

NORTH CAROLINA



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
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		Plumbing, Heating & Fire Sprinkler Contractors	50
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		Professional Counselors	53
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		Real Estate Commission	58
		Refrigeration Examiners	60
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	01/17/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	01/31/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	02/16/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/02/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	03/16/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	03/30/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	04/17/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/01/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/16/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	05/30/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	06/18/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
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16:01	07/02/01	06/11/01	09/04/01	07/17/01	07/17/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	07/31/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
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16:04	08/15/01	07/25/01	10/15/01	08/30/01	08/30/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
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16:11	12/03/01	11/07/01	02/01/02	12/18/01	12/18/01	01/22/02	05/00/02	02/01/02	02/20/02	05/00/02	08/30/02
16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/02/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings 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 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 1

THE NORTH CAROLINA BOARD OF ETHICS

WHEREAS, the people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest; and

WHEREAS, to maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence; and

WHEREAS, elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions; and

WHEREAS, acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest and such power cannot be used to advance narrow interest for oneself, other persons, or groups; and

WHEREAS, self interest, partiality, and prejudice have no place in decision making for the public good; and

WHEREAS, Public Officials must exercise their duties responsibly with skillful judgment and energetic dedication; and

WHEREAS, Public Officials must exercise discretion with sensitive information pertaining to public and private persons and activities; and

WHEREAS, to maintain the integrity of North Carolina's state government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect; and

WHEREAS, because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists; and

WHEREAS, the State of North Carolina is committed to the responsible exercise of authority by persons of honor and good will in their government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

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

Section 1. Rescission of Executive Order No. 127, as amended.

Executive Order Number 127, dated January 16, 1998, and all subsequent amendments thereto, including Executive Order 131 dated March 25, 1998, are hereby rescinded. All records, including Statements of Economic Interest and other resources of the North Carolina Board of Ethics created pursuant to Executive Order Number 127, as amended, are transferred to the North Carolina Board of Ethics created herein.

Section 2. North Carolina Board of Ethics – Creation & Term of Service

There is hereby established the North Carolina Board of Ethics ("the Board"). The Board shall consist of seven persons appointed by the Governor. To provide for staggered terms, the Governor shall appoint three members to serve initial terms of two years, two members to serve initial terms of three years, and two members to serve initial terms of four years. Thereafter, each member shall serve a term of four years. No member shall be removed from the Board absent misfeasance, malfeasance, or nonfeasance as determined by the Governor. The Governor shall, from time to time, designate one of the members as Chair. The members shall receive no compensation, but shall receive reimbursement for any necessary expenses incurred in connection with the performance of their duties pursuant to North Carolina law and procedure. Vacancies on the Board shall be filled for the remainder of the term by appointment of the Governor.

Section 3. Persons Subject to this Executive Order

The following persons are subject to this Executive Order and to the jurisdiction of the Board and shall hereafter be referred to as "Public Officials":

- (a) All employees in the Office of the Governor.
- (b) The heads of all "principal departments" (as set out in North Carolina General Statutes ("N.C.G.S.") §143B-6, as amended from time to time¹) who are appointed by the Governor, and their chief deputies or chief administrative assistants.
- (c) All "confidential" assistants or secretaries to the aforesaid department heads (or to the aforesaid chief deputies and assistants of department heads) as defined in N.C.G.S. §126-5(c)(2).
- (d) All employees in "exempt positions" (as that term is defined in N.C.G.S. §126-5(b)) as designated by the Governor pursuant to the State Personnel Act; all employees in exempt positions in the Cabinet Department as designated by the Governor per §126-5(d)(1); and all employees in additional positions designated as exempt by the Governor per §126-5(d)(2a).
- (e) Any other exempt employees in the principal departments as defined above who are appointed by the Governor, or designated by the Governor upon the recommendation of the Board, to the extent such

¹ Currently, such "principal departments" include the following: Administration; Correction; Crime Control & Public Safety; Cultural Resources; Commerce; Environment and Natural Resources; Health & Human Services; Juvenile Justice and Delinquency Prevention; Revenue; and Transportation.

designation does not conflict with the State Personnel Act.

(f) Gubernatorial appointees to non-advisory boards, commissions, councils, committees, task forces, authorities, or similar public bodies, however denominated (hereinafter "boards") located within the Executive branch of State government. Final determination of whether a board, commission, or council is "advisory" shall be made by the Board according to its standards and criteria.

(g) Individuals made subject to this Executive Order pursuant to Section 4 below.

(h) Members of the Board.

The departments, agencies, authorities, boards, commissions, councils, and other State entities identified above in which Public Officials serve are hereafter collectively referred to as "Agencies" (or "Agency" as the context may require).

Section 4. Other Public Officials.

(a) The Board of Governors of the University of North Carolina System, the President Pro Tempore of the North Carolina Senate, the Speaker of the North Carolina House of Representatives, and each of the elected heads of the Council of State agencies (the Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance), are invited to participate in this Executive Order.

(b) Those desirous of participating shall notify the Board in writing. The notification shall specify the exempt employees and appointees who shall become Public Officials under this Order and shall include the name of the board or position to which the Official is appointed, the appointee's address and telephone number, and the effective and expiration dates of their appointment.

(c) All Public Officials brought within the coverage of this Order under this Section shall be subject to and comply with all applicable provisions of the Order, including, without limitation, the duty to timely file a Statement of Economic Interest pursuant to Section 9 below. All appointing authorities listed above shall, prior to or as soon as reasonably practicable after designating an individual as a Public Official covered under this Order, provide such Public Official with copies of this Order (together with any subsequent amendments thereto) and any financial disclosure forms required by Section 9 below, including the Statement of Economic Interest form or forms.

(d) All services of the Board available to the Governor under this Order shall be available to each of the heads of the participating Agencies. All services of the Board available to Public Officials under this Order shall be available to those brought within the coverage of this Order under this Section.

Section 5. Duties and Powers of the Board.

(a) General Duties

- (1) The Board shall provide reasonable assistance to Public Officials in complying with the terms of this Order.
- (2) The Board shall develop readily understandable forms, policies, rules, and procedures to accomplish the purposes of this Order.
- (3) The Board shall interpret the provisions of this Order and such interpretations shall be binding on all Public Officials. Any conflict between a provision in this Order and other North Carolina law (such as the North Carolina Administrative Code, North Carolina General Statutes, and State Constitution) shall be resolved in favor of the law.
- (4) The Board shall submit a report annually to the Governor on its activities and generally on the subject of public disclosure, ethics, and conflicts of interest. The report shall include such recommendations for administrative and legislative action as the Board deems appropriate.
- (5) The Board shall meet as often as it deems necessary to carry out its duties under this Order. A meeting may be called by the Chair or by a majority of its members upon request to the Chair or person acting in his or her stead.
- (6) The Board shall perform such other duties as may be necessary to accomplish the purposes of this Order.

(b) "Statement of Economic Interest" Review and Evaluation

- (1) The Board shall review all Statements of Economic Interest (hereinafter "Statements" or "SEI") filed by prospective or actual Public Officials to evaluate whether:
 - (a) the Statements conform with the terms of this Order;
 - (b) the Statements comply with the Board's forms, policies, and procedures; and
 - (c) the financial, familial, and personal interests and other information reported reveals an actual or potential conflict of interest.
- (2) The Board shall submit a written evaluation of each Statement to the following:
 - (a) the Public Official who submitted the Statement;
 - (b) the chair of each covered board on which the Public Official serves;
 - (c) the Governor for gubernatorial appointees and employees in the Office of the Governor; and
 - (d) the appointing or hiring authority for those Public Officials subject to this Order.

The Board shall make every reasonable effort to evaluate Statements filed by actual or prospective Public Officials as promptly as possible. The Board may not accept and shall not evaluate Statements voluntarily or inadvertently submitted by those who are not Public Officials covered under this Order, including, without limitation, appointees to advisory boards or employees or appointees in other branches of State government.

(c) Complaints Against Public Officials

- (1) The Board shall investigate legitimate, properly-filed complaints against covered Public Officials according to rules or regulations it may adopt for that purpose. The Board may not investigate and shall not accept complaints filed against employees or appointees who do not come under its jurisdiction pursuant to this Order. Any person may file a complaint with the Board regarding actions of any Public Official covered by this Order which constitute a violation of the Order. A complaint shall include:
 - (a) the name, address, and telephone number of the individual filing the complaint (“the complainant”);
 - (b) the name and job title or appointive position of the Public Official against whom the complaint is filed; and
 - (c) a concise statement of the nature of the complaint and specific facts indicating that a violation of this Order has occurred.

Complaints filed against Public Officials pursuant to this subsection must be filed with the Board within ninety (90) days of when the complainant knew or should of known of the conduct complained of. The Board may decline to accept or investigate any attempted complaint which does not contain any of the aforementioned information, or the Board may, at its sole option and discretion, request additional information be provided by the complainant within a specified reasonable amount of time (such time to be not less than seven (7) business days), barring which the attempted complaint may be dismissed.

- (2) In addition to the foregoing, the Board may decline to accept or investigate a complaint if it determines that
 - (a) the complaint is frivolous or brought in bad faith,
 - (b) the individuals and conduct complained of have already been the subject of a prior complaint, or
 - (c) the conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other Federal, State, or Local agencies or authorities, including, but not limited to, law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed pursuant to this Section, the Board shall stay its complaint investigation pending final resolution of such other investigation.
- (3) The Board also is authorized to unilaterally initiate investigations upon the request of any Board member if, in the Board member's discretion, there is reason to believe that a Public Official has or may have violated this Executive Order. There is no time limit on Board-initiated complaint investigations under this subsection. In determining whether there is reason to believe that a violation has or may have occurred, a Board member can take general notice of available

information even if not formally provided to the Board in the form of a complaint.

- (4) The Board shall promptly notify Public Officials that a complaint has been filed or initiated against them. A Public Official against whom a complaint is filed, and all other individuals against whom allegations are made in a complaint, shall be given an opportunity to file a written response with the Board. As provided in Section 10 of this Order, the Board may utilize the services of hired investigators when conducting investigations.
- (5) Public Officials shall promptly and fully cooperate with the Board in any Board related investigations. Failure to cooperate fully with the Board in any investigation shall be grounds for sanctions as set forth in Section 8 of this Order.
- (6) To the extent possible and consistent with Chapter 132 of the North Carolina General Statutes (the “Public Records Law”), it is the intent of this Order that all preliminary and ongoing investigative materials and information not be disclosed until such investigation is completed, at which time the Board shall issue its official findings and recommendations. To the extent the Board deems it necessary or advisable to enhance compliance with this Order and raise the level of ethical awareness in public service, the Board may periodically publish (either in complete or summary form) its official findings and recommendations made pursuant to third-party or Board-initiated complaint investigations. The Board shall forward a copy of its official findings and recommendations to:
 - (a) the Public Official whose conduct is at issue;
 - (b) the complainant (if applicable);
 - (c) the head of the Agency in which the Public Official serves (which term includes the chair of each covered board) ;
 - (d) the Governor for all gubernatorial appointees and employees in the Office of the Governor; and,
 - (e) the official responsible for hiring or making the appointment of the person investigated.

(d) Advisory Opinions

The Board shall render advisory opinions as may be requested by any Public Official, any individual not otherwise a Public Official who is responsible for the supervision or appointment of someone who is a Public Official, Agency heads (which term includes the chair of each covered board), and legal counsel for covered Agencies or boards. The request shall be in writing and relate prospectively to real or reasonably-anticipated fact settings or circumstances. The Board shall issue advisory opinions having prospective application only. Advisory opinions are not intended to and shall not serve as substitute or *de facto* complaints against Public Officials for past conduct. Staff to the Board may issue advisory opinions under such circumstances and procedures as may be prescribed by the Board.

(e) Ethics Education and Awareness Program.

- (1) The Board shall develop and implement an ethics education and awareness program designed to instill in all Public Officials a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflict of interest.
- (2) Upon request, the Board shall make basic ethics education and awareness presentations to all Agency heads, their chief deputies or assistants, and all other Public Officials subject to this Order. Such presentations shall stress the Rules of Conduct for Public Officials as set out below and provide attendees with practical tools to aid in identifying and neutralizing real or potential conflicts of interest. Covered Public Officials and those responsible for appointing, supervising, or advising such Public Officials are strongly encouraged to attend a basic ethics education and awareness presentation as soon as reasonably practicable.
- (3) In addition, upon request the Board shall assist each Agency in developing such in-house educational programs, procedures, workshops, or seminars as are necessary or desired to meet the Agency's particular needs for ethics education, conflict identification, and conflict avoidance.
- (4) The Board shall produce and distribute to all Public Officials a newsletter designed to further the goals and objectives of this Order. In particular, such newsletter shall inform Public Officials of the Board's policies, procedures, and opinions having widespread applicability or interest, and shall provide such other information as may be helpful in raising the level of ethical awareness in public service.
- (5) The Board shall assemble and maintain a collection of relevant North Carolina laws, rules, and regulations that set forth ethical standards applicable to Public Officials, which collection shall be made available as resource material to all Public Officials and ethics liaisons upon request.

Section 6. Duties of the "Heads of State Agencies."

- (a) The head of each State Agency (which term includes the chair of each board subject to this Order) shall take an active role in furthering ethics in public service and ensuring compliance with this Order. The head of each State Agency shall make a conscientious, good-faith effort to assist Public Officials within the Agency (or on the board) in monitoring their personal, financial, and professional affairs to avoid taking any action which results in a conflict of interest or the appearance of conflict.
- (b) The head of each State Agency shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Board of Ethics regarding ethics in general and the interpretation and enforcement of this Order. Agency heads shall also maintain familiarity with and stay knowledgeable of the Board's reports, evaluations, opinions, or findings regarding individual Public Officials in his or her Agency or on his or her board or under his or her supervision or control, including all such reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.
- (c) When an actual or potential conflict of interest is cited by the Board of Ethics in regard to a Public Official sitting on a board, then the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the entity's chair as often as necessary to remind all members of the conflict and help ensure compliance with this Order.
- (d) The head of each State Agency shall periodically remind Public Officials under his or her authority of their duties to the public under the Rules of Conduct herein, including the duty of each Public Official to monitor, evaluate, and manage his or her personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.
- (e) At the beginning of any official meeting of a covered board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict pursuant to this Order. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.
- (f) Agency heads shall ensure that legal counsel employed by or assigned to their Agencies are familiar with the provisions of this Order (particularly the Rules of Conduct set out in Section 7 below) and are available to advise Public Officials on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Board of Ethics, seek the Board's assistance or advice, and refer Public Officials and others to the Board of Ethics as appropriate.
- (g) Taking into consideration the individual autonomy, needs, and circumstances of each Agency covered by this Order, Agency heads shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the Agency's particular needs for ethics education, conflict identification, and conflict avoidance. This should include, at a minimum, the periodic presentation to all Agency heads, their chief deputies or assistants, and other Public Officials under their supervision or control of the basic ethics education and awareness presentation outlined in Section 5 above and any other workshop/seminar program the Agency head deems necessary in implementing the provisions of this Order. Agency heads may request reasonable assistance from the Board of Ethics in complying with the requirements of this subsection.
- (h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other Public Officials under their supervision or control, or learning of the appointment or election of other Public Officials to an Agency head's board covered under this Order, all Agency heads shall (1) notify the Board of Ethics of such designation, hiring,

promotion, appointment, or election and (2) provide all such Public Officials with copies of this Order (together with any subsequent amendments thereto) and all applicable financial disclosure forms (including, without limitation, Statement of Economic Interest disclosure form(s) pursuant to Section 9 below), if such materials and forms have not been previously provided to such Public Officials by their appointing authorities. In order to avoid duplication of effort, Agency heads shall coordinate this effort with the Board's staff.

Section 7. Rules of Conduct for Public Officials.

Public Officials shall perform their official duties in a manner to promote the best interests of the public. To help ensure the proper performance of their duties, the following Rules of Conduct are adopted.

(a) Conflicts of Interest

- (1) A Public Official shall not knowingly use his or her position in any manner which will result in financial benefit, direct or indirect, to the Public Official, the Official's family, or an individual with whom or business, organization, or group with which the Public Official is associated. This provision shall not apply to financial and other benefits (a) derived by a Public Official that he or she would enjoy to an extent no greater than that which other citizens of North Carolina would or could enjoy, (b) rightfully gained by a Public Official pursuant to the proper performance of his or her official duties or State employment, or (c) that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the Public Official's ability to protect the public interest and perform his or her official duties would not be compromised.
- (2) A Public Official shall not, directly or indirectly, knowingly ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for himself or herself, or for another person, in return for being influenced in the discharge of his or her official responsibilities, other than that which is received by the Public Official from the State for acting in his or her official capacity.
- (3) A Public Official shall not solicit or receive personal financial gain, other than that received by the Public Official from the State for acting in his or her official capacity, for advice or assistance given in the course of carrying out the Public Official's duties.
- (4) A Public Official shall not use or disclose information gained in the course of, or by reason of, his or her official responsibilities in a way that would affect a personal financial interest of the Public Official, a member of the Official's family, or a person with whom or business, organization, or group with which the Public Official is associated. A Public Official shall not improperly use or disclose any information deemed

confidential by North Carolina law and therefore not a public record.

- (5) A Public Official shall not cause the employment, appointment, promotion, transfer, or advancement of a family member to a State or local office or position which the Public Official supervises or manages. A Public Official shall not participate in an action relating to the disciplining of a member of the Public Official's family.
- (b) Appearances of Conflict
- (1) A Public Official shall make every effort to avoid even the appearance of a conflict of interest. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the Public Official's ability to protect the public interest, or perform public duties, is compromised by familial, personal, or financial interests. An appearance of conflict could exist even in the absence of a true conflict of interest.
 - (2) A Public Official shall take reasonable and appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself, to the extent necessary to protect the public interest and comply with this Order, from any proceeding in which the Public Official's impartiality might reasonably be questioned due to the Official's familial, personal, or financial relationship with a participant in the proceeding. A "participant" includes, but is not limited to, (a) an owner, shareholder, partner, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (b) an organization or group which has petitioned for rulemaking or has some specific, unique, and substantial interest in the proceeding. "Proceeding" includes, but is not limited to, both quasi-judicial proceedings (like contested case hearings) and quasi-legislative proceedings (like most rulemaking). A "personal relationship" includes, but is not limited to, one in a leadership or policy-making position (such as officers or directors) in a business, organization, or group.
 - (3) If a Public Official is uncertain whether the relationship in question justifies removing himself or herself from the proceeding pursuant to this subsection, then the Official shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which, if any, the Public Official will be permitted to participate. If the affected Public Official is the person presiding, then the vice chair or such other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a Public Official is presumptively valid and only subject to review under Section 8 below upon a clear and convincing showing of

mistake, fraud, abuse of discretion, or willful disregard of the provisions of this Order.

(c) **Other Rules of Conduct**

- (1) A Public Official shall make a due and diligent effort before taking any action (such as voting or participating in discussions with other Public Officials on a board) to determine whether he or she has a conflict of interest or appearance of conflict.
- (2) A Public Official shall continually monitor, evaluate, and manage his or her personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

Section 8 Sanctions.

(a) Public Officials serving on boards, commissions, or councils.

The North Carolina General Statutes provide that certain appointees to boards, commissions, and councils may be removed from office for misfeasance, malfeasance, or nonfeasance. The failure of any Public Official serving on a board, commission, or council to comply with this Order is hereby deemed to be misfeasance, malfeasance, or nonfeasance as used in the General Statutes. In the event of misfeasance, malfeasance, or nonfeasance, the offending Public Official shall be subject to removal from the board, commission, or council of which he or she is a member. For gubernatorial appointees, the Governor shall determine whether to remove the Public Official. For all other appointees, the appointing authority shall exercise the discretion of whether to remove the offending Public Official.

(b) Public Officials serving as State employees.

The provisions within this Executive Order are hereby deemed to be written work rules. The failure of any Public Official to comply with this Order shall be a violation of a written work rule thereby permitting disciplinary action as allowed by North Carolina law, including termination from employment. Except for State employees brought under the terms of this Order pursuant to Section 4, the Governor shall make all final decisions on the manner in which offending Public Official State employees shall be disciplined. For State employees subject to this Order pursuant to Section 4, the elected or appointed head of the Agency in which the Public Official State employee works shall determine whether and what disciplinary action shall be taken.

(c) Sanctions issued by the Board of Ethics

If the Board of Ethics determines, after proper review and investigation, that such action is appropriate, the Board may issue such sanctions or rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with the terms of this Order, specifically including, without limitation, Section 7 (Rules of Conduct for Public Officials).

In formulating appropriate sanctions, the Board may consider, without limitation, the following factors:

- (1) the Public Official's prior experience in an Agency or on a covered board and prior opportunities to learn the Rules of Conduct for Public Officials, including those dealing with conflicts of interest and appearances of conflict of interest;
- (2) the number of ethics violations;

- (3) the severity of the violations;
- (4) whether the violations involve the Public Official's financial interests or arise from an appearance of conflict of interest;
- (5) whether the violations were inadvertent or intentional; whether the Public Official knew or should have known that the improper conduct was a violation of this Order;
- (6) whether the Public Official has previously been sanctioned by the Board of Ethics;
- (7) whether the conduct or situation giving rise to the violation was pointed out to the Public Official in the Board's Statement of Economic Interest evaluation letter issued pursuant to Section 9 below;
- (8) the Public Official's motivation or reason for the improper conduct or actions (for example, personal financial gain versus protection of the public interest).

(d) Recommendations by the Board of Ethics.

If the Board of Ethics determines, after proper review and investigation, that such action is appropriate, the Board may recommend any action it deems necessary, including removal of the Public Official from his or her State position, to properly address and rectify any violation of this Order by a Public Official. As it deems necessary and proper, the Board may make referrals to appropriate State officials, including law enforcement officials, for investigation of wrongful conduct by State employees or appointees, regardless of whether the individual is a Public Official under this Order, discovered during the course of a complaint investigation. Nothing in this provision is intended, and shall not be construed, to give the Board of Ethics any independent civil, criminal, or administrative investigative or enforcement power or authority over Public Officials or other State employees or appointees.

Section 9. Statement of Economic Interest.

- (a) Each of the following Public Officials shall file with the Board of Ethics a sworn Statement of Economic Interest ("Statement"):
 - (1) Public Officials appointed by the Governor to a board, commission, or council.
 - (2) Public Officials hired for State employment to a position which is anticipated to have annual compensation in excess of \$40,000 per year.
 - (3) Public Officials appointed or employed whose position is determined by the Board to be particularly susceptible to conflicts of interest.
 - (4) Each prospective Public Official designated under the provisions of Section 9 below to be subject to the Statement filing requirements herein.
 - (5) Prospective Members of the Board.
- (b) Between April 15 and May 15 of each succeeding year after the persons identified in (a) above are appointed or employed, an updated Statement shall be filed with the Board.
- (c) The Statement shall contain:
 - (1) The name, home address, occupation, employer and business address of the person filing.
 - (2) A list of each asset and liability of whatever nature of the filing prospective or actual Public

Official, and his or her spouse, with a value of at least \$10,000. This list shall contain, but shall not be limited to, the following. (As used herein, "Public Official" shall include prospective and actual Public Officials.)

- (a) All North Carolina real estate owned wholly or in part by the Public Official or the Official's spouse.
 - (1) The listing shall include specific descriptions adequate to determine the location of each parcel.
 - (2) The listing shall include the specific interest held by the Public Official and spouse in each identified parcel.
- (b) Real estate that is currently leased or rented to the State.
- (c) Personal property sold to or bought from the State within the preceding two years.
- (d) Personal property currently leased or rented to the State.
- (e) The name of each publicly-owned company in which the value of securities held exceeds \$10,000.
- (f) The name of each non-publicly-owned company or business entity in which the value of securities or other equity interests held exceeds \$10,000. This subsection (f) includes, but is not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

For each non-publicly owned company or business entity listed pursuant to this subsection (f), the filing Public Official shall indicate whether the listed company/entity owns securities or equity interests exceeding a value of \$10,000 in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

- (g) If the filing Public Official, his or her spouse, or dependent children are the Beneficiary of a trust created, established or controlled by the Public Official, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the Public Official, the Statement also shall include a list of businesses in which the trust has an ownership interest exceeding \$10,000.
- (h) The filing Public Official shall make a good faith effort to list any individual or business entity with which the filing Public Official has a financial or professional relationship provided:
 - (1) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a

conflict of interest for the Public Official; or,

- (2) a reasonable person would conclude that any other financial or professional interests of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the Public Official.

For each individual or business entity listed under this subsection, the filing Public Official shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

- (i) A list of all other assets and liabilities with a valuation of at least \$10,000 including bank accounts and debts.
- (j) A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and state income tax returns of the person filing where \$10,000 or more was received from such source.
- (k) If the Public Official is a practicing attorney, an indication of whether he or she, or the law firm with which the Public Official is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars (\$10,000) from any of the following categories of legal representation:
 - (1) Criminal Law;
 - (2) Utilities regulation or representation of regulated utilities;
 - (3) Corporation Law;
 - (4) Taxation;
 - (5) Decedent's estates;
 - (6) Labor Law;
 - (7) Insurance Law;
 - (8) Administrative Law;
 - (9) Real property;
 - (10) Admiralty;
 - (11) Negligence (representing plaintiffs);
 - (12) Negligence (representing defendants); or
 - (13) Local Government.
- (l) A list of all non-publicly owned businesses with which, during the past five years, the Public Official has been associated, indicating the time period of such association and the relationship with each business as an officer, employee, director, partner, or owner. The list also shall indicate whether or not each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.
- (m) A list of all gifts of a value of more than \$200 received during the twelve months preceding the date of the Statement from sources other than the Public Official's family, and a list of all gifts valued in excess of \$100 received from any source having business with, or regulated by, the State.

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- (n) A list of all bankruptcies filed during the preceding five years by the Public Official, the Official's spouse, or any entity in which the Public Official or spouse has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.
- (o) The filing Public Official shall list all directorships on all boards of which he or she is a member.
- (3) In addition to the foregoing, the filing Public Official shall provide in his or her Statement any other information which a reasonable person would conclude is necessary either to carry out the purposes of this Order or to fully disclose any potential conflict of interest or appearance of conflict. If a Public Official is uncertain of whether particular information is necessary, then the Public Official shall consult the Board for guidance.
- (4) Each Statement of Economic Interest shall contain a sworn certification by the filing Public Official that he or she has read the Statement and that, to the best of his or her knowledge and belief, the Statement is true, correct, and complete. The Public Official's sworn certification also shall provide that he or she has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.
- (5) If the Public Official believes a potential for conflict exists, he or she has a duty to inquire of the Board as to that potential conflict.

- (d) The Board shall issue a form for such Statements of Economic Interest as soon as reasonably practicable, and shall revise the form from time to time as necessary to carry out the purposes of this Executive Order.
- (e) All Public Officials currently serving who submitted a Statement of Economic Interest under Executive Order Number 127 shall resubmit a new Statement in accordance with the provisions of this Order. These statements shall be resubmitted to the Board of Ethics on or before May 15, 2001. Between April 15 and May 15 of each succeeding year, Public Officials under this subsection shall file an updated Statement with the Board.

Section 10. Board Staff, Offices, and Funding.

- (a) The Board shall have a minimum staff of three, headed by an Executive Director who shall be an attorney licensed to practice law in the State of North Carolina.
- (b) The Board may engage the services of private investigators as needed to carry out the purposes of this Executive Order.

- (c) All State agencies subject to this Executive Order shall provide reasonable assistance upon request of the Board to carry out the purposes of this Order.
- (d) The Board and its staff, for administrative purposes only, shall be located in the Department of Administration.
- (e) The State Budget Officer is directed to identify sufficient funds from lawfully appropriate sources to ensure that all provisions of this Executive Order are fully carried out.

Section 11. Effective Date.

This Executive Order is effective immediately and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina, this the 12th day of January, 2001.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 2
EXTENDING EXECUTIVE ORDER NOS. 176 AND 178
ISSUED BY GOVERNOR JAMES B. HUNT, JR.**

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

Executive Order Nos. 176 and 178 issued by Governor James B. Hunt, Jr., on December 22, 2000 and December 29, 2000, respectively, are hereby extended for an additional fifteen (15) days from this date based on a review of current market and weather conditions and on the recommendation of the Director of the Division of Emergency Management within the Department of Crime Control and Public Safety.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 19th day January, 2001.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NUMBER NO. 3
BUDGET ADMINISTRATION**

WHEREAS, Article III, Sec. 5(3) of the Constitution of North Carolina provides that the State may not operate at a deficit during the fiscal period covered by a budget. For these purposes, a "deficit" is defined as having been incurred when total expenditures for the fiscal period of the budget exceed the total of receipts during the period, plus the surplus remaining in the State Treasury at the beginning of the period. The fiscal period for the current budget is July 1, 2000 through June 30, 2001; and,

WHEREAS, to insure that the State does not incur a deficit for the fiscal year covered by a budget, Article III, Sec. 5(3) of the Constitution requires the Governor to continually survey the collection of revenue. If, as a result of his surveys, he determines that actual receipts for the fiscal period, when added to the surplus remaining in the Treasury at the beginning of the fiscal period, will not be sufficient to pay budgeted expenditures, the Governor, after first making adequate provisions for the prompt payment of the principal and interest on the State's outstanding bonds and notes, must effect the necessary economies in State expenditures to keep the deficit from occurring; and,

WHEREAS, continually surveying the collection of the State's revenues pursuant to Article III, Sec. 5 (3) of the Constitution is a normal function of the Office of State Budget, Planning, and Management (OSBPM) and reports on its surveys are received routinely by the Governor; and,

WHEREAS, OSBPM has provided the Governor with detailed briefings on the growing fiscal year 2000-01 deficit and, along with the Office of the Governor, has also advised members of the General Assembly of the situation, including the President Pro-Tempore of the Senate and the Speaker of the House of Representatives; and,

WHEREAS, as detailed in a memorandum from the Governor to Department Heads and Chief Fiscal Officers dated January 23, 2001, OSBPM estimated a substantial deficit for fiscal year 2000-01 and recommended immediate action; and,

WHEREAS, on January 23, 2001, OSBPM, at the direction of the Governor, reduced state agency expenditures by approximately four percent (4%) on an annualized basis for the remainder of the fiscal year; and,

WHEREAS, on January 23, 2001, the University of North Carolina System and the North Carolina Community College System made similar reductions in expenditures; and,

WHEREAS, as detailed in a memorandum from the Governor to Department Heads and Chief Fiscal Officers dated February 6, 2001, OSBPM estimates, in light of January 2001 collections and new economic forecasts, a growing substantial deficit for fiscal year 2000-01 that will not be covered by the reduction in expenditure measures adopted on January 23, 2001; and,

WHEREAS, in light of OSBPM estimates, the budget enacted by the General Assembly for fiscal year 2000-01 cannot be administered as enacted without the State incurring a deficit in its administration; and,

WHEREAS, it is found as a fact that based on General Fund revenue collections through January 31, 2001, and projections for these revenues through June 30, 2001, actual receipts for the

current fiscal year will not meet the expenditures anticipated and budgeted by the 1999 General Assembly; and,

WHEREAS, from this fact it is determined and concluded that unless further economies in State expenditures are made, the State's General Fund expenditures will exceed General Fund receipts, for the current fiscal year.

NOW THEREFORE, by the authority vested in me as Governor by Article III, Sec. 5(3) of the North Carolina Constitution to insure that a deficit is not incurred in the administration of the budget for fiscal year 2001, IT IS ORDERED:

Section 1. OSBPM will reduce, as necessary, State expenditures from Funds appropriated to operate State departments and institutions, and implement monthly allotment expenditure and review measures.

Section 2. OSBPM will halt, as necessary, expenditures for capital improvement projects for which State funds have been appropriated but not placed under State contract and, as necessary, transfer any unused capital improvement funds to the General Fund.

Section 3. OSBPM will transfer, as necessary, non-General Fund and non-Highway Fund receipts into the General Fund to support appropriation expenditures in order to avoid a deficit in the General Fund.

Section 4. OSBPM may borrow, as necessary, receipts from non-General Fund State receipts and non-Highway Fund State receipts for support of General Fund appropriation expenditures.

Section 5. OSBPM may, as necessary, order the delay or cancellation of purchase orders in State General Fund-supported departments and institutions;

Section 6. OSBPM may, as necessary, take other steps as directed by the Governor to insure that a deficit is not incurred for fiscal year 2001.

Section 7. The Office of the State Controller, as advised by the State Budget Officer, is directed to monitor disbursements as presented on requisitions for CASH and, as necessary, shall release CASH requisitions in the following priority order for payment of:

1. State debt;
2. payrolls and public assistance benefits;
3. State aid to local government;
4. health and medical provider payments; and
5. all other necessary expenditures.

Section 8. The Office of the State Controller, as advised by the State Budget Officer, is directed to receive the employer portion of retirement contributions for all State funded retirement systems and to escrow such funds in a special reserve as established by OSBPM.

Before taking such action, OSBPM is directed to confirm with the State Treasurer that such action will not impair the actuarial

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integrity of the state retirement system. Return of all such receipts shall be made to the retirement system, if possible, after determination that such funds are not necessary to address the deficit. The Office of the State Controller, as advised by the State Budget Officer, is directed also to receive the local government reimbursement funds and to escrow such funds in a special reserve as established by OSBPM. Return of all such receipts shall be made to the local government reimbursement funds, if possible, after determination that such funds are not necessary to address the deficit.

This Executive Order is effective immediately and shall remain in effect, as written, until terminated or amended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this 8th day of February, 2001.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

CHAPTER 48 – PLANT INDUSTRY

Notice of Rule-making Proceedings is hereby given by the North Carolina Plant Conservation Board in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 48F .0305 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-202.15; 106-202.21

Statement of the Subject Matter: This Rule establishes requirements for collection and sale of ginseng. Proposed changes would prohibit collection of plants less than five years old and require replanting of seed from collected plants.

Reason for Proposed Action: Due to increasing export sales of ginseng root, there is concern about over-harvest of wild ginseng. The proposed rule changes would prohibit harvest of plants less than five years old and require that seed from collected plants be replanted in the immediate vicinity.

Comment Procedures: Written comments may be submitted to Marj Boyer, Secretary, North Carolina Plant Conservation Board, PO Box 27647, Raleigh, NC 27611.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

**CHAPTER 05 – UNIFORM COMMERCIAL CODE
DIVISION**

Notice of Rule-making Proceedings is hereby given by the NC Department of Secretary of State in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 18 NCAC 05 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 25-9-526 (eff. July 1, 2001)

Statement of the Subject Matter: Article 9 of the UCC regulates the filing of UCC documents including, but not limited to: place of filing; duties of the filing officer; contents of documents; debtor and secured party responsibilities; types of collateral; and fees for filing UCC documents.

Reason for Proposed Action: The 2000 General Assembly, in Senate Bill 1305, rewrote Article 9 (Secured Transactions) of the Uniform Commercial Code after studying model legislation from the National Conference of Commissioners on Uniform State Laws. The new law, at G.S. 25-9-526 (eff. July 1, 2001) directs the Department to adopt rules in consultation with Model Rules, revised eff. October 2000, promulgated by the International Association of Corporate Administrators. The Department intends to file temporary rules to coincide with the Senate Bill 1305 effective date of July 1, 2001.

Comment Procedures: To comment on the proposed action or to receive a copy of the draft administrative rules when they are completed, contact Scott Templeton, Deputy Secretary, NC Department of the Secretary of State, PO Box 29622, Raleigh, NC 27626-0622, or preferably by email at stempleton@mail.secstate.state.nc.us

TITLE 19A – DEPARTMENT OF TRANSPORTATION

CHAPTER 03 – DIVISION OF MOTOR VEHICLES

Notice of Rule-making Proceedings is hereby given by the North Carolina Department of Transportation – Division of Motor Vehicles in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 19A NCAC 03D .0801 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 20-2; 20-17.7; 20-37.22; 20-96; 20-183.2(a); 20-381

Statement of the Subject Matter: The rule sets conditions which interstate for-hire motor carriers and private motor carriers may operate on North Carolina highways.

Reason for Proposed Action: The rule is proposed for amendment as a result of changes to G.S. 20-96 in the 2000 Session of the General Assembly. In House Bill 1840, Section 25.11, ratified June 30, 2000, language was added which allowed a law

RULE-MAKING PROCEEDINGS

enforcement officer to seize or detain any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid. Section (g) of this Rule is being deleted because conditions for penalty are incorporated into G.S. 20-96.

Comment Procedures: *Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by July 16, 2001.*

CHAPTER 03 – DIVISION OF MOTOR VEHICLES

Notice of Rule-making Proceedings *is hereby given by the North Carolina Department of Transportation – Division of Motor Vehicles in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rule Affected by this Rule-making: *19A NCAC 03J .0101-.0102, .0201-.0204, .0206-.0207, .0305-.0306, .0308, .0401-.0402, .0501-.0504, .0507, .0601-.0604, .0703, .0801-.0802, .0901-.0904, .0906 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326; 20-327; 20-328*

Statement of the Subject Matter: *Rules state conditions under which commercial driver training schools operate.*

Reason for Proposed Action: *Rules are proposed for amendment to implement technical changes in terminology. Fee changes are proposed pursuant to G.S. 20-324. Additional amendments are proposed to reflect statutory changes and provisions in the Code of Federal Regulations.*

Comment Procedures: *Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by July 16, 2001.*

PROPOSED RULES

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03M .0301 and .0506. Notice of Rule-making Proceedings was published in the Register for 15A NCAC 03M .0301 on December 15, 1999 and for 15A NCAC 03M .0506 on October 2, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: March 19 and March 28, 2001

Time: 7:00 p.m.

Location: March 19 – Coastal Carolina Community College, AD Guy Technology Bldg., Room BT101, 444 Western Boulevard, Jacksonville, NC; March 28 – Ocracoke Community Center, Ocracoke, NC.

Reason for Proposed Action: 15A NCAC 03M .0301 – Prohibition of gill nets south of Cape Lookout would cause State waters to reflect what the South Atlantic Fisheries Management Plan for mackerel presently requires in the EEZ. This would prevent a directed gill net fishery for king mackerel in State waters to be established. Allowing three king mackerel per person per day would allow for bycatch. Requiring fishermen fishing for king mackerel in State waters would clarify the interpretation of the rule, ease enforcement problems, and require that only permitted fishermen be contributing to the quota. 15A NCAC 03M .0506 – Changes to the harvest and possession limit for red porgy made effective by the National Marine Fisheries Service on August 29, 2000, lifted the moratorium on red porgy in the EEZ. The Marine Fisheries Commission adopted a temporary rule implementing the limits required for compliance which implements Amendment 12 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. Unless this Rule is adopted, the prohibition remains for red porgy for North Carolina fishermen.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at two public hearings scheduled as follows: March 19 – Coastal Carolina Community College, AD Guy Technology Building, Room BT101, 444 Western Boulevard, Jacksonville; March 28 – Ocracoke Community Center, Ocracoke, NC. All hearings begin at 7:00 p.m. Oral presentation lengths may be limited, depending on the number of people that wish to speak at the public hearings. The

public comment period will end on April 2, 2001. The Marine Fisheries Commission will consider this Rule and the public comments at a business session scheduled for March 29-30 at the Ocracoke Community Center, Ocracoke, NC.

Fiscal Impact

- State
Local
Substantive (>\$5,000,000)
None

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03M - FINFISH

SECTION .0300 – SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of Spanish or king mackerel:

- (1) Specify areas.
(2) Specify seasons.
(3) Specify quantity.
(4) Specify means/methods.
(5) Specify size.

(b) King mackerel and Spanish mackerel taken for recreational purposes or by hook and line:

- (1) It is unlawful to possess king mackerel less than 24 inches fork length.
(2) It is unlawful to possess more than three king mackerel per person per day, except permit holders as referenced in Paragraph (d) of this Rule.
(3) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
(4) It is unlawful to possess more than 15 Spanish mackerel per person per day.

(c) King mackerel and Spanish mackerel taken by commercial fishing operations, exclusive of hook and line:

- (1) In the Atlantic Ocean, it is unlawful to use gill nets to take more than three king mackerel per person per day south of Cape Lookout (34° 37.3000’N).
(2) It is unlawful to possess king mackerel less than 24 inches fork length.
(3) It is unlawful to possess Spanish mackerel less than 12 inches fork length.

PROPOSED RULES

- (d) Persons in possession of a valid National Marine Fisheries Service King Mackerel Permit to fish on the commercial king mackerel quota are exempt from the king mackerel creel restrictions established in Paragraph (b) of this Rule.
- (e) Persons in possession of a valid National Marine Fisheries Service Federal Coastal Migratory Pelagic (Charter Boats and Head Boats) Permit must comply with the mackerel creel restrictions established in Paragraph (b) of this Rule when fishing with more than three persons (including the captain and mate) on board.
- (f) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0506 SNAPPER-GROUPER

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper-grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper-Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:

- (1) Specify size;
 - (2) Specify seasons;
 - (3) Specify areas;
 - (4) Specify quantity;
 - (5) Specify means/methods; and
 - (6) Require submission of statistical and biological data. The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.access.gpo.gov and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.
- (b) Black sea bass:
- (1) It is unlawful to possess black sea bass less than ten inches total length.
 - (2) It is unlawful to take or possess more than 20 black sea bass per person per day south of Cape Hatteras without a valid Federal Commercial Snapper-Grouper permit.
- (c) Gag grouper:
- (1) It is unlawful to possess gag grouper (gray grouper) less than 24 inches total length.
 - (2) It is unlawful to possess more than two gag grouper (gray grouper) per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (3) It is unlawful to possess more than two gag grouper (gray grouper) per person per day during the months of March and April.

- (4) It is unlawful to sell or purchase gag grouper (gray grouper) taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.
- (d) Black grouper:
- (1) It is unlawful to possess black grouper less than 24 inches total length.
 - (2) It is unlawful to possess more than two black grouper per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (3) It is unlawful to take or possess more than two black grouper per person per day during the months of March and April.
 - (4) It is unlawful to sell or purchase black grouper taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.
- (e) It is unlawful to possess red grouper less than 20 inches total length.
- (f) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.
- (g) It is unlawful to possess scamp less than 20 inches total length.
- (h) It is unlawful to possess yellowmouth grouper less than 20 inches total length.
- (i) Speckled hind (kitty mitchell) and warsaw grouper:
- (1) It is unlawful to sell or purchase speckled hind or warsaw grouper.
 - (2) It is unlawful to possess more than one speckled hind or one warsaw grouper per vessel per trip.
- (j) Greater amberjack:
- (1) For recreational purposes:
 - (A) It is unlawful to possess greater amberjack less than 28 inches fork length.
 - (B) It is unlawful to possess more than one greater amberjack per person per day.
 - (2) It is unlawful to sell or purchase greater amberjack less than 36 inches fork length.
 - (3) It is unlawful to possess more than one greater amberjack per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (4) It is unlawful to possess more than one greater amberjack per person per day during the month of April.
 - (5) It is unlawful to sell or purchase greater amberjack during any closed season.
- (k) Red Snapper:
- (1) It is unlawful to possess red snapper less than 20 inches total length.
 - (2) It is unlawful to possess more than two red snapper per person per day without a valid Federal Commercial Snapper-Grouper permit.
- (l) Vermilion Snapper:
- (1) For recreational purposes:
 - (A) It is unlawful to possess vermilion snapper (beeliner) less than 11 inches total length.
 - (B) It is unlawful to possess more than 10 vermilion snapper per person per day.

PROPOSED RULES

- (2) It is unlawful to possess or sell vermilion snapper (beeliner) less than 12 inches total length with a valid Federal Commercial Snapper-Grouper permit.
- (m) It is unlawful to possess silk snapper (yelloweye snapper) less than 12 inches total length.
- (n) It is unlawful to possess blackfin snapper (hambone snapper) less than 12 inches total length.
- (o) Red pogy (*Pagrus pagrus*):
 - (1) It is unlawful to possess red pogy less than 14 inches total length.
 - (2) It is unlawful to possess more than one red pogy per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (3) From January 1 through April 30, it is unlawful for any person to:
 - (A) possess more than one red pogy per person per day, or
 - (B) sell or offer for sale red pogy.
- (4) It is unlawful to land more than 50 pounds of red pogy from May 1 through December 31 in a commercial fishing operation.
- (p) It is unlawful for persons in possession of a valid National Marine Fisheries Service Snapper-Grouper Permit for Charter Vessels to exceed the creel restrictions established in Paragraphs (b),(j), (o), and (p) of this Rule when fishing with more than three persons (including the captain and mate) on board.
- (q) In the Atlantic Ocean, it is unlawful for an individual fishing under a Recreational Commercial Gear License with seines, shrimp trawls, pots, trotlines or gill nets to take any species of the Snapper-Grouper complex.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

TEMPORARY RULES

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

EXPIRED TEMPORARY RULES

*Rules shown with an * were returned to the agency based on an objection by the Rules Review Commission. The rule dies when the rule is returned.

<u>Administration</u>	<u>Effective Date</u>	<u>Expired</u>
1 NCAC 05C .0224	04/26/00	02/09/01
Agriculture		
2 NCAC 55 (entire chapter)	02/01/00	12/31/00
Elections		
8 NCAC 10 (entire chapter)	05/01/00	12/10/00
8 NCAC 11 (entire chapter)	05/01/00	12/10/00
Environment and Natural Resources		
15A NCAC 01J .0301	09/24/99	07/11/00
15A NCAC 01L .0301	09/24/99	07/11/00
15A NCAC 02B .0234	03/15/00	12/10/00
15A NCAC 07H .2501 - .2505	10/02/99	07/28/00
15A NCAC 09C .1101	01/12/00	10/10/00
Health and Human Services		
10 NCAC 01B .0501 - .0502	09/24/00	07/11/00
10 NCAC 03R .6242 - .6243	11/29/00	09/10/00
10 NCAC 26H .0506	01/01/00	10/28/00
*10 NCAC 42A .0807	01/01/00	06/19/00
10 NCAC 42B .2601	11/30/99	08/11/00
10 NCAC 42C .4001	11/30/99	08/11/00
10 NCAC 42D .2101 - .2102	12/01/99	07/11/00
10 NCAC 42D .2301	11/30/99	08/11/00
Public Instruction		
16 NCAC 06E .0301	03/15/00	12/10/00
Revenue		
17 NCAC 10 .0204	02/24/00	07/01/00
Secretary of State		
*18 NCAC 10 .0802	12/03/99	07/20/00
State Personnel		
25 NCAC 01C .0801-.0813	01/19/00	11/11/00

TEMPORARY RULES ENTERED INTO THE CODE

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Division of Facility Services*

Rule Citation: *10 NCAC 03R .1616*

Effective Date: *February 2, 2001*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 131E-177(1); 131E-183(b)*

Reason for Proposed Action: *The changes to this Rule are necessary to ensure compliance with the 2001 State Medical Facilities Plan (SMFP) and the recommendation made by the State Health Coordinating Council. Temporary rule-making is necessary because the annual planning process does not provide the Department with the time necessary to utilize the permanent rule-making process.*

Comment Procedures: *Questions or comments concerning the rules should be directed to Jackie Sheppard, Assistant*

TEMPORARY RULES

Director/Rule-making Coordinator, Division of Facility Services,
701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-
2701.

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS

SECTION .1600 - CRITERIA AND STANDARDS FOR CARDIAC CATHETERIZATION EQUIPMENT AND CARDIAC ANGIOPLASTY EQUIPMENT

10 NCAC 03R .1616 REQUIRED SUPPORT SERVICES

- (a) If the applicant proposes to perform therapeutic cardiac catheterization procedures, the applicant shall demonstrate that open heart surgery services are provided within the same facility.
- (b) If the applicant proposes to perform diagnostic cardiac catheterization procedures, the applicant shall document that its patients will have access to a facility which provides open heart surgery services, and that the patients can be transported to that facility within 30 minutes and with no greater risk than if the procedure had been performed in a hospital which provides open heart surgery services; with the exception that the 30 minute transport requirement may be waived for equipment that was identified as needed in the 2001 State Medical Facilities Plan based on an adjusted need determination.
- (c) The applicant shall provide documentation to demonstrate that the following services shall be available in the facility:
- (1) electrocardiography laboratory and testing services including stress testing and continuous cardiogram monitoring;
 - (2) echocardiography service;
 - (3) blood gas laboratory;
 - (4) pulmonary function unit;
 - (5) staffed blood bank;
 - (6) hematology laboratory/coagulation laboratory;
 - (7) microbiology laboratory;
 - (8) clinical pathology laboratory with facilities for blood chemistry;
 - (9) immediate endocardiac catheter pacemaking in case of cardiac arrest; and
 - (10) nuclear medicine services including nuclear cardiology.

History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Authority G.S. 131E-177(1); 131E-183(b);

Eff. January 1, 1987;

Amended Eff. February 1, 1994;

Temporary Amendment Eff. February 2, 2001.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Editor's Note: The notice published below is a Notice of Intent to Adopt Temporary Rules.

Rule-making Agency: Environmental Management Commission

Rule Citation: 15A NCAC 02B .0243-.0244

Authority for the rulemaking: Clean Water Act of 1999; House Bill 1160, Part VII; S.L. 1999-329

Reason for Proposed Action: The purpose of the proposed temporary rules is to protect and preserve existing 50-foot wide riparian buffers within the mainstem of the Catawba River Basin below Lake James and along the mainstem lakes from Lake James to the North Carolina/South Carolina state line in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting water quality of the lakes and connecting river segments. The mainstem lakes include Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion). This notice sets out the text of the proposed temporary rule for comment.

The Clean Water Act of 1999 enacted by the North Carolina General Assembly includes authorization to the North Carolina Environmental Management Commission to adopt temporary rules to protect water quality within the Catawba River Basin. The authorizing legislation requires a notice of intent to adopt temporary rules to set out the text of the proposed rule and for the Commission to accept written comment on the proposed temporary rule for at least 30 days after the notice of intent is published in the North Carolina Register. The authorizing legislation further requires a public hearing to be held within the river basin of the proposed temporary rule. The Environmental Management Commission will hold two public hearings and encourages the submission of written comments.

Public Hearing for the Lower Portion of the Basin

Date: Tuesday, March 20, 2001

Time: 6:00 – 9:00 p.m. (sign-in beginning at 5:30 p.m.)

Location: Old Gym, 123 Hawthorne Road, Mt. Holly, NC
Directions: From I-85, take exit 27 (NC-273 Mt Holly/Belmont). At end of exit ramp, turn right onto NC-273/Betty Drive. At the second light, turn left onto Rankin Road. After crossing over the bridge, take a right onto Hawthorne Road. The facility is about 0.5 miles down on Hawthorne. **Please park in the parking lot of Mt. Holly Junior High School located directly across the street from the Old Gym.**

Public Hearing for the Upper Portion of the Basin

Date: Thursday, March 22, 2001

Time: 6:00 – 9:00 p.m. (sign-in beginning at 5:30 p.m.)

Location: Old Rock School, 400 Main Street West, Valdese, NC
Directions: From I-40, take exit 112 and turn right at the end of the ramp. At the first stop light, turn left onto Main St. The facility is about 0.25 miles down Main St. on the right.

Comment Procedures: *The Environmental Management Commission wishes to hear comments on the proposed text of this temporary rule. The Environmental Management Commission will accept comments on this proposed temporary rule language through April 2, 2001. Questions and/or comment on the subject matter of this proposed temporary rule may be submitted to: Alan Clark, NC Division of Water Quality, 1617 Mail Service Center, Raleigh, NC 27699, Tel: (919) 733-5083 ext. 570.*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER AND WETLAND STANDARDS

15A NCAC 02B .0243 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

- (1) **PURPOSE.** The purpose of this Rule shall be to protect and preserve existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.
- (2) **DEFINITIONS.** For the purpose of this Rule, these terms shall be defined as follows:
 - (a) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)
 - (b) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
 - (c) "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18-inch.
 - (d) "Mainstem lakes" means the following impoundments created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).
 - (e) "Perennial waterbody" means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants,

including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).

- (f) "Shoreline stabilization" is the in-place stabilization of a severely eroding bank. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, will not be considered restoration or enhancement in most cases.
- (g) "Stream restoration" is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions.
- (h) "Stump diameter" means stump diameter of a tree, which is measured at 6 inch above ground surface level.
- (i) "Surface water" means all waters of the state as defined in G.S. 143-212 except underground waters.
- (j) "Tree" means a woody plant with a stump diameter equal to or exceeding six inches.
- (3) **APPLICABILITY.** This Rule shall apply to a 50-foot wide riparian buffer directly adjacent to surface waters along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin, excluding wetlands. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506. The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. Riparian buffers adjacent to surface waters of the Catawba River mainstem below Lake James and mainstem lakes shall be subject to this Rule unless one of the following applies.
 - (a) **EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING.** This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:
 - (i) A use shall be considered existing if it was present within the riparian buffer as of June 30, 2001. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Change of ownership through legal purchase or inheritance is not considered change of use.

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- Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.
- (ii) A use shall be considered as existing if projects or proposed development at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Rule, based on at least one of the following criteria:
- (A) Substantial expenditures of resources (time, labor, and money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
- (B) Having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1;
- (C) Having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1;
- (D) Project requires a 401 Certification/404 Permit and these were issued prior to the effective date of this Rule; or
- (E) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, are built or a state permit was issued prior to the effective date of this Rule.
- (b) LOCAL GOVERNMENTS THAT HAVE APPROVED RIPARIAN BUFFER ORDINANCES. All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.
- (4) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:
- (a) Zone 1 shall consist of a forested area that is undisturbed except for uses provided for in Item (6) of this Rule. The location of Zone 1 shall be as follows:
- (i) For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.
- (ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the most landward limit of the high water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item (6) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin.
- (5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.
- (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.
- (6) TABLE OF USES. The following chart sets out the uses and their designation under this Rule as exempt, allowable, or allowable with mitigation. Any uses, which are not listed in the table, shall be considered as prohibited. The requirements for each category are given in Item (7) of this Rule.

TEMPORARY RULES

	<u>Exempt</u>	<u>Allowable</u>	<u>Allowable with Mitigation</u>
<u>Airport facilities:</u> <ul style="list-style-type: none"> • <u>Airport or airstrip facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> • <u>Airport or airstrip facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer</u> 		<u>X</u>	<u>X</u>
<u>Archaeological activities</u>	<u>X</u>		
<u>Bridges</u>		<u>X</u>	
<u>Canoe Access provided that installation and use does not result in removal of forest vegetation</u>		<u>X</u>	
<u>Dam maintenance activities</u>	<u>X</u>		
<u>Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:</u> <ul style="list-style-type: none"> • <u>Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies</u> • <u>New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the riparian buffer</u> 	<u>X</u>	<u>X</u>	
<u>Driveway crossings of surface waters subject to this Rule:</u> <ul style="list-style-type: none"> • <u>Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer</u> • <u>Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer</u> • <u>In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> <u>In a subdivision that cumulatively disturbs greater than 150 linear feet or one-third of an acre of riparian buffer</u>	<u>X</u>	<u>X</u> <u>X</u>	<u>X</u>
<u>Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation</u>	<u>X</u>		
<u>Forest harvesting - see Item (11) of this Rule</u>			
<u>Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized</u>	<u>X</u>		
<u>Greenway / hiking trails in Zone 2</u>		<u>X</u>	
<u>Historic preservation</u>	<u>X</u>		
<u>Mining activities:</u> <ul style="list-style-type: none"> • <u>Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4) and (5) of this Rule are established adjacent to the relocated channels</u> • <u>Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (4) and (5) of this Rule are not established adjacent to the relocated channels</u> 		<u>X</u>	<u>X</u>

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<u>Non-electric utility lines:</u> <ul style="list-style-type: none"> • <u>Impacts other than perpendicular crossings in Zone 2 only</u>³ • <u>Impacts other than perpendicular crossings in Zone 1</u>³ 		X	
<u>Non-electric utility line perpendicular crossings of surface waters subject to this Rule</u> ² : <ul style="list-style-type: none"> • <u>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</u> • <u>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</u> • <u>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</u> • <u>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</u> • <u>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer</u> 	X	X	X
<u>On-site sanitary sewage systems - new ones that use ground absorption</u>			
<u>Overhead electric utility lines:</u> <ul style="list-style-type: none"> • <u>Impacts other than perpendicular crossings in Zone 2 only</u>³ • <u>Impacts other than perpendicular crossings in Zone 1</u>^{1,2,3} 	X		
<u>Overhead electric utility line perpendicular crossings of surface waters subject to this Rule</u> ² : <ul style="list-style-type: none"> • <u>Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer</u>¹ • <u>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer</u>^{1,2} 	X	X	

1 Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

2 Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.

3 Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.

	<u>Exempt</u>	<u>Allowable</u>	<u>Allowable with Mitigation</u>
<u>Playground equipment:</u> <ul style="list-style-type: none"> • <u>Playground equipment provided that installation and use does not result in removal of vegetation</u> • <u>Playground equipment provided that installed and use requires removal of vegetation</u> 	X	X	

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<u>Protection of existing structures, facilities and shoreline when this requires additional disturbance of the riparian buffer or the channel</u>		<u>X</u>	
<u>Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of forest vegetation</u>		<u>X</u>	
<u>Railroad impacts other than crossings of surface waters subject to this Rule</u>			<u>X</u>
<u>Railroad crossings of surface waters subject to this Rule:</u> <ul style="list-style-type: none"> • <u>Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer</u> • <u>Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> • <u>Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</u> 	<u>X</u>	<u>X</u>	<u>X</u>
<u>Recreational and accessory structures such as decks, gazebos, and sheds with a footprint of less than 150 square feet provided that the structures are elevated above pervious ground, that installation does not result in removal of trees, and that they are not otherwise prohibited under the local water supply watershed ordinance</u>	<u>X</u>		
<u>Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored</u>	<u>X</u>		
<u>Road impacts other than crossings of surface waters subject to this Rule</u>			<u>X</u>
<u>Road crossings of surface waters subject to this Rule:</u> <ul style="list-style-type: none"> • <u>Road crossings that impact equal to or less than 40 linear feet of riparian buffer</u> • <u>Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> • <u>Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</u> 	<u>X</u>	<u>X</u>	<u>X</u>
<u>Scientific studies and gauging station</u>	<u>X</u>		
<u>Stormwater management ponds excluding dry ponds:</u> <ul style="list-style-type: none"> • <u>New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond</u> • <u>New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond</u> 		<u>X</u>	<u>X</u>
<u>Stream restoration with approved 401 Certification / 404 Permit</u>	<u>X</u>		
<u>Shoreline stabilization</u>		<u>X</u>	
<u>Temporary roads:</u> <ul style="list-style-type: none"> • <u>Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance</u> • <u>Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance</u> • <u>Temporary roads used for bridge construction or</u> 	<u>X</u>	<u>X</u>	<u>X</u>

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<u>replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction</u>			
<u>Temporary sediment and erosion control devices:</u> <ul style="list-style-type: none"> • <u>In Zone 2 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5) of this Rule</u> • <u>In Zones 1 and 2 to control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</u> • <u>In-stream temporary erosion and sediment control measures for work within a stream channel</u> 	X	X	
<u>Underground electric utility lines:</u> <ul style="list-style-type: none"> • <u>Impacts other than perpendicular crossings in Zone 2 only</u>³ • <u>Impacts other than perpendicular crossings in Zone 1</u>^{3, 4} 	X		
<u>Underground electric utility line perpendicular crossings of surface waters subject to this Rule:</u> ³ <ul style="list-style-type: none"> • <u>Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer</u>⁴ • <u>Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer</u>⁴ 	X	X	
<u>View corridors - thinning of underbrush, shrubs, and low-hanging limbs to enhance a lake view provided soils are undisturbed.</u>	X		

⁴ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

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	<u>Exempt</u>	<u>Allowable</u>	<u>Allowable with Mitigation</u>
<u>Vegetation management:</u>			
• <u>Emergency fire control measures provided that topography is restored</u>	X		
• <u>Periodic mowing and harvesting of plant products in Zone 2 only</u>	X		
• <u>Planting vegetation to improve water quality protection function of the riparian buffer</u>	X		
• <u>Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</u>	X		
• <u>Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life</u>	X		
• <u>Removal of poison ivy</u>	X		
• <u>Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</u>	X		
<u>Water dependent structures as defined in 15A NCAC 02B .0202</u>	X		
<u>Water wells</u>	X		
<u>Wetland restoration</u>	X		

(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:

- (a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.
- (b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the local government with approved riparian buffer ordinance.
- (c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the local government with approved riparian buffer ordinance.
- (d) PROHIBITED. All uses not designated as exempt, allowable or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant

to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.

(8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the local government with approved riparian buffer ordinance. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the local government with approved riparian buffer ordinance shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

- (a) For any request for an Authorization Certificate, the Division or the local government with approved riparian buffer ordinance shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
 - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (iii) Best management practices shall be used if necessary to minimize disturbance, preserve

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aquatic life and habitat, and protect water quality.

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the local government with approved riparian buffer ordinance. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the local government with approved riparian buffer ordinance may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

- (i) The name, address and phone number of the applicant;
- (ii) The nature of the activity to be conducted by the applicant;
- (iii) The location of the activity, including the jurisdiction;
- (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
- (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
- (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate local government with approved riparian buffer ordinance may grant variances. The variance request procedure shall be as follows:

- (a) For any variance request, the Division or the local government with approved riparian buffer ordinance shall make all of the finding of fact to insure that the following requirements have been met:
 - (i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or the local government with approved riparian buffer ordinance shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.;

(ii) The variance is in harmony with the general purpose and intent of the Catawba River Basin's riparian buffer protection requirements and preserves its spirit; and

(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(b) Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by either the Division or the local government with approved riparian buffer ordinance pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The Division or the local government with approved riparian buffer ordinance may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the local government with approved riparian buffer ordinance shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S.

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153A-345 for determinations made by the local government with approved riparian buffer ordinance.

(10) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (8) of this Rule.

(b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0244.

(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.

(a) The following measures shall apply in Zone 1 of the riparian buffer:

(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.

(ii) Timber felling shall be directed away from the water body.

(iii) Skidding shall be directed away from the water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forestry Resources.

(iv) Individual trees may be treated to maintain or improve their health, form or vigor.

(v) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.

(vi) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.

(vii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.

(viii) High intensity prescribed burns shall not be allowed.

(ix) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a

deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forestry Resources.

(ii) Soil disturbing site preparation activities are not allowed.

(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.

(iv) The following provisions for selective harvesting shall be met:

(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined.

(B) In the outer 20 feet of Zone 1, trees greater than 12-inch diameter stump may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 – .0200 as enforced by the Division of Forestry Resources.

(12) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1.

15A NCAC 02B .0244 CATAWBA RIVER BASIN: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS IN THE CATAWBA RIVER BASIN

The following are the requirements for the Riparian Buffer Mitigation Program for the Catawba River Basin.

(1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to maintain and protect existing riparian buffers on the Catawba River mainstem below Lake James and mainstem lakes from and including

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Lake James to the North Carolina/South Carolina border in the Catawba River Basin, as described in Rule 15A NCAC 02B .0243.

(2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Catawba Basin when one of the following applies:

(a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0243 for a proposed use that is designated as "allowable with mitigation."

(b) A person has received a variance pursuant to 15A NCAC 02B .0243 and is required to perform mitigation as a condition of a variance approval.

(3) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division or a local government with an approved riparian buffer ordinance according to the following:

(a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or a local government with an approved riparian buffer ordinance by adding the following:

(i) The area of the footprint of the use causing the impact to the riparian buffer.

(ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.

(iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.

(b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Rule to each zone of the riparian buffer:

(i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 2.

(ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.

(4) THE LOCATION OF MITIGATION. The mitigation effort shall be the same distance from the Catawba River as the proposed impact and as close to the location of the impact as feasible.

(5) ISSUANCE OF THE MITIGATION DETERMINATION. The Division or a local government with an approved buffer program shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.

(6) OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:

(a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.

(b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.

(c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.

(7) PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:

(a) SCHEDULE OF FEES: The amount of payment into the Fund shall be determined by square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents per square foot.

(b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, Mail Service Center 1619, Raleigh, NC 27699-1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.

(c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.

(d) The Division shall review the fee outlined in Sub-item (7)(a) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division shall recommend revisions to Sub-item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.

(8) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

(a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Rule, the applicant shall pay the remaining balance due.

(b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.

(c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if

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such property meets all of the following requirements:

- (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin.
- (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.
- (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
- (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.
- (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use.
- (vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation.
- (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
- (ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
- (x) The property shall not contain any hazardous substance or solid waste.
- (xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.
- (xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.

(xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.

(d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:

(i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.

(ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.

(iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.

(iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.

(v) A title certificate.

(9) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

(a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

(i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.

(ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.

(b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.

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- (c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
- (d) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0243. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following.
 - (i) A map of the proposed restoration or enhancement site.
 - (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.
 - (iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.
 - (iv) A fertilization plan.
 - (v) A schedule for implementation.
- (e) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State or a local riparian buffer ordinance.
- (f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.
- (g) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1;

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Wednesday, February 28, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Tuesday, February 20, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

John Arrowood – 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

February 28, 2001
March 15, 2001
May 17, 2001
July 19, 2001
April 19, 2001
June 14, 2001
August 16, 2001

The Rules Review Commission meeting has been rescheduled from Thursday, February 15, 2001 to Tuesday, **February 28, 2001**.

The Rules Review Commission is likely to review rules filed by February 20, 2001, at the February 28, 2001, meeting. In other words, rules which would normally be reviewed on March 15, 2001, will likely be reviewed on February 28, 2001.

The only reason that would not happen is if the volume of rules filed left inadequate time for review by staff and commission.

The following rule 21 NCAC 33 .0106 has been removed from the NC Administrative Code (NCAC). The Rules Review Commission (RRC) objected to existing language in the rule and the rulemaking agency did not satisfy the objection. Therefore, RRC returned the rule to the adopting agency and the Codifier removed the rule from the NCAC effective the date of RRC's action to return the rule. See G.S. 150B-21.8(c) and G.S. 150B-21.12.

**Log of Filings
December 21, 2000 through January 22, 2001**

NC OFFICE OF INFORMATION TECHNOLOGY SERVICES

Benchmark	09 NCAC 06A .0103	Amend
Board of Awards	09 NCAC 06B .1008	Amend
Protest Procedures	09 NCAC 06B .1009	Amend
Right to Hearing	09 NCAC 06B .1010	Amend
Request for Hearing	09 NCAC 06B .1011	Amend
Definitions	09 NCAC 06B .1012	Amend
General Provisions	09 NCAC 06B .1013	Amend
Duties of the Hearing Officer	09 NCAC 06B .1015	Amend
Settlement Conference	09 NCAC 06B .1017	Amend
Official Record	09 NCAC 06B .1029	Amend
General Delegations	09 NCAC 06B .1104	Amend

DENR/ENVIRONMENTAL MANAGEMENT COMMISSION

Purpose	15 NCAC 02E .0102	Repeal
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RULES REVIEW COMMISSION

Scope	15 NCAC 02E .0103	Repeal
Definitions	15 NCAC 02E .0106	Amend
Delegation	15 NCAC 02E .0107	Amend
Declaration and Delineation of Capacity Use Area	15 NCAC 02E .0201	Repeal
Persons Withdrawing Groundwater in Capacity Use	15 NCAC 02E .0202	Repeal
Activities	15 NCAC 02E .0205	Repeal
Declaration and Delineation of Central Coastal	15 NCAC 02E .0501	Adopt
Withdrawal Permits	15 NCAC 02E .0502	Adopt
Prescribed Water Use Reductions in Cretaceous	15 NCAC 02E .0503	Adopt
Requirements for Entry and Inspection	15 NCAC 02E .0504	Adopt
Acceptable Withdrawal Methods	15 NCAC 02E .0505	Adopt
Central Coastal Plain Capacity Use Area Status	15 NCAC 02E .0506	Adopt
Definitions	15 NCAC 02E .0507	Adopt
Scientific Educational Or Official Collecting Permits	15 NCAC 03I .0106	Repeal
Permits for Aquaculture Operations	15 NCAC 03I .0111	Repeal
Pound Net Sets	15 NCAC 03J .0107	Amend
Pots	15 NCAC 03J .0301	Amend
Permits to use Mechanical Methods for Oysters	15 NCAC 03K .0206	Amend
Permits to use Mechanical Methods for Oysters or	15 NCAC 03K .0303	Amend
Horseshoe Crabs	15 NCAC 03L .0207	Adopt
Spanish and King Mackerel	15 NCAC 03M .0301	Amend
Authorized Gear	15 NCAC 3O .0302	Amend
Procedures and Requirements to Obtain Permits	15 NCAC 3O .0501	Amend
Permit Conditions	15 NCAC 3O .0503	Amend
TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS		
Business Records	19 NCAC 02D .0219	Amend
Permits-Authority Application and Enforcement	19 NCAC 02D .0601	Amend
Permits-Issuance and Fees	19 NCAC 02D .0602	Amend
Permits-Weight Dimensions and Limitations	19 NCAC 02D .0607	Amend
Permits-House Moves	19 NCAC 02D .0612	Amend
Denial Revocation Refusal to Renew Appeal	19 NCAC 02D .0633	Amend

**Log of Filings
January 20, 2001 through February 20, 2001**

**DEPARTMENT OF INSURANCE/NC CODE OFFICIALS QUALIFICATIONS BOARD/HOME INSPECT
LICENSURE BOARD**

Nature of Probationary Certificate	11 NCAC 08 .0602	Amend
Application Form Contents	11 NCAC 08 .0604	Amend
Application Form Contents	11 NCAC 08 .0704	Amend
Required Qualifications Types and Levels	11 NCAC 08 .0706	Amend
Certificate	11 NCAC 08 .0708	Amend
Renewal	11 NCAC 08 .0709	Amend
Pre-Qualification Program	11 NCAC 08 .0711	Adopt
Preliminary Investigation	11 NCAC 08 .0802	Repeal
Definitions	11 NCAC 08 .1301	Amend
Renewal of Active License	11 NCAC 08 .1302	Amend
Course Requirements	11 NCAC 08 .1304	Amend
Attendance Requirements	11 NCAC 08 .1305	Amend
Extensions of Time	11 NCAC 08 .1306	Amend
Denial or Withdrawal of Credit	11 NCAC 08 .1307	Amend
Duties of Licensees to Show Proof of Compliance	11 NCAC 08 .1308	Repeal
Update Course Component	11 NCAC 08 .1309	Adopt
Application for Original Approval of Update Course	11 NCAC 08 .1310	Adopt
Criteria for Approval of Update Course Sponsor	11 NCAC 08 .1311	Adopt

RULES REVIEW COMMISSION

Student Fee for Update Courses	11 NCAC 08 .1312	Adopt
Nature and Scope of Approval of Update Course Inst	11 NCAC 08 .1313	Adopt
Application and Criteria for Original Approval of	11 NCAC 08 .1314	Adopt
Renewal of Approval of Update Course Instructors	11 NCAC 08 .1315	Adopt
Denial or Withdrawal of Approval of Update Course	11 NCAC 08 .1316	Adopt
Request for Video of Update Course Instructors	11 NCAC 08 .1317	Adopt
Elective Course Component	11 NCAC 08 .1318	Adopt
Application for Original Approval of An Elective C	11 NCAC 08 .1319	Adopt
Criteria for Elective Course Approval	11 NCAC 08 .1320	Adopt
Elective Course Subject Matter	11 NCAC 08 .1321	Adopt
Elective Course Instructors	11 NCAC 08 .1322	Adopt
Elective Course Credit Hours	11 NCAC 08 .1323	Adopt
Request for Video of an Elective Course	11 NCAC 08 .1324	Adopt
Student Fees for Elective Courses	11 NCAC 08 .1325	Adopt
Elective Course Instructional Delivery Methods	11 NCAC 08 .1326	Adopt
General Sponsor Eligibility Requirements	11 NCAC 08 .1327	Adopt
Sponsor Name	11 NCAC 08 .1328	Adopt
Sponsor Advance Approval Required	11 NCAC 08 .1329	Adopt
Continuing Education Coordinator	11 NCAC 08 .1330	Adopt
Course Completion Reporting	11 NCAC 08 .1331	Adopt
Per Student Fee	11 NCAC 08 .1332	Adopt
Change in Sponsor Ownership	11 NCAC 08 .1333	Adopt
Sponsor Changes During Approval Period	11 NCAC 08 .1334	Adopt
Course Records	11 NCAC 08 .1335	Adopt
Renewal of Course and Sponsor Approval	11 NCAC 08 .1336	Adopt
Denial or Withdrawal of Approval of Course or Cour	11 NCAC 08 .1337	Adopt
Scheduling	11 NCAC 08 .1338	Adopt
Minimum Class Size	11 NCAC 08 .1339	Adopt
Notice of Scheduled Courses	11 NCAC 08 .1340	Adopt
Advertising Providing Course Information	11 NCAC 08 .1341	Adopt
Classes Open to All Licensees	11 NCAC 08 .1342	Adopt
Classroom Facilities	11 NCAC 08 .1343	Adopt
Student Check-In	11 NCAC 08 .1344	Adopt
Instructor Requirements	11 NCAC 08 .1345	Adopt
Monitoring Attendance	11 NCAC 08 .1346	Adopt
Student Participation Standards	11 NCAC 08 .1347	Adopt
Solicitation of Students	11 NCAC 08 .1348	Adopt
Cancellation and Refund Policies	11 NCAC 08 .1349	Adopt
Course Monitors	11 NCAC 08 .1350	Adopt
Accommodations for Persons With Disabilities	11 NCAC 08 .1351	Adopt
DEPARTMENT OF INSURANCE		
Actuarial Certification	11 NCAC 10 .1112	Adopt
Commercial Lines	11 NCAC 10 .1206	Amend
Seasoning Requirements	11 NCAC 11A .0514	Adopt
Notes to Financial Statements	11 NCAC 11A .0515	Adopt
Required Reports on Variable Annuity Business	11 NCAC 12 .0423	Amend
JUSTICE/NC PRIVATE PROTECTIVE SERVICES BOARD		
Location	12 NCAC 07D .0102	Amend
Definitions	12 NCAC 07D .0104	Amend
JUSTICE/NC ALARM SYSTEMS LICENSING BOARD		
Location	12 NCAC 11 .0102	Amend
Definitions	12 NCAC 11 .0103	Amend
Definitions	12 NCAC 11 .0501	Amend
Required Continuing Education Hours	12 NCAC 11 .0502	Amend
Accreditation Standards	12 NCAC 11 .0503	Amend
Non-Resident Licensees and Continuing Education Cr	12 NCAC 11 .0504	Amend

RULES REVIEW COMMISSION

Recording and Reporting Continuing Education Cr Non-Compliance	12 NCAC 11 .0505 12 NCAC 11 .0506	Amend Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Groundwater Quality Standards	15 NCAC 02L .0202	Amend
DENR/COASTAL RESOURCES COMMISSION		
Sandbags and Erosion Control Structures	15 NCAC 07H .0308	Amend
Sandbags and Erosion Control Structures	15 NCAC 07H .1705	Amend
Beach Bulldozing and Substantial Progress	15 NCAC 07J .0403	Amend
Beach Bulldozing Permit Extension and Substantial	15 NCAC 07J .0404	Amend

AGENDA
RULES REVIEW COMMISSION
February 28, 2001

Call to Order and Opening Remarks

Review of minutes of last meeting

Follow Up Matters

- A. Department of Agriculture Structural Pest Control Committee - 02 NCAC 34 .0502; Objection on 12/21/00 (DeLuca).
- B. Department of Agriculture - 02 NCAC 52B .0201; Objection on 12/21/00 (DeLuca).
- C. Department of Cultural Resources - 07 NCAC 4 S .0104; Objected on 12/21/00 (DeLuca).
- D. Department of Revenue - 17 NCAC 07B .1303; Extend Period of Review Objection on 12/21/00 (DeLuca)
- E. State Board of Massage & Bodywork Therapy - 21 NCAC 30 .0602; Objection on 12/21/00 (Bryan)
- F. State Personnel Commission - 25 NCAC 1E .1605; .1606; and .1607; Objection on 12/21/00 (Bryan)
- G. State Personnel Commission: 25 NCAC 1I .2310; Failure to make technical change 12/21/00 (Bryan).

Review of rules (Log Report #172)

- V. Commission Business
- VI. Next meeting: Thursday, March 15, 2001.

CONTESTED CASE DECISIONS

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. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter

James L. Conner, II
Beryl E. Wade

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ALCOHOL BEVERAGE CONTROL COMMISSION				
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Timothy Lee Hopper v. NC ABC Commission	00 ABC 0326	Lassiter	10/20/00	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
NC ABC Commission v. Kevin Scott Heath, Robinhood Grille, LLC t/a Robinhood Grille	00 ABC 1026	Gray	12/19/00	15:14 NCR 1390
BOARD OF MORTUARY SCIENCE				
NC Board of Mortuary Science v. R.L. Sanders Funeral Home, Hugh Sanders and Demetrice Brewington	99 BMS 1180	Lassiter	11/27/00	
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
CRIME CONTROL AND PUBLIC SAFETY				
Terry Ramey D/B/A/Ramey's Wrecker Service v. NC Dept. of of Crime Control & Public Safety, NC State Highway Patrol	99 CPS 1160	Morrison	01/26/01	15:17 NCR 1594
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
Kenneth E. Brooks v. NC Crime Victims Compensation Commission	00 CPS 1048	Lassiter	12/21/00	
Kathy Oates Parzygnat v. NC Crime Victims Compensation Commission	00 CPS 1054	Conner	01/29/01	
Dowu Thomas v. NC Crime Victims Compensation Commission	00 CPS 1090	Mann	01/17/01	
Derrick Davis v. NC Crime Victims Compensation Commission	00 CPS 1352	Gray	02/01/01	
HEALTH AND HUMAN SERVICES				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 ¹	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
Tyrone Banks v. Department of Health & Human Services	00 CRA 1759	Gray	01/16/01	
Child Support Enforcement Section				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00	
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00	
Charles Jr. Lotharp v. Department of Health & Human Services	99 CSE 0626	Lassiter	02/09/01	

CONTESTED CASE DECISIONS

Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00
Anthony R. McRae Sr. v. Department of Health & Human Services	99 CSE 0812	Morrison	12/20/00
Richard Cook v. Department of Health & Human Services	99 CSE 0873 ⁴	Chess	10/27/00
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00
Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00
Tony R. Wood v. Department of Health & Human Services	99 CSE 1501	Gray	01/12/01
Samuel E. Massenber, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00
Richard Cook v. Department of Health & Human Services	00 CSE 0053 ⁴	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00

CONTESTED CASE DECISIONS

Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Ronnie N. Morgan v. Department of Health & Human Services	00 CSE 0446	Gray	01/17/01
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 ²	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 ²	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Anthony L. Reid v. Department of Health & Human Services	00 CSE 0647	Lassiter	01/16/01
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Benny G. Bowen v. Department of Health & Human Services	00 CSE 0666	Mann	12/11/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Ottis Hairr v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
Gregory C. Tweed v. Department of Health & Human Services	00 CSE 0876	Conner	01/25/01
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 ³	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00

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James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00
Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00
Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00
Norman G. Mitchell v. Department of Health & Human Services	00 CSE 1036	Chess	12/18/00
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 ³	Conner	10/06/00
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00
Chester L. Jenkins v. Department of Health & Human Services	00 CSE 1089	Chess	12/13/00
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00
Tony E. Plyler v. Department of Health & Human Services	00 CSE 1447	Wade	01/12/01
Teresa A. Ingraham v. Department of Health & Human Services	00 CSE 1464	Chess	12/29/00
Tommy William Carter v. Department of Health & Human Services	00 CSE 1485	Gray	01/31/01
Michael Hudson v. Department of Health & Human Services	00 CSE 1493	Wade	02/02/01
Robert M. Murray v. Department of Health & Human Services	00 CSE 1507	Lassiter	02/09/01
Kevin R. McCray v. Department of Health & Human Services	00 CSE 1525	Chess	01/30/01
Stan Matthire v. Department of Health & Human Services	00 CSE 1536	Chess	01/30/01
Richard McC arson v. Department of Health & Human Services	00 CSE 1543	Mann	01/03/01
Calvin G. Carter v. Department of Health & Human Services	00 CSE 1546	Lassiter	02/09/01
Mark Andrew Cohn v. Department of Health & Human Services	00 CSE 1560	Gray	02/09/01
Savoy L. Miler v. Department of Health & Human Services	00 CSE 1571	Lassiter	01/31/01
Elmer L. Mosley v. Department of Health & Human Services	00 CSE 1581	Wade	02/02/01
David E. Allen v. Department of Health & Human Services	00 CSE 1589	Lassiter	02/09/01
Clyde Michael Trout v. Department of Health & Human Services	00 CSE 1596	Morrison	01/03/01
Sharon S. Godwin v. Department of Health & Human Services	00 CSE 1598	Morrison	02/09/01
Bernie Mayr Jr v. Department of Health & Human Services	00 CSE 1622	Morrison	01/31/01
Karen R. McLean v. Department of Health & Human Services	00 CSE 1707	Gray	01/12/01
Daniel L. Phillips v. Department of Health & Human Services	00 CSE 1717	Morrison	01/31/01
Mauricio Lopez-Granados v. Department of Health & Human Services	00 CSE 1729	Gray	02/06/01
Carl Miller v. Department of Health & Human Services	00 CSE 1894	Morrison	01/31/01
Roger D Mintz v. Department of Health & Human Services	00 CSE 1997	Morrison	01/31/01
Jonathan P Deese v. Department of Health & Human Services	00 CSE 2112	Wade	02/02/01

Division of Social Services

Mary Laforet v. Department of Health & Human Services	99 DCS 0372	Lassiter	01/12/01
Emma Burkes (Edwards) v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00
Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 ¹	Wade	06/30/00
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00
Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00
Benita Hopkins v. Department of Health & Human Services	00 DCS 1444	Lassiter	12/18/00
Mary Springer v. Department of Health & Human Services	00 DCS 1459	Conner	12/20/00
Tameca Grant v. Department of Health & Human Services	00 DCS 1533	Wade	01/12/01
Della T Austin for Christopher Moore v. Dept. of Health & Human Svcs.	00 DCS 1740	Lassiter	01/31/01
Michael Anthony Bowden v. Department of Health & Human Services	00 DCS 2050	Lassiter	01/31/01

Albemarle Mental Health Center, Developmental Disabilities: Substance	98 DHR 1598	Reilly	12/15/00	15:15 NCR 1440
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Abuse Services v. NC Dept. of Health & Human Services, Division of Medical Assistance and NC Council of Community Mental Health, Developmental Disabilities and Substance Abuse Programs, Inc.				
Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00	
Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00	
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00	
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00	
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00	
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00	
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00	
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00	
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00	
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00	
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00	
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00	
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00	
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00	
Chawona Lynn Emanuel v. Department of Health & Human Services	00 DHR 1360	Gray	01/31/01	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1371 ⁶	Gray	01/09/01	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR-DOFS	00 DHR 1382	Gray	11/21/00	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1383 ⁶	Gray	01/09/01	
Penny Jean Leary for Hyailey Okanoto v. Div. of Medical Assistance	00 DHR 1400	Gray	01/11/01	
Reshea Devon Pierce v. Department of Health & Human Services	00 DHR 1516	Morrison	12/18/00	
Beatrice Harper v. NC Human & Health Services	00 DHR 2048	Gray	02/06/01	
Melissa M. Hale v. State of NC Office of Administrative Hearings	00 DHR 2077	Chess	01/26/01	
James Crosland and wife, Carolyn Crosland v. Polk County Dept. of Social Services	00 DHR 2130	Gray	01/04/01	
Division of Facility Services				
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR 41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00	
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00	
Sharon J. Saxe v. DHHS, Division of Facility Services	99 DHR 1169	Lassiter	11/16/00	15:14 NCR 1396
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00	
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00	
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00	
Nancy Yarbrough Allen v. DHHS, Division of Facility Services	00 DHR 0356	Gray	06/23/00	
Greensboro Heart Center, LLC v. NC DHHS, Division of Facility Services, Certificate of Need Section & The Moses H. Cone Memorial Hospital & The Moses H. Cone Memorial Hospital Operating Corporation	00 DHR 0375	Lassiter	12/19/00	
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00	
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00	
Helen Ramsey v. DHHS, Division of Facility Services	00 DHR 0578	Conner	01/29/01	
Cynthia Renee Cajuste v. DHHS, Division of Facility Services	00 DHR 0606	Morrison	11/08/00	
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00	
Violet Anne Berliner v. DHHS, Division of Facility Services	00 DHR 0685	Gray	11/17/00	
MariaGoretti Adaugo Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00	
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00	
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00	
Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00	
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR 1045
Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00	
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00	
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00	
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00	
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00	
Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00	
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00	
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00	
Sherie Moran Hinson Edwards v. DHHS, Division of Facility Services	00 DHR 1299	Morrison	12/18/00	
Mary Carmon Williams v. DHHS, Division of Facility Services	00 DHR 1308	Conner	02/01/01	

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Ruby L. Laughter v. DHHS, Division of Facility Services	00 DHR 1346	Lassiter	01/31/01		
Jonathan L. Merrell & Judith A. Merrell, and Eyring Realty, Inc. v. DHHS, Division of Facility Services & S & R Healthcare, Inc.	00 DHR 1461	Mann	01/31/01		
ENVIRONMENT AND NATURAL RESOURCES					
Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR	501
Dan M. Eichenbaum v. DENR & Harrison Construction Division of APAC-Tennessee, Inc.	99 EHR 0191	Lassiter	11/21/00		
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00		
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1136 ⁷	Lassiter	01/01/00		
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR	696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00		
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR	343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00		
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00		
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1627 ⁷	Lassiter	01/01/00		
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00		
Leonard F. Sutton v. Division of Forest Resources	00 EHR 0072	Morrison	12/18/00	15:15 NCR	1435
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR	693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00		
Samuel A. Perrella v. Div. of Environmental Health, New Bern, NC	00 EHR 0219	Gray	11/16/01		
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00		
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00		
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00		
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00		
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00		
William A. Sergeant Lot 9 v. Dept. of Environment & Natural Resources	00 EHR 1210	Gray	12/12/00		
Scotty's Mobile Village, Larry G. Scott v. Dept. of Env. & Natural Resources	00 EHR 1266	Morrison	12/12/00		
Randy Graham v. Environmental Health of Alamance County	00 EHR 1393	Gray	12/29/00		
Chris & Senja Shumater v. Dept. of Environment & Natural Resources	00 EHR 1584	Morrison	12/18/00		
Lisa King v. Brunswick County Health Department	00 EHR 1778	Lassiter	01/19/01		
Robert H. Bilbro v. DENR/Division of Coastal Management	00 EHR 1843	Chess	01/19/01		
<i>Coastal Resources Commission</i>					
Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR	342
<i>Division of Air Quality</i>					
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00		
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State of North Carolina, Dept. of Environment and Natural Resources, Division of Air Quality	00 EHR 0227	Conner	08/31/00		
Billy V. Cain v. NC DENR, Division of Air Quality	00 EHR 1351	Lassiter	01/11/01		
<i>Division of Land Resources</i>					
James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of Land Resources	98 EHR 1292	Gray	10/16/00		
<i>Division of Water Quality</i>					
Fred J. McPherson v. DENR, Division of Water Quality	00 EHR 0160	Morrison	09/01/00		
Town of Wallace v. NCDENR, Division of Water Quality	00 EHR 0247	Lassiter	10/05/00		
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NCDENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00		
<i>Division of Waste Management</i>					
A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management	99 EHR 0994	Mann	07/27/00	15:05 NCR	636
JUSTICE					
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00		
<i>Alarm Systems Licensing Board</i>					
John Martin Canter v Alarm Systems Licensing Board	00 DOJ 0573	Gray	06/02/00		
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00		
James Thomas Wagg v. Alarm Systems Licensing Board	00 DOJ 1124	Lassiter	11/02/00		
Edwin Moore Stevens v. Alarm Systems Licensing Board	00 DOJ 1413	Lassiter	11/02/00		
<i>Education and Training Standards Division</i>					
Peter A. Davis v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0531	Reilly	09/14/00		
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00		
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00		
Larry G. McClain v. Sherriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00		
Ersal Overton, III v. Sherriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR	883

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Keith Allen Murchison v. Sheriffs' Education & Training Stds Comm.	00 DOJ 0006	Lassiter	06/26/00	
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00	
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm.	00 DOJ 0563	Gray	09/19/00	
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0907	Lassiter	11/02/00	
Charles L. Garner, Jr. v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0993	Morrison	01/05/01	
James Edward Ellerbe v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0948	Lassiter	07/31/00	
Dexter Dwayne Boyd v. Criminal Justice Education & Training Standards Commission	00 DOJ 1366	Lassiter	05/26/00	
William J. Sciacca v. Sheriffs' Education & Training Stds. Comm	00 DOJ 1555	Mann	01/17/01	
Rosamel T. Gresham v. Sherriffs' Education & Training Standards Comm.	00 DOJ 1557	Lassiter	12/20/00	
Private Protective Services Board				
Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective Services Board	00 DOJ 0004	Conner	08/14/00	
George Thomas Bond v. Private Protective Services	00 DOJ 0014	Conner	05/11/00	
Robert V. Croom and Robert V. Wooster v. Private Protective Services Board	00 DOJ 0058	Morrison	05/16/00	
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00	
Samuel G. Slater v. Private Protective Services Board	00 DOJ 0090	Morrison	05/12/00	
Keith Lewis v. Private Protective Services Board	00 DOJ 0113	Connor	06/07/00	
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00	
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00	
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00	
Franklin Delano Gann, Jr. v. Private Protective Services Board	00 DOJ 0670	Morrison	06/15/00	
William Junior Holmes v. Private Protective Services Board	00 DOJ 0671	Morrison	06/15/00	
Michael Burt v. Private Protective Services Board	00 DOJ 0672	Morrison	06/15/00	
Jason William Kane v. Private Protective Services Board	00 DOJ 0952	Wade	09/08/00	
Anthony Queen Williams v. Private Protective Services Board	00 DOJ 1005	Morrison	09/01/00	
Calvin Earl McRae v. Private Protective Services Board	00 DOJ 0736	Morrison	08/02/00	
PUBLIC INSTRUCTION				
Doris G. Branch v. NC Department of Public Instructions	98 EDC 0368	Gray	10/08/00	15:13 NCR 1233
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education	99 EDC 0389	Gray	08/23/00	
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR 45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00	
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters for Weston Harold Waters	00 EDC 0465	Wade	08/11/00	
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie Smith, Frank Smith, and Angela Smith v. NC State Board of Education and Cleveland County Board of Commissioners	00 EDC 0800	Morrison	06/26/00	15:04 NCR 492
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00	
Christopher Paul Thompson v. Polk County School System	00 EDC 1291	Conner	12/28/00	
DEPARTMENT OF INSURANCE				
Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00	
MISCELLANEOUS				
Nancy York Vorys v. Raleigh Police Department		00 MIS 1436	Gray	10/27/00
Shane C. Balance v. Watauga County District Attorney and Watauga County Superior Court	00 MIS 1685	Mann	01/31/01	
STATE PERSONNEL				
Denise M. Ashe v. Northampton County Board of Commissioners, Northampton County Board of Social Services, Northampton County Department of Social Services	95 OSP 1011	Gray	08/29/00	
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00	
Roosevelt Wilkerson, Jr. v. NC Department of Correction	98 OSP 1198 ⁸	Gray	01/30/01	
Marshe Morgan v. Black Mount Center, NC DHHS	98 OSP 1302	Gray	07/11/00	15:05 NCR 624
Pat Hovis v. Lincoln County Department of Social Services	98 OSP 1348	Conner	11/15/00	
Roosevelt Wilkerson, Jr. v. NC Department of Correction	99 OSP 0084 ⁸	Gray	01/30/01	
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR 47
Betty R. Holman v. Broughton Hospital	99 OSP 0580	Hunter	05/08/00	
Doris A. Archibald v. Dare County Health Department	99 OSP 0622	Gray	08/10/00	
Mack Reid Merrill v. NC Department of Correction	99 OSP 0627	Wade	08/23/00	15:07 NCR 772
Russell J. Suga v. Employment Security Commission of NC	99 OSP 0768	Gray	06/23/00	
Glenn Roger Forrest v. NC Department of Transportation	99 OSP 0853	Lassiter	08/24/00	15:07 NCR 781
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR 5
Larry Mayo v. Employment Security Commission of NC	99 OSP 1023	Wade	06/30/00	
Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR 924
Joel T. Lewis v. Department of Correction	99 OSP 1116	Reilly	05/31/00	
Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet	99 OSP 1142	Morrison	08/11/00	
Van Sutton v. Office of Juvenile Justice/Dobbs School	99 OSP 1204	Gray	07/13/00	
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Thelma T. Utley v. NC State University	99 OSP 1708	Conner	12/08/00		
Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center	99 OSP 1757	Anderson	08/28/00		
Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction	00 OSP 0013	Conner	07/05/00		
Brenda Parker v. NC Div. of Motor Vehicles	00 OSP 0021	Gray	01/19/01	15:16 NCR	1545
Forrest Travis Coston v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0022	Conner	01/24/01		
Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0029	Morrison	08/08/00		
Robert Boyd Choat v. Department of Correction		00 OSP 0102	Reilly	07/24/00	
Larry Campbell v. Wildlife Resources Commission	00 OSP 0117 ⁵	Reilly	09/28/00		
Larry Campbell v. Wildlife Resources Commission	00 OSP 0118 ⁵	Reilly	09/28/00		
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00		
Robert L. Swinney v. NC Department of Transportation	00 OSP 0281	Morrison	12/20/00	15:14 NCR	1392
Jesse C. Whitaker v. Facilities Operations (NCSU)	00 OSP 0342	Chess	07/11/00		
Gladys M. Sanders v. NC Department of Correction	00 OSP 0362	Gray	09/27/00		
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Starr M. Strickland v. Correction Enterprises, NC Dept. of Correction	00 OSP 0460	Chess	10/24/00		
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Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00		
Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons	00 OSP 0586	Chess	07/10/00		
Michael Jackson v. University Graphics, NC State University	00 OSP 0621	Lassiter	08/16/00		
Marvin Clark v. NC Department of Correction	00 OSP 0623	Gray	08/03/00		
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James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00		
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00		
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00		
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00		
Bernadine Johnson v. Department of Correction	00 OSP 1118	Morrison	11/20/00		
Robert C. Adams v. NC Department of Labor	00 OSP 1185	Conner	11/28/00		
Pamela DeVose v. Durham County DSS	00 OSP 1189	Conner	12/28/00		
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Robert J. Lane v. Jim Webb, NC Special Care Center (DHR)	00 OSP 1241	Gray	01/23/01		
Pamela R. Smith v. NC Department of Public Instruction	00 OSP 1229	Conner	11/09/00		
Wayne M. Wise v. NCCU-WNCU	00 OSP 1269	Gray	01/09/01		
Dora P. Pettiford v. NC Department of Health & Human Services	00 OSP 1279	Lassiter	09/25/00		
David A. Greats v. NC Department of Correction	00 OSP 1282	Conner	11/09/00		
Ronald Dennis "Butch" Long v. Western Carolina University	00 OSP 1307	Chess	02/02/01		
Wayne Davis v. Shelby City Schools	00 OSP 1402	Lassiter	12/20/00		
Larry Joel Williams v. Durham Co. Gov't, The Durham Center	00 OSP 1417	Gray	01/24/01		
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Jean C. Burkhart v. NC Dept. of State Treasurer, Retirement Systems Division	99 DST 1475	Mann	05/30/00	15:05 NCR	633
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Eddie B. Thomas v. NC Department of Revenue		00 REV 0530	Gray	08/24/00	
Samuel W. Hinshaw v. NC Department of Revenue	00 REV 1008	Gray	12/20/00		

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Pamela J. Rollefson v. Secretary of State (Notary Division)	00 SOS 1470	Conner	01/26/01		
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UNIVERSITY OF NORTH CAROLINA

Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing	00 UNC 0763	Lassiter	09/08/00		
Betty S. Matheson v. UNC Hospitals, Patient Accounting Department, OR Services	00 UNC 1020	Gray	10/09/00		
Ande West v. UNC Hospitals	00 UNC 1267	Conner	12/14/00		
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NC BOARD OF ETHICS

H. Michael Poole, Ph.D v. Perry Newsome, Exec. Dir. NC Board of Ethics	00 EBD 0696	Lassiter	08/25/00		
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CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
99 CPS 1160

TERRY RAMEY D/B/A RAMEY'S WRECKER SERVICE,)
Petitioner,)
v.)
N.C. DEPARTMENT OF CRIME CONTROL AND)
PUBLIC SAFETY)
N.C. STATE HIGHWAY PATROL,)
Respondent.)

RECOMMENDED DECISION

ISSUE

Whether the Highway Patrol has enforced its rules concerning wrecker rotation in an arbitrary and capricious manner since June 23, 1999.

BACKGROUND

Petitioner had filed an earlier case, File No. 98 CPS 0460, wherein he alleged, in pertinent part, that Respondent was enforcing its rules in an arbitrary and capricious manner.

Administrative Law Judge Dolores O. Smith issued a Recommended Decision in that earlier case on February 22, 1999, wherein she recommended:

1. That the Respondent create a Special Heavy Equipment Tow Rotation Log in Haywood County; and
2. That random checks of wrecker service compliance be conducted in Haywood County.

In support of the first recommendation, Judge Smith found, in pertinent part, that Petitioner had purchased a prototype 50 ton wrecker, which was larger than any wrecker in the vicinity and was capable of towing heavily loaded cement trucks, large buses and other heavy vehicles. In that case, Petitioner testified that most of these calls were low revenue producing calls and other large wrecker services routinely turned them down because they were incapable of towing them and that when he was called to these low revenue type calls he lost his place on the heavy rotation list, thereby missing out on more lucrative calls. (P.E. #1, F of F # 50-61).

The second recommendation was based on findings of fact and a conclusion of law that although First Sergeant Valentine conducted investigations when complaints were registered, he did not conduct regular inspections of wrecker services as required by the rules. (P.E. # 1, C of L # 4).

Although Petitioner alleged, in the earlier case, that another wrecker service, Moe Bandy's, was not in compliance with the regulatory requirements, Judge Smith concluded that there was insufficient evidence to show whether Moe Bandy violated any regulations or whether Sergeant Valentine was aware of any alleged violations. (P.E. #1, C of L #3).

Petitioner also alleged, in the earlier case, that Moe Bandy received preferential treatment from the Highway Patrol and that Moe Bandy appeared on the rotation log more than once under different names. This allegation was not substantiated. (P.E. # 1, C of L # 5).

The Highway Patrol Commander issued a Decision and Order in the above referenced earlier case on June 23, 1999, adopting the findings of fact and conclusions of law of Judge Smith and directing that each of her two recommendations be implemented in Haywood County. (P.E. # 2) (Note: Random inspections were required under the old administrative rules (14A NCAC 0306(b)) (P.E. # 6) but are not required under the new rules implemented subsequent to the issuance of the Recommended Decision and Decision and Order. (See 14A NCAC 9H.0321(b) (R.E. # 1).

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On or about August 5, 1999, First Sergeant Valentine, the supervisor who at that time was responsible for overseeing Highway Patrol operations in Haywood County, provided each large wrecker service with a copy of the Patrol Commander's Decision and Order and a letter prepared by him which stated, in pertinent part:

If you are interested in having your wrecker service placed on the Special Heavy Equipment Rotation Log, you are to certify below that you wish to be included. All wrecker services to be included on this log must be able to demonstrate that they can, in fact, pull a large motor home or bus. (P.E. # 4; T pp 16-18).

Four large wrecker services in Haywood County requested to be included on the new Special Heavy Equipment Rotation Log. Those services are Sutton's, Moe Bandy's, Wilke's Garage and Doyle's. (T pp 12-13). Petitioner did not request to be included on the log and, therefore, was not included. (T p 53).

Although the letter from First Sergeant Valentine stated that wrecker services desiring to be placed on the specialized log "must be able to demonstrate that they can, in fact, pull a large motor home or bus," no test was actually administered by the Highway Patrol. (T pp 15-18). Since the inception of the Special Heavy Equipment Rotation Log in Haywood County, however, the Highway Patrol has not received any complaints and the wrecker services on the list appear to be getting the job done in a satisfactory manner. (T. pp 54-55). No evidence was presented that any wrecker service on the Special Heavy Equipment Rotation Log was turning down calls due to an inability to handle the job or for any other reason.

On or about 31 August 1999, Petitioner filed a Petition for Contested Case Hearing in the above captioned matter. In his Petition, he specifically alleged that Respondent:

- a. Adopted a new CAD down rotation system in violation of North Carolina Administrative Procedures Act without proper notice and public hearing;
- b. Failed to properly follow procedures with respect to whether the drivers on wrecker rotation are in compliance with the "existing" rules of the Highway Patrol for wrecker services and failing to remove wrecker owners in violation of said rules; and
- c. Further, since March 11, 1999, for failing to carry out the adaptation of the Administrative Law Judge's ruling directing the creation of a special wrecker rotation system for specialty wreckers.

This matter previously came on for hearing on March 28, 2000, Robert Roosevelt Reilly, Jr., Administrative Law Judge, presiding. At that time, an agreement was reached between the parties that the matter should be stayed in order to allow Respondent time to promulgate new rules related to rotation wrecker services and Judge Reilly issued an ORDER TO STAY on April 6, 2000.

On or about June 5, 2000, Respondent filed Temporary Rules as directed by Judge Reilly. Those rules were subsequently accepted by the Office of Administrative Hearings and published in the North Carolina Register.

Although Respondent promulgated new temporary rules, Petitioner has asked for a hearing which was heard by the undersigned at Black Mountain, North Carolina, on October 25, 2000.

Pursuant to G.S. §150-B-23(a), in order for the Office of Administrative Hearings to have jurisdiction over this matter, Petitioner must allege that Respondent has deprived the Petitioner of property, has ordered the Petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the Petitioner's rights and that the Respondent:

1. Exceeded its authority or jurisdiction;
2. Acted erroneously;
3. Failed to use proper procedure; Acted arbitrarily or capriciously; or
4. Failed to act as required to act as required by law or rule.

Respondent filed a Motion to Dismiss. After hearing evidence on Respondent's Motion and reviewing the parties' Pretrial Orders, the undersigned determined that the only basis of jurisdiction as alleged by the pleadings and record, and, therefore, the sole issue to be decided in this case is whether the Highway Patrol, since June 23, 1999, has enforced its rules in an arbitrary and capricious manner in Haywood County and, if so, whether in doing so, substantially prejudiced the Petitioner's rights.

FINDINGS OF FACT

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1. When First Sergeant Workman assumed the duties as First Sergeant for Haywood County in October 1999, the Special Heavy Equipment Tow Rotation Log and new temporary rules were already in place. Upon assuming command of the District, however, Sergeant Workman reviewed the existing files on wrecker services that were on the rotation list and directed his Line Sergeants to conduct periodic inspections and to document the results. (T pp 20-21, 58). Sergeant Workman removed three wrecker services from the rotation log permanently and one temporarily for not being in compliance with the rules. (T pp 38, 59). Other wrecker services, including Petitioner, were given an opportunity to correct less serious discrepancies in order to avoid being removed from the rotation log. (T pp 58-60). Although Petitioner's largest wrecker (what he describes as a prototype 50 ton wrecker) is not in compliance with the newly adopted administrative rules, it has not been removed from the rotation log because, in the judgment of the Highway Patrol, it is capable of getting the job done. (T pp 60-62, 121-22).

2. At the hearing of this contested case, as in the earlier case (98 CPS 0460), Petitioner presented a substantial amount of evidence related to "Moe Bandy's," a wrecker service, which is owned and operated by James Autrey and which Petitioner claims receives special treatment from the Highway Patrol. Specifically, Petitioner contends that Moe Bandy's wrecker service is in violation of numerous rules but has not been removed from the rotation list by the Highway Patrol. This same allegation was addressed at the earlier hearing in which Judge Smith concluded that there was insufficient evidence that Moe Bandy was violating any of the rules. (P.E. # 1, C of L # 5). Despite Judge Smith's earlier ruling, Petitioner contends that Moe Bandy's wrecker service has been in violation of the administrative rules since June 23, 1999, and that Moe Bandy's should have been removed from the rotation log pursuant to 14A NCAC 9H.0321(31)(b) which states, in pertinent part: "Once placed on the rotation wrecker list, a wrecker service that fails to comply with the requirements of these rules shall be removed from the rotation list." (R.E. # 1). Petitioner alleges that he has been substantially prejudiced by the Highway Patrol's failure to remove Moe Bandy's from the rotation log and that such inaction by the Highway Patrol constitutes arbitrary and capricious enforcement of its rules.

3. James Autrey has been on the Highway Patrol rotation log and doing business under the assumed name of Moe Bandy's wrecker service for approximately fifteen (15) years; during which time he has not had any complaints from the public. (T pp 157-58, 193). He currently has three (3) wreckers (1 large, 1 medium and 1 small) (T p 176) and his large wrecker is on the Special Heavy Equipment Rotation log. (T pp 195-96).

4. Moe Bandy's wrecker service was inspected by the Highway Patrol in October 1999, January 2000 and again in June 2000. (T pp 42-43, 68, 90). Each of these inspections consisted of on-site inspections of his storage lot, wreckers and related equipment. (T pp 34-35, 42-43, 68-69). Petitioner argues that these inspections, if conducted properly, would have disclosed violations of the rules. (T pp 68, 78, 81, 90-92).

5. Although James Autrey reported that his business office was located at his residence, none of the inspections conducted since June 1999, included an inspection of that office. (T pp 26, 34-35, 42-44, 90-92). 14A NCAC 9H.0321(2) states, in pertinent part; "a wrecker service must have a full-time office within the Rotation Wrecker Zone that is manned and open for business at least eight hours per day, five days per week. . . ." Petitioner argues that by failing to inspect Moe Bandy's business office located at his residence, the Highway Patrol was unable to ensure compliance with this rule. Witnesses for the Highway Patrol testified, however, that the home business office had been previously inspected by Sgt. Valentine (T p 168), the address was listed in the Computer Assisted Dispatch (CAD) log (T p 82) and that they relied, in good faith, on James Autrey's representations because there had never been any complaints from the public. (T pp 68, 78, 81). Significantly, James Autrey maintained a second office in a large white trailer located on his storage lot, which he testified he manned not less than eight hours per day, five days per week. This business office was, at times, sparsely furnished. James Autrey testified that the trailer has a desk and storage cabinets (T p 161) and that when he rented a lot from Joe Powell, he provided electricity by running drop cords from a barn. (T p 163). He also ran a telephone line from the same barn. (T p 164). More recently, however, James Autrey purchased an adjacent piece of property as a storage lot on Devine Way. (T pp 165, 167, 186). His office is currently located in a big white trailer, marked with "Moe Bandy's Wrecker Service" in three-foot high letters and he now uses generators to supply his own electricity and his telephone service is provided by cellular service rather than a land-line. (T pp 169-71). The office at the storage lot is open from 6 a.m. until 2 p.m. and he then works out of his home from 2 p.m. until approximately 9 p.m. He does not have any employees assisting him; he staffs the office himself. (T p 169). Although Moe Bandy's wrecker service does not have additional employees, the office is manned for not less than eight hours per day by James Autrey and is monitored by his cellular telephone while on calls. Obviously, the office will be unmanned at any time James Autrey is working a wreck or otherwise on the road, but he has a cellular telephone.

6. Petitioner presented evidence related to 14 NCAC 0308(11) which requires that a storage facility be secured by a 6-foot high chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism. Moe Bandy's storage facility is secured with a six-foot high chain link fence and gate as required which Sergeant Sorrell testified was, in his opinion, more secure than Petitioner's storage facility. (T pp 68-69, 86, 197).

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7. Petitioner presented a great deal of evidence that Moe Bandy does not have a listed telephone number and that his telephone number is not painted on one of his three wreckers. There is, however, no specific requirement that a wrecker service be listed in the telephone directory. (14A NCAC 9H.0321(2)); or that a telephone number be painted on the wrecker trucks (T pp 192-93); nor has the Highway Patrol received any complaints from the public about not being able to locate or get in touch with Moe Bandy's Wrecker Service. (T pp 44, 82).

8. Petitioner presented evidence that suggested that Moe Bandy may have been operating out of the same storage facility as another wrecker operator, Joe Powell; in violation of 14A NCAC 9H.0308(11). This allegation was not corroborated by any of the witnesses, however, and James Autrey testified that he leased the property from Joe Powell and that Joe Powell did not operate a wrecker service on that property until he purchased an adjacent piece of property on Devine Way, and that is where his storage lot is currently located. (T pp 165, 167, 186).

9. Petitioner presented evidence that Moe Bandy does not have a business license issued by Haywood County, which Haywood County does not require to operate a wrecker service. (T pp 78-79, 159-160).

10. Petitioner presented evidence that the Highway Patrol never checked with the Register of Deeds to determine whether James Autrey filed an Assumed Name Certificate disclosing that he was operating under the assumed name of Moe Bandy. The evidence disclosed that Highway Patrol officials are not familiar with Assumed Name Certificates and had never checked such files. (T pp 79-80). 14A NCAC 9H.0321(12) states that wrecker firms: "Must adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker services and insurance as required by G.S. 20-309(a). (Emphasis added). Assumed name certificates are not specifically related to registration or operation of wrecker services; indeed searching such files would appear to be clearly beyond the scope and intent of the rules. There was no evidence presented that Moe Bandy's wreckers are not properly registered and James Autrey testified that he has the required \$750,000 insurance on his large wrecker. (T p 198).

11. Petitioner's wrecker service may be larger than Moe Bandy's and other firms in Haywood County and the evidence shows that Petitioner may invest more money on overhead expenses than Moe Bandy's and other wrecker services in Haywood County. The additional overhead costs incurred by Petitioner are related to his wrecker business generally but are significantly related to the rules promulgated by the Highway Patrol. When asked what percentage of his wrecker business is related to Highway Patrol rotation calls, Petitioner responded: "very small." Additionally, no evidence was presented to show that Petitioner is losing a significant amount of revenue as a consequence of Moe Bandy being on the rotation log. In fact, Petitioner never asked to be placed on the special heavy equipment log and cannot, therefore, be prejudiced in any way by Moe Bandy being on that log.

12. It is more likely than not that James Autrey has not complied will all rules and standards of the Highway Patrol concerning the operation of his wrecker service—no office open fulltime to the public at least eight hours a day, failing to give proper notice before changing business location, a proper telephone listing, and not being available to the public on a 24-hour basis.

BASED UPON THE FOREGOING FINDINGS OF FACT, the undersigned enters the following:

CONCLUSIONS OF LAW

The Highway Patrol has allowed James Autrey to operate Moe Bandy Wrecker Service and remain on its heavy equipment wrecker rotation log even though Autrey has not complied with all the Patrol's rules and standards, which is not fair to those services following the rules.

WHEREFORE, based upon the foregoing Findings Of Fact and Conclusions Of Law, the undersigned makes the following:

RECOMMENDED DECISION

That the Patrol Commander issue a Final Decision ordering a full inspection to determine whether or not James Autrey's wrecker service in Haywood County is in compliance with the Patrol's rules and standards with the result that if he is not he will be removed from the rotation log until the deficiencies are corrected.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

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NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Commander of the North Carolina Highway Patrol.

This the 26th day of January, 2001.

Fred G. Morrison Jr.
Senior Administrative Law Judge