. Is the Petitioner entitled to recover in quantum meruit for the design of an alum sludge disposal facility?

STIPULATED FACTS

1. All parties are properly before the Court, and the Court has jurisdiction over the parties and the subject matter of the proceeding.
2. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

ADJUDICATED FACTS

1. On December 15, 1985, the State of North Carolina (State) selected W. M. Piatt and Company (Piatt) as the designer for the renovation project known as Phase II Water Plant Improvements at John Umstead Hospital in Butner, North Carolina.
2. On May 21, 1986 Piatt and the State executed a State of North Carolina Standard Form of Agreement Between Owner and Designer contract.
3. This contract provided that the scope of work consisted of "Phase II Water Plant Improvements at John Umstead Hospital, insofar as funds available will permit."
4. Article II of the contract provided that the State would pay the designer for additional design work authorized by the State if the "Owner, with the approval of the Division of State Construction requests in writing that the designer perform services over, above and beyond the basic services described in Article I, hereof,"
5. At a meeting on February 27, 1986 which was memorialized by a letter dated March 4, 1986, Piatt indicated that he had been directed by a representative of the State to do design work for the alum sludge facility.
6. The Business Manager of John Umstead Hospital, Gene Barrett, testified that no such direction was given

to Piatt at that meeting or at any other time.

7. Grayson Gurley, who as the Physical Plant Director at Umstead during the time at issue, testified that he saw "blue line" plans for the whole project including the alum sludge facility but that he had never told Piatt to do a design for the alum sludge facility.

8. "Design" is a term of art used in the construction industry and understood to be an advanced step in the process. It is a term not commonly associated with providing cost estimates.

9. Paragraph B(2) of the Design Agreement states that "[F]or the designer's additional services as described in Article II hereinafter, a fee must be agreed upon with the Owner and Division of State Construction prior to beginning the work. The agreement must be in writing and attached as an amendment to this agreement." This was not done.

10. In a letter to Gene Barrett, dated March 4, 1986, Piatt stated that the following items could be added: "... Provide facilities for disposal of alum sludge utilizing sand-drying beds constructed so as to permit removal with vac-all equipment, which equipment will be provided under the waste water treatment plan improvement project. The last group of items will require some additional study and revisions to the estimate of costs. We will make these studies and estimates as quickly as possible and will report them to you for your review and approval. Though some of the items mentioned above will decrease the cost of the project originally proposed, we believe the additional items will increase the total cost so that it will be necessary to supplement the original funds and modify the fee. Until further work is done, we cannot give an opinion as to what the funding requirements will be."

11. The alum sludge design was not to be included as a part of the Phase II Water Plant Improvements.

12. There was no intent or agreement by the parties that this design would be included as a part of Phase II.

13. The amount of money appropriated for all of Phase II was \$870,000.00.

14. A letter to Gene Barrett dated June 26, 1987, from Piatt, clearly stated that alum sludge facilities including pump station piping lagoons, access road, heating and electrical work would cost approximately \$780,000.00.

15. This letter establishes that Piatt knew that Phase III, the alum sludge facility work, could not be included as a part of the Phase II appropriation.

16. Although Piatt asserted that the State knew he was doing the design work on the alum sludge facility, no evidence, other than Mr. Piatt's testimony, was offered to prove this assertion.

17. On February 21, 1992, Piatt submitted to Lehman Brinkley, the Business Manager at John Umstead Hospital at that time, Piatt's statement for services rendered on the Phase III design work, which amount was \$53,576.64.

18. This was the first time this bill was submitted to the State for this design work.

19. The State did not voluntarily and knowingly accept Piatt's work nor did the State receive any benefit from this work.

CONCLUSIONS OF LAW

1. The State and Piatt are bound by the terms of the contract that they signed.

2. Piatt did not comply with the contract requirement that a fee be agreed on with the owner and the Division of State Construction prior to beginning the work.

3. The "agreement" was not in writing and attached as an amendment to the agreement as required by the contract.

4. There was no parol agreement between the parties and the written contract therefore, was not amended in such manner.

5. The State did not breach its design contract with Piatt.

6. The State did not accept the design work done by Piatt on the alum sludge facility in that no one at Umstead used that design work and no one, with the exception of Grayson Gurley, saw the design.

7. The State is not liable to Piatt in quantum meruit under this contract because it did not accept or use the design created by Piatt.

8. The State did not exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously or fail to act as required by law or rule in performing this contract with Piatt.

RECOMMENDED DECISION

It is recommended that Piatt receive nothing from the State pursuant to this contract.

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, North Carolina, 27611-7447, in accordance with North Carolina General Statutes 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 is the North Carolina Department of Administration.

This the 11th day of April, 1995.

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.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
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2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
	Crime Control & Public Safety	Geologists	21
14A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
		Landscape Architects	26
15A	Public Education	Landscape Contractors	28
	Revenue	Marital and Family Therapy	31
16	Secretary of State	Medical Examiners	32
17	Transportation	Midwifery Joint Committee	33
18	Treasurer	Mortuary Science	34
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19A	Administrative Procedures	Nursing Home Administrators	37
20	Community Colleges	Occupational Therapists	38
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