

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 17, Issue 24
Pages 2167 - 2206

June 16, 2003

This issue contains documents officially filed through May 23, 2003.

Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

I. IN ADDITION

Elections - Written Opinions2167 - 2168
Rules Review Commission.....2169

II. RULE-MAKING PROCEEDINGS

Agriculture

Plant Conservation Board2170

Environment and Natural Resources

Environmental Management Commission2170 - 2171

Licensing Boards

Medical Board2171

Plumbing, Heating & Fire Sprinkler Contractors .2171 - 2172

III. PROPOSED RULES

Environment and Natural Resources

Coastal Resources Commission2176 - 2179

Health and Human Services

Health Services, Commission for2173 - 2176

Secretary of State

Securities Division2179 - 2183

IV. TEMPORARY RULES

Environment and Natural Resources

Health Services, Commission for2187 - 2190

Wildlife Resources Commission.....2186 - 2187

Health and Human Services

Health Services, Commission for2184 - 2186

V. APPROVED RULES2191 - 2197

Administration

State Construction Office

Environment and Natural Resources

Well Contractor Certification Rules

Health and Human Services

Medical Assistance

Insurance

Financial Evaluation Division

Licensing Boards

General Contractors, Licensing Board for

Veterinary Medical Board

VI. RULES REVIEW COMMISSION2198 - 2199

VII. CONTESTED CASE DECISIONS

Index to ALJ Decisions2200 - 2206

For the CUMULATIVE INDEX to the NC Register go to:

<http://oahnt.oah.state.nc.us/register/CI.pdf>

North Carolina Register is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. *North Carolina Register* (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, 6714 Mail Service Center, Raleigh, NC 27699-6714.

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	Locksmith Licensing Board	29
*21	Occupational Licensing Boards	Massage & Bodywork Therapy	30
22	Administrative Procedures (Repealed)	Marital and Family Therapy	31
23	Community Colleges	Medical Examiners	32
24	Independent Agencies	Midwifery Joint Committee	33
25	State Personnel	Mortuary Science	34
26	Administrative Hearings	Nursing	36
27	NC State Bar	Nursing Home Administrators	37
28	Juvenile Justice and Delinquency Prevention	Occupational Therapists	38
		Opticians	40
		Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Respiratory Care Board	61
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
Publication Schedule for January 2003 – December 2003

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	
17:13	01/02/03	12/06/02	03/03/03	01/17/03	02/03/03	02/20/03	05/00/04	03/03/03	03/20/03	05/00/04	09/29/03
17:14	01/15/03	12/19/02	03/17/03	01/30/03	02/14/03	02/20/03	05/00/04	03/17/03	03/20/03	05/00/04	10/12/03
17:15	02/03/03	01/10/03	04/15/03	02/18/03	03/05/03	03/20/03	05/00/04	04/04/03	04/21/03	05/00/04	10/31/03
17:16	02/17/03	01/27/03	05/01/03	03/04/03	03/19/03	03/20/03	05/00/04	04/21/03	04/21/03	05/00/04	11/14/03
17:17	03/03/03	02/10/03	05/15/03	03/18/03	04/02/03	04/21/03	05/00/04	05/02/03	05/20/03	05/00/04	11/28/03
17:18	03/17/03	02/24/03	06/02/03	04/01/03	04/16/03	04/21/03	05/00/04	05/16/03	05/20/03	05/00/04	12/12/03
17:19	04/01/03	03/11/03	06/02/03	04/16/03	05/01/03	05/20/03	05/00/04	06/02/03	06/20/03	05/00/04	12/27/03
17:20	04/15/03	03/25/03	06/16/03	04/30/03	05/15/03	05/20/03	05/00/04	06/16/03	06/20/03	05/00/04	01/10/04
17:21	05/01/03	04/09/03	07/01/03	05/16/03	06/02/03	06/20/03	05/00/04	06/30/03	07/21/03	05/00/04	01/26/04
17:22	05/15/03	04/24/03	07/15/03	05/30/03	06/16/03	06/20/03	05/00/04	07/14/03	07/21/03	05/00/04	02/09/04
17:23	06/02/03	05/09/03	08/01/03	06/17/03	07/02/03	07/21/03	05/00/04	08/01/03	08/20/03	05/00/04	02/27/04
17:24	06/16/03	05/23/03	08/15/03	07/01/03	07/16/03	07/21/03	05/00/04	08/15/03	08/20/03	05/00/04	03/12/04
18:01	07/01/03	06/10/03	09/02/03	07/16/03	07/31/03	08/20/03	05/00/04	09/02/03	09/22/03	05/00/04	03/27/04
18:02	07/15/03	06/23/03	09/15/03	07/30/03	08/14/03	08/20/03	05/00/04	09/15/03	09/22/03	05/00/04	04/10/04
18:03	08/01/03	07/11/03	10/01/03	08/16/03	09/02/03	09/22/03	05/00/04	09/30/03	10/20/03	05/00/04	04/27/04
18:04	08/15/03	07/25/03	10/15/03	08/30/03	09/15/03	09/22/03	05/00/04	10/14/03	10/20/03	05/00/04	05/11/04
18:05	09/02/03	08/11/03	11/03/03	09/17/03	10/02/03	10/20/03	05/00/04	11/03/03	11/20/03	05/00/04	05/29/04
18:06	09/15/03	08/22/03	11/17/03	09/30/03	10/15/03	10/20/03	05/00/04	11/14/03	11/20/03	05/00/04	06/11/04
18:07	10/01/03	09/10/03	12/01/03	10/16/03	10/31/03	11/20/03	05/00/04	12/01/03	12/22/03	05/00/04	06/27/04
18:08	10/15/03	09/24/03	12/15/03	10/30/03	11/14/03	11/20/03	05/00/04	12/15/03	12/22/03	05/00/04	07/11/04
18:09	11/03/03	10/13/03	01/02/04	11/18/03	12/03/03	12/22/03	05/00/04	01/02/04	01/20/04	05/00/04	07/30/04
18:10	11/17/03	10/24/03	02/02/04	12/02/03	12/17/03	12/22/03	05/00/04	01/16/04	01/20/04	05/00/04	08/13/04
18:11	12/01/03	11/05/03	02/02/04	12/16/03	12/31/03	01/20/04	05/00/04	01/30/04	02/20/04	05/00/04	08/27/04
18:12	12/15/03	11/20/03	02/16/04	12/30/03	01/14/04	01/20/04	05/00/04	02/13/04	02/20/04	05/00/04	09/10/04

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.

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

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Director

Mailing Address:
PO Box 27255
Raleigh, NC 27611-7255
(919) 733-7173
Fax (919) 715-0135

May 8, 2003

Senator Virginia Foxx
11468 Highway 105
Banner Elk, N.C. 28604

RE: Request for formal opinion as to GS §163-278.5 and GS § 163-278.13B

Dear Senator Foxx,

This letter contains an opinion of this office being reported as per GS § 163-278.23.

You have requested if it is possible for your active Congressional political committee to continue to solicit and accept political contributions during the course of your campaign for Congress. The North Carolina State Board of Elections can only answer that question from the perspective of North Carolina campaign reporting laws. This office can not give you an opinion that such operation would or would not violate Federal election laws. The Federal Election Commission is the entity that is empowered to render such an opinion in the context of Federal election law.

Under North Carolina law, the concurrent operation of the two political committees would be acceptable as long as the various contributions to the different committees are clearly designated as required by GS § 163-278.20, and the contributions to your State Senate committee comply with the other legal restrictions contained in Chapter 163 of the General Statutes. This conclusion is based upon a reading of GS § 163-278.5, which clearly precludes the application of Article 22A of Chapter 163 of the General Statutes to elections for federal office.

You have also made inquiry as to whether the provisions of GS § 163-278.13B prevents the solicitation and acceptance of campaign contributions for your Congressional campaign during the prohibited time periods and from the prohibited contributors. It appears that GS § 163-278.5 would again prevent the application of this state statute to your campaign for the Federal office of U.S. Congresswoman..

The opinion of this office that GS § 163-278.13B would not apply to a Federal race has been shared with the Honorable Colon Willoughby, the District Attorney for Wake County, and he concurs in this opinion. This opinion is limited as to issues of North Carolina law, and does not and can reflect the position, if any, of the Federal Election Commission on the issue in question. If the North Carolina State Board of Elections can be of further help to you on issues of North Carolina election law, please contact us.

Sincerely,

Gary O. Bartlett
Executive Director

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Director

Mailing Address:
PO Box 27255
Raleigh, NC 27611-7255
(919) 733-7173
Fax (919) 715-0135

May 8, 2003

Mr. John B. McMillan
Manning Fulton & Skinner PA
PO Box 20389
Raleigh, NC 27619-0389

Via Hand Delivery

Re: North Carolina Association of Realtors (NCAR) and its Affiliated Political Committee; Request for Advisory Opinion Pursuant to N.C. Gen. Stat. § 163-278.23

Dear Mr. McMillan:

You have requested a written opinion pursuant to the final paragraph of N.C. Gen. Stat. § 163-278.23 on the compliance of the political committee of the North Carolina Association of Realtors (NCAR) with the requirements of Article 22A of Chapter 163 of the North Carolina General Statutes. The affiliated political committee of the NCAR is the North Carolina Realtors Political Action Committee ("RPAC").

NCAR has more than 25,000 members from throughout North Carolina. RPAC is a separate segregated fund affiliated with NCAR and organized by its officials and members as a political committee pursuant to N.C. Gen. Stat. § 163-278.19(b). Under this statute, members of a professional association may establish and contribute to such a political committee so long as the contributions are voluntary and the source of any contribution is not dues or other fees required as a condition of membership in the NCAR and do not derive from "any commercial transaction whatsoever." NCAR proposes that each NCAR affiliate that collects RPAC contributions create a "Transmittal Account," such as is used pursuant to the regulations of the Federal Election Commission. See 11 C.F.R. 102.6(c)(4)(ii)(A). The NCAR local affiliates will serve as the collecting agents for RPAC, and will establish transmittal accounts to which they will deposit checks from members of NCAR. NCAR affiliates will then be responsible for disbursing the checks according to the directions of the member of NCAR. The amounts directed to be contributed to RPAC must be deposited into its separate segregated fund directly from the transmittal accounts and should not be deposited into any NCAR operating accounts. All contributions to RPAC must be reported as such according to the requirements of Article 22A of Chapter 163 and are subject to the limitations of that Article.

The record-keeping, reporting and transmittal requirements will be significant for handling these contributions. The NCAR and RPAC must take great care to assure there is a "paper trail" for each contribution received by RPAC that shows the amount of the contribution, the source of the contribution, that the contribution came from funds of the NCAR member, and that the contribution was voluntarily given. Except for deposit and disbursement from the transmittal accounts, the monies originating as contributions to RPAC must be kept segregated from the dues and other funds of the NCAR. So long as the transmittal accounts will be maintained in this manner, with the necessary record keeping and reporting, it is my opinion that the transmittal accounts are an appropriate mechanism for the safeguarding and tracing of voluntary contributions to RPAC. Transmittal accounts meeting these requirements will not be deemed a political committee subject to the requirements of Article 22A of Chapter 163 of the General Statutes.

This opinion is based upon the facts as stated in your letter dated April 28, 2003. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules

THE N.C. RULES REVIEW COMMISSION

There is currently a proposal, House Bill 1151, going through the legislature to amend the Administrative Procedure Act. At the time this notice is being written it has passed the House and received a favorable report from the Senate Judiciary committee it was assigned to.

In the event that HB 1151 becomes law, there will be extensive changes in the temporary and permanent rulemaking procedure. The Rules Review Commission may consider at its June 19 meeting enacting temporary procedures to address certain aspects of the rulemaking process, if it appears to be necessary to do so based on the content and status of the proposals at that time. The Commission may hold a hearing to accept any oral comments concerning this process or the Commission's procedures. The Commission shall consider any written comments submitted on or prior to that date and prior to enacting any temporary procedures.

You may submit written comment to the Commission in care of the staff director at the following address: Joseph J. DeLuca, Jr.; N.C. Rules Review Commission; 1307 Glenwood Ave. #159; Raleigh, N.C. 27608. You may also reach the commission's staff at 919-733-2721. The Commission meeting is at that same address at 10:00 a.m. on Thursday, June 19, 2003.

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 .0301-.0302, .0304 - Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter: *These Rules establish lists of plants that are protected under the Plant Conservation Act.*

Reason for Proposed Action: *Proposed changes would add or remove certain plants in the various categories of protected plants, as recommended by the Plant Conservation Scientific Committee based upon changes in the status of these plants.*

Comment Procedures: *Comments from the public shall be directed to Marj Boyer, Sec., NC Plant Conservation Board, PO Box 27647, Raleigh, NC 27611, (919) 733-3610, ext. 250, fax (919) 733-1041, and email marj.boyer@ncmail.net.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by Environmental Management Commission 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: 15A NCAC 02D .1100, .1201; 02Q .0102, .0202, .0523, .0700. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-215.3(a)(1), (1a), (1b), (1d); 143.215.107(a)(1), (3), (4), (5), (10); 143-215.108; 143B-282; 150B-21.6

Statement of the Subject Matter:

15A NCAC 02D .1100; 02Q .0700 – To allow the use of ambient monitoring to determine compliance with the air toxic requirements instead of modeling.

15A NCAC 02D .1201 – To change the ranking of incinerators.

15A NCAC 02Q .0102 – To clarify the facility permit exemption.

15A NCAC 02Q .0202 – To correct a cross-reference in the definition of "actual emissions".

15A NCAC 02Q .0523 – To clarify that trades made under the nitrogen oxide budget trading program are not covered under the reporting requirements of this Rule.

Reason for Proposed Action:

15A NCAC 02D .1100; 02Q .0700 – Currently, modeling is the only acceptable way to demonstrate compliance with the air toxic rules. The criteria used in the model is placed in the permit, and compliance with these criteria is deemed compliance with the air toxic rules. Consideration is being given to allow using ambient monitoring in lieu of modeling. To substitute ambient monitoring for modeling would require establishing and operating an ambient monitoring network that would simulate modeling. Such a network would require a large number of monitors surrounding the facility in concentric circles. The monitors would have to be operated continuously for years. The monitors would have to measure concentrations below the acceptable ambient levels for the toxic air pollutants of concern. Multiple monitors may be required at each monitoring site as different monitors may be needed to measure different toxic air pollutants. If an exceedance of an acceptable ambient level is measured, then modeling would be required to fix operating parameters in the permit to ensure compliance. This rule change would require one or more new rules and amendments of rules in these Subchapters.

15A NCAC 02D .1201 – This rule gives the order to use to determine which standards and requirements apply if an incinerator can be classified as being more than one type of incinerator. The purpose of Paragraph (d) is to prevent an incinerator that could be classified as being more than one type of incinerator from having to comply with multiple rules. The order of hospital, medical, or infectious waste incinerators (HMIWI) and commercial and industrial solid waste incinerators (CISWI) should be reversed, i.e. CISWI should come before or out rank HMIWI, as the standards for CISWI are generally more restrictive than the standards for HMIWI.

15A NCAC 02Q .0102 – This rule identifies types of activities that do not need an air quality permit. 15A NCAC 02Q .0102(c)(2)(E)(ii) exempts facilities whose actual emissions of the listed pollutants before any air pollution control device are less than five tons per year. The rule does not intend to exempt facilities that are likely to violate an air quality standard. The rule needs to be clarified to add a qualification such that the exemption would not apply if the facility had a source that could likely violate an applicable standard if the source were not properly controlled.

15A NCAC 02Q .0202 – This rule defines terms used in the permit fee section. It contains a definition of "actual emissions." This definition defines actual emissions by describing how to calculate actual emissions for Title V fee purposes. The definition identifies insignificant activities. Insignificant activities are now defined in 15A NCAC 02Q .0503, Definitions. Thus, the cross-reference in this rule needs to be changed from .0102 to .0503.

15A NCAC 02Q .0523 – This rule allows emission trades to be made to the extent allowed under Subchapter 02D, without permit revision if three conditions listed in Paragraph .0523(c) are met. One of these conditions is that the permittee must notify the Director and EPA in writing at least seven days before the trade is made. This provision is not really suitable or necessary for trades made under the nitrogen oxide budget trading program. Under the nitrogen oxide budget trading program, trades can be made weeks or months after the actual emissions have occurred. The purpose of this trading program is to acquire sufficient allowances to equal or exceed actual emissions during the previous ozone season. These trades may take place in October after the ozone season is over. Also, allowance trading can occur in a fluid market among many participants, many of whom are not in North Carolina and some of whom may not even be sources of air pollution. As these trades take place through a trading program administered by the EPA, the EPA is aware of the trade when it occurs. The DAQ can access this information if it desires. As far as these trades are concerned, the DAQ's primary interest is that after the close of the trading season, the source has enough allowances to offset its actual emissions during the previous ozone season.

Comment Procedures: Written comments should be submitted to Thomas Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641. Phone: (919) 733-1489, fax: (919) 715-7475, email: thom.allen@ncmail.net

has provided to the physician assistant written instructions about ordering medication, tests, and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test, or treatment is ordered. The adoption of a rule requiring regularly scheduled meetings between the supervising physician and the physician assistant to discuss clinical problems and quality improvement will further this interest more effectively. Continuing Medical Education requirement changed to allow greater flexibility in choice of CME courses.

Comment Procedures: Written comments should be submitted to Alexa Kapetanakis, Physician Extender Coordinator, 1203 Front Street, Raleigh, NC 27609. Phone: (919) 326-1109 ext. 233, fax: (919) 326-1130; email: alexa.kapetanakis@ncmedboard.org.

CHAPTER 50 – STATE BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice of Rule-making Proceedings is hereby given by the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors 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: 21 NCAC 50 .0108, .0301, .0305-.0306, .0402-.0409, .0411-.0412, .0502, .0505, .0511, .1004, .1006, .1014, .1101-.1102, .1104, .1401, .1403-.1404 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 87-18

Statement of the Subject Matter: Clarification of classifications of license and requirements for licensure; application and experience prerequisites for exams or licensure; content of examination or adoption of national test for some or all license classifications; business component of examinations and minimum passing grade on each part; continuing education requirements for renewal, for reactivation of expired licenses, for new limited license classifications, calculation of hours and components of credit hours; license display and contact information, signatures and definitions of proposals and contracts; use of trade names and identity of firms; responsibilities of licensees with respect to system design; joint ventures; licensee responsibilities of limited or unlimited plumbing, heating or fire sprinkler contractors as to permits, use of license, branch offices, full-time employment, supervision and competence in installation; clarification of service and minor repair exemptions; components of disciplinary process and sanctions; fees for plumbing, heating, fuel piping or fire sprinkler license applications or examinations; fees for license renewal by sublicensees; and publications and associated-fees.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice of Rule-making Proceedings is hereby given by NC Medical 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: 21 NCAC 32S .0106, .0109-.0110. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-18(13); 90-18.1

Statement of the Subject Matter: Changes to Rules Pertaining to Physician Assistants - specifically, regulations regarding continuing medical education; prescriptive authority; supervision of physician assistants; and addition of requirement mandating meetings to discuss quality improvement measures.

Reason for Proposed Action: Pursuant to G.S. 90-18.1, the Board is responsible for ensuring that the supervising physician

RULE-MAKING PROCEEDINGS

Reason for Proposed Action: *Implementation of new license classifications has revealed ambiguities in present rules. In addition, recent legislation creates conflict with text within some rules. Also, some fees were inadvertently changed by 2001 session laws, while other fees may need to be established, increased or decreased. The rules relative to disciplinary processes, and rules adopted by reference may need modification for descriptive purposes. It is anticipated that text of proposed rules will be published August 15, 2003, and a public hearing held September 15, 2003.*

Comment Procedures: *Comments on components of this Notice of Rulemaking may be submitted in writing to the Board addressed to Rulemaking Coordinator at State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Court, Raleigh, NC 27609, with a copy to Board counsel addressed to John N. Fountain, Young Moore and Henderson, P.O. Box 31627, Raleigh, NC 27622. Comments must be received by 5:00 p.m. on August 15, 2003.*

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 10A NCAC 41A .0213, and amend the rule cited as 10A NCAC 41A .0101. Notice of Rule-making Proceedings was published in the Register on April 1, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: July 9, 2003

Time: 1:30 p.m. – 3:00 p.m.

Location: Room G-1A, 1330 St. Mary's Street, Raleigh, NC

Reason for Proposed Action: *The recent outbreak of Severe Acute Respiratory Syndrome (SARS) has resulted in an unanticipated public health risk that requires prompt identification and effective control measures if the disease is to be effectively identified and controlled. In order to achieve these goals, it is necessary to add SARS to the list of reportable conditions and to require effective control measures that are in accordance with national standards set by the Centers for Disease Control and Prevention (CDC).*

Comment Procedures: *Written comments should be submitted to Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915. Phone: (919) 715-4168, email: Chris.Hoke@ncmail.net. Comments should be submitted by July 16, 2003.*

Fiscal Impact

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

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;

- (2) anthrax - 24 hours;
- (3) botulism - 24 hours;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease – 7 days;
- (10) cryptosporidiosis - 24 hours;
- (11) cyclosporiasis - 24 hours;
- (12) dengue - 7 days;
- (13) diphtheria - 24 hours;
- (14) *Escherichia coli*, shiga toxin-producing - 24 hours;
- (15) ehrlichiosis - 7 days;
- (16) encephalitis, arboviral - 7 days;
- (17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
- (18) foodborne disease, including but not limited to *Clostridium perfringens*, staphylococcal, and *Bacillus cereus* - 24 hours;
- (19) gonorrhea - 24 hours;
- (20) granuloma inguinale - 24 hours;
- (21) *Haemophilus influenzae*, invasive disease - 24 hours;
- (22) Hantavirus infection – 7 days;
- (23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
- (24) Hemorrhagic fever virus infection – 24 hours;
- (25) hepatitis A - 24 hours;
- (26) hepatitis B - 24 hours;
- (27) hepatitis B carriage - 7 days;
- (28) hepatitis C, acute - 7 days;
- (29) human immunodeficiency virus (HIV) infection confirmed - 7 days;
- (30) legionellosis - 7 days;
- (31) leptospirosis - 7 days;
- (32) listeriosis – 24 hours;
- (33) Lyme disease - 7 days;
- (34) lymphogranuloma venereum - 7 days;
- (35) malaria - 7 days;
- (36) measles (rubeola) - 24 hours;
- (37) meningitis, pneumococcal - 7 days;
- (38) meningococcal disease - 24 hours;
- (39) mumps - 7 days;
- (40) ongonococcal urethritis - 7 days;
- (41) lague - 24 hours;
- (42) paralytic poliomyelitis - 24 hours;
- (43) psittacosis - 7 days;
- (44) Q fever - 7 days;
- (45) rabies, human - 24 hours;
- (46) Rocky Mountain spotted fever - 7 days;
- (47) rubella - 24 hours;

PROPOSED RULES

- (48) rubella congenital syndrome - 7 days;
- (49) salmonellosis - 24 hours;
- (50) severe acute respiratory syndrome (SARS) – 24 hours;
- ~~(50)~~(51) shigellosis - 24 hours;
- ~~(51)~~(52) smallpox – 24 hours;
- ~~(52)~~(53) streptococcal infection, Group A, invasive disease - 7 days;
- ~~(53)~~(54) syphilis - 24 hours;
- ~~(54)~~(55) tetanus - 7 days;
- ~~(55)~~(56) toxic shock syndrome - 7 days;
- ~~(56)~~(57) toxoplasmosis, congenital - 7 days;
- ~~(57)~~(58) trichinosis - 7 days;
- ~~(58)~~(59) tuberculosis - 24 hours;
- ~~(59)~~(60) tularemia - 24 hours;
- ~~(60)~~(61) typhoid - 24 hours;
- ~~(61)~~(62) typhoid carriage (*Salmonella typhi*) - 7 days;
- ~~(62)~~(63) typhus, epidemic (louse-borne) - 7 days;
- ~~(63)~~(64) vaccinia – 24 hours;
- ~~(63)~~(65) vibrio infection (other than cholera) - 24 hours;
- ~~(64)~~(66) whooping cough - 24 hours;
- ~~(66)~~(67) yellow fever - 7 days.

(b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - (C) *Bacillus anthracis*, the cause of anthrax.
 - (D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
 - (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
 - (F) *Brucella spp.*, the causes of brucellosis.
 - (G) *Campylobacter spp.*, the causes of campylobacteriosis.
 - (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (I) *Clostridium botulinum*, a cause of botulism.

- (J) *Clostridium tetani*, the cause of tetanus.
- (K) *Corynebacterium diphtheriae*, the cause of diphtheria.
- (L) *Coxiella burnetii*, the cause of Q fever.
- (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
- (N) *Cyclospora cayentanesis*, the cause of cyclosporiasis.
- (O) *Ehrlichia spp.*, the causes of ehrlichiosis.
- (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
- (Q) *Francisella tularensis*, the cause of tularemia.
- (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- (S) Human Immunodeficiency Virus, cause of AIDS.
- (T) *Legionella spp.*, the causes of legionellosis.
- (U) *Leptospira spp.*, the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (X) Poliovirus (any), the cause of poliomyelitis.
- (Y) Rabies virus.
- (Z) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (AA) Rubella virus.
- (BB) *Salmonella spp.*, the causes of salmonellosis.
- (CC) *Shigella spp.*, the causes of shigellosis.
- (DD) Smallpox virus, the cause of smallpox.
- (EE) *Trichinella spiralis*, the cause of trichinosis.
- (FF) Vaccinia virus.
- (GG) *Vibrio spp.*, the causes of cholera and other vibrioses.
- (HH) Yellow fever virus.
- (II) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
 - (A) Group A *Streptococcus pyogenes* (group A streptococci).
 - (B) *Haemophilus influenzae*, serotype b.
 - (C) *Neisseria meningitidis*, the cause of meningococcal disease.

PROPOSED RULES

- (D) Vancomycin-resistant Enterococcus spp.
(3) Positive serologic test results, as specified, for the following infections:
(A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
(i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
(ii) Any hantavirus or hemorrhagic fever virus.
(iii) Chlamydia psittaci, the cause of psittacosis.
(iv) Coxiella burnetii, the cause of Q fever.
(v) Dengue virus.
(vi) Ehrlichia spp., the causes of ehrlichiosis.
(vii) Measles (rubeola) virus.
(viii) Mumps virus.
(ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
(x) Rubella virus.
(xi) Yellow fever virus.
(B) The presence of IgM serum antibodies to:
(i) Chlamydia psittaci
(ii) Hepatitis A virus.
(iii) Hepatitis B virus core antigen.
(iv) Rubella virus.
(v) Rubeola (measles) virus.
(vi) Yellow fever virus.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: July 14, 2003

Time: 2:00 p.m.

Location: 1330 St. Mary's Street, Conference Room G1-A, Raleigh, NC

Reason for Proposed Action: The proposed amendment clarifies the original intent of the rule. It was expected that hospitals would follow the standing order of the attending physician to screen all neonates before discharge for permanent hearing loss. Some hospitals are now saying that they do not have to follow physicians standing orders and are opting to discharge without screening neonates for hearing loss, and that the standing order does not constitute a mandate to screen all neonates for hearing loss before discharge. The proposed amendment maintains the standing order from the physician and the responsibility of the medical facility to maintain equipment necessary to perform physiologic hearing screenings for all neonates, and also clearly defines the medical facilities' responsibility to perform the hearing screening before discharge, unless provision in Paragraph (b) or (c) override the performance of the hearing screening.

Comment Procedures: Written comments concerning this rule-making action may be submitted within 30 days after the date of publication of this issue of the North Carolina Register. Comments must be submitted to Chris G. Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001. Comments will be accepted June 16, 2003 through July 16, 2003.

Fiscal Impact

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

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

10A NCAC 41A .0213 CONTROL MEASURES -- SARS
Guidelines and recommended actions for prevention of the spread of Severe Acute Respiratory Syndrome (SARS) published by the Centers for Disease Control and Prevention (CDC) shall be the required control measures for SARS and are incorporated by reference, including subsequent amendments and editions. Copies of CDC guidelines contained in the Morbidity and Mortality weekly reports may be purchased from the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402 for a total cost of three dollars and fifty cents (\$3.50) each.

Authority G. S. 130A-144.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 10A NCAC 43F .1203. Notice of Rule-making Proceedings was published in the Register on April 1, 2003.

CHAPTER 43 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 43F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .1200 - NEWBORN SCREENING PROGRAM

10A NCAC 43F .1203 SCREENING REQUIREMENTS

(a) The attending physician shall order that each neonate, Each infant born in North Carolina, Carolina shall be physiologically screened in each ear for the presence of permanent hearing loss. loss within 30 days of their birth. Medical facilities that provide birthing or inpatient neonatal services shall maintain the equipment necessary to perform physiologic hearing screenings for neonates prior to discharge home.

- (1) The attending physician shall order that each infant be physiologically screened in each ear for the presence of permanent hearing loss before the birth discharge.
(2) Infants born in medical facilities that provide birthing or inpatient neonatal services shall be

PROPOSED RULES

physiologically screened prior to discharge home, unless medical complications prevent such, for the presence of permanent hearing loss in each ear.

(3) Infants born in non-birthing facilities and other settings shall be referred by their primary care provider for a physiological hearing screening within 30 days of their birth.

(4) Medical facilities that provide birthing or inpatient neonatal services shall maintain the equipment necessary to perform physiologic hearing screenings for infants.

(b) Parents or guardians may object to the hearing screening in accordance with G.S. 130A -125(b).

(c) When ~~the~~an attending physician has issued ~~a standing~~an order that ~~a~~a diagnostic ~~brainstem~~brainstem auditory evoked response testing ~~shall~~shall be performed for ~~neonates~~an infant who ~~exhibit~~exhibits medically recognized risk indicators of auditory deficits, ~~the order for the~~the hearing screening ~~may be superseded but the outcome of the diagnostic testing procedure shall be reported in accordance with 15A NCAC 21F .1204.~~is not required to be performed on the infant. The outcome of the diagnostic testing procedure shall be reported in accordance with 10A NCAC 43F .1204.

Authority G.S. 130A-125; S.L. 1998, c. 131, s. 13.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .1401-.1402, .1404-.1405; 07J .0701-.0703. Notice of Rule-making Proceedings was published in the Register on December 2, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: July 23, 2003

Time: 4:00 p.m.

Location: Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action:

15A NCAC 07H .1401-.1402, .1404-.1405 – The North Carolina General Assembly recently amended the Coastal Area Management Act (CAMA) to require that riprap groins be given the same consideration as wooden ones under the General Permit provisions contained in the CAMA statute. The language requiring this change is contained in Section 29.2(f) of Session Law 2002-126, which amended G.S. 113-118.1 by adding a new subsection that states "(e) The Commission shall allow the use of riprap in the construction of groins in the estuarine and public trust waters on the same basis as the Commission allows the use of wood." This change was adopted as a temporary rule by the Coastal Resources Commission in October 2002 and the Commission is now proceeding with permanent rule making.

15A NCAC 07J .0701-.0703 – The Division of Coastal Management has recognized a need to amend the variance

procedure rules in this Section in accordance with the statutory interpretation made by the North Carolina Court of Appeals in the Sammie Williams case. The court imposed a three-factor rather than a four-factor test for variances and the rules should be amended in several places to reflect this interpretation of CAMA. The rule was adopted by the Coastal Resources Commission in temporary form in October 2002 and the Commission is now proceeding with permanent rule making.

Comment Procedures: *Comments from the public shall be directed to Charles S. Jones, 151-B Hwy 24, Hestron Plaza II, Morehead City, NC 28557, phone (252) 808-2808, fax (252) 247-3330, and email charles.s.jones@ncmail.net. Comments shall be received through July 31, 2003.*

Fiscal Impact

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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .1400 - GENERAL PERMIT FOR CONSTRUCTION OF WOODEN AND RIPRAP GROINS IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1401 PURPOSE

This permit will allow the construction of wooden and riprap groins in the estuarine and public trust waters AECs according to the authority provided in Subchapter 7J .1100 and according to the following guidelines. This general permit shall not apply to the ocean hazard AEC.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1402 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant must provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that

no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) Approval of individual projects will be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section.

(d) Construction must be completed within 90 days of the approval of the permit or the permit expires.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1404 GENERAL CONDITIONS

(a) Structures authorized by this permit shall be simple, wooden or riprap groins conforming to the standards herein.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no significant interference with navigation or use of the waters by the public by the existence of wooden or riprap groins authorized herein.

(d) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

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

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1405 SPECIFIC CONDITIONS

(a) Groins shall not extend more than 25 feet waterward of the ~~mean-normal high water or normal water level level unless a longer structure can be justified by site specific conditions, sound engineering and design principles.~~

(b) Riprap groins shall not exceed a base width of 10 feet.

~~(b)(c)~~ Groins shall be set back a minimum of 15 feet from the adjoining property lines. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the

permitting agency prior to initiating any development of the groin.

~~(e)(d)~~ The height of wooden groins shall not exceed one foot above ~~mean-normal high water or the normal water level level~~ and the height of riprap groins shall not exceed two feet above normal high water or the normal water level.

(e) Riprap groins shall be constructed of materials free from loose dirt or any other pollutant. It must be of sufficient size to prevent its movement from the site by wave or current action.

(f) The riprap material must consist of clean rock or masonry materials such as, but not limited to, granite or broken concrete.

~~(d)(g)~~ No more than two structures shall be allowed per 100 feet of shoreline unless the applicant can provide evidence that more structures are needed for shoreline stabilization.

~~(e)(h)~~ "L" and "T" sections shall not be allowed at the end of groins.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

SUBCHAPTER 07J - PROCEDURES FOR HANDLING MAJOR DEVELOPMENT PERMITS: VARIANCE REQUESTS; APPEALS FROM MINOR DEVELOPMENT PERMIT DECISIONS; AND DECLARATORY RULINGS

SECTION .0700 - PROCEDURES FOR CONSIDERING VARIANCE PETITIONS

15A NCAC 07J .0701 VARIANCE PETITIONS

(a) Any person who has received a final decision of an application for a CAMA major or minor development permit may petition for a variance from the CRC by means of the procedure described in this Section. In the case of a minor development permit, a decision shall not be considered final until all available local appeals have been exhausted.

(b) The procedure in this Section shall apply only to petitions for variances, and shall not apply to appeals of major or minor permit decisions. This procedure shall be used for all variance petitions except when:

- (1) a petition is combined with an appeal of a major or minor permit decision concerning the same application, in which case the applicant may consolidate both matters for a single quasi-judicial hearing as described in Section .0300 of this Subchapter;
- (2) the Commission determines that due to the extraordinary nature of a petition more facts are necessary, in which case the petition may be heard by means of a hearing; or
- (3) there are controverted facts that are significant in determining the propriety of a variance.

(c) Variance petitions shall be submitted on forms provided by the Department of ~~Environment, Health, Environment~~ and Natural Resources or CAMA local permit officers or, if not on such a form, shall provide at a minimum the following information:

- (1) the case name and location of the development as identified on the denied permit application;
- (2) an explanation of the reasons why the applicant believes that the Commission should

make the following findings, all of which are necessary for a variance to be granted:

- (A) that ~~enforcement of the applicable development guidelines or standards will cause the petitioner practical difficulties or unnecessary hardships; hardships would result from strict application of the development rules, standards, or orders issued by the Commission;~~
- (B) that such ~~hardships~~ result from conditions peculiar to the petitioner's ~~property; property such as the location, size, or topography of the property;~~
- (C) that such ~~hardships did not result from actions taken by the petitioner; conditions could not reasonably have been anticipated by the Commission when the applicable guidelines or standards were adopted;~~ and
- (D) that the ~~requested variance~~ proposed development is consistent with the spirit, purpose and intent of the Commission's ~~rules; rules, standards or orders;~~ will secure the public safety and welfare; and will preserve substantial justice;

- (3) a copy of the permit application and denial for the development in question;
- (4) the date of the petition, and the name, address, and phone number of the petitioner; and
- (5) a complete description of the proposed development, including a site drawing with adequate topographical and survey information.

(d) In order to have a petition for a variance considered under the procedures set forth in this rule, a petitioner who has given notice of appeal of the permit decision concerning the development that is the subject of the variance appeal will be required to agree that the time required to consider the petition shall not be counted in calculating the ~~180~~ 120 day time period allowed for disposition of the appeal. The time required to consider the petition shall be calculated from the date on which the petitioner requests to have the petition heard under these procedures until the date on which the petitioner reaffirms the notice of appeal.

(e) Petitions shall be mailed directly to the Director of the Division of Coastal Management, Department of ~~Environment, Health, Environment~~ and Natural Resources, ~~P.O. Box 27687, Raleigh, NC 27611-1638~~ Mail Service Center, Raleigh, NC ~~27699-1638~~.

(f) A variance request will be considered by the Commission at a regularly scheduled meeting. Petitions will be scheduled no later than the second regularly scheduled meeting following the date of receipt of the petition by the Division of Coastal Management, except when a later meeting is agreed upon by the petitioner and the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, must be received by the Division of Coastal Management a

minimum of four weeks in advance of a regularly scheduled commission meeting to be considered by the Commission at that meeting.

(g) Written notice of variance hearings or commission consideration of variance requests shall be provided to the petitioner and the permit officer making the initial permit decision. ~~Notice shall be published in a newspaper of general circulation in the area of the proposed variance five days prior to a commission decision on the petition.~~

Authority G.S. 113A-124.

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the commission, is hereby authorized to review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete applications and a description of the deficiencies shall be returned expeditiously to the petitioner. Complete requests shall be scheduled for the appropriate commission meeting.

(b) The staff shall prepare a written description of the variance petition which shall be presented to the Commission before the petition is considered. The written description shall include:

- (1) a description of the property in question;
- (2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;
- (3) a discussion of whether the petition meets or does not meet each of the requirements for a variance including both the petitioner and the staff positions;
- (4) and any other undisputed facts relevant to the findings set forth in G.S. ~~113A-120(e)-113A-120.1~~ which the Commission must make in order to grant a variance.

(c) The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the Commission shall include only those facts and statements that have been agreed upon and stipulated to by both the petitioner and the staff. If the staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting. If the staff determines that agreement cannot be reached on sufficient facts on which to base a meaningful variance decision, then the petition will be considered by means of an administrative hearing. Copies of the agreed upon description shall be provided to the permit officer making the initial permit decision prior to commission consideration of the variance.

Authority G.S. 113A-124.

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

(a) The Commission may review the variance petition and staff comments and hear any oral presentation by the petitioner in full session or may appoint a member or members to do so. In cases

PROPOSED RULES

where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

(b) The Commission or its appointed member or members shall be provided with copies of the petition and any comments the staff deems necessary before considering the petition.

(c) The Commission staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The applicant shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.

(d) The final decision of the commission may be made at the meeting at which the matter is heard or in no case later than the next regularly scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail at the earliest feasible date after the final decision is reached.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

(f) Variances may only be granted following affirmative findings by the Commission on each of the following points:

- (1) that ~~enforcement of the applicable development guidelines or standards will cause the petitioner practical difficulties or unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;~~
- (2) that such ~~hardships~~ difficulties result from conditions peculiar to the petitioner's ~~property;~~ property such as location, size, or topography;
- (3) that ~~such hardships did not result from actions taken by the petitioner; conditions could not reasonably have been anticipated by the Commission when the applicable guidelines or standards were adopted;~~ and
- (4) that the ~~requested variance~~ proposed development is consistent with the spirit, purpose and intent of the Commission's ~~rules;~~ rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

Authority G.S. 113A-120.1.

TITLE 18 – SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of the Secretary of State intends to amend the rules cited as 18 NCAC 06 .1205, .1208, .1211, .1401-.1402, .1417. Notice of Rule-making Proceedings was published in the Register on November 1, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:
Date: July 2, 2003
Time: 10:00 am

Location: *Legislative Office Building, 300 N. Salisbury Street, Suite 100, Raleigh, NC*

Reason for Proposed Action: *S.L. 2002-126, s. 29A.21-38 amended several of the Secretary of State's fee provisions found in Chapter 78A of the General Statutes. The statutory amendments (that became effective November 1, 2002) have made this rule found in 18 NCAC 06 inconsistent with G.S. 78A-17(9). The amendment to this rule does not establish or increase any fee because the fee is now established by statute and the rule will merely reference the public to the appropriate statutory language.*

Comment Procedures: *Written comments should be submitted to Allan C. J. Russ, NC Securities Division, PO Box 29622, Raleigh, NC 27626-0622. Phone: (919) 733-3924, fax: (919) 821-0818, email: aruss@sosnc.com. Comments will be received through July 16, 2003.*

Fiscal Impact

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

CHAPTER 06 – SECURITIES DIVISION

SECTION .1200 - EXEMPTIONS

18 NCAC 06 .1205 LIMITED OFFERINGS PURSUANT TO G.S. 78A-17(9)

(a) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a security made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) (and as subsequently amended) shall comply with the provisions of Rules .1206, .1207 and .1208 of this Section; provided that such compliance shall not be required if the security is offered and sold only to persons who will be actively engaged, on a regular basis, in the management of the issuer's business; and provided further, that compliance with provisions of Paragraphs (a), (b), and (c) of Rule .1208 of this Section shall not be required, except in the case of the offer and sale of a viatical settlement contract, if the security is offered to not more than five individuals who reside in this State.

(b) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a direct participation program security made solely in reliance upon an exemption from registration contained in Section 4(2) or Section 3(a)(11) of the Securities Act of 1933, as amended, or made solely in reliance upon Rule 504 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.504 (1982), (and as subsequently amended), or any person relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a viatical settlement contract, shall comply with the following conditions and limitations:

- (1) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for

- soliciting any prospective purchaser of the security sold to a resident of this State unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.
- (2) In all sales of direct participation program securities, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable. In all sales of viatical settlement contracts, the provisions of Rule .1320 shall be applicable.
- (3) Any prospectus or disclosure document used in offering the securities in this state shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter.
- (4) Not less than 10 business days prior to any sale of the securities to a resident of this State which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed:
- (A) A statement signed by the issuer and acknowledged before a notary public or other similar officer:
- (i) identifying the issuer (including name, form of organization, address and telephone number);
 - (ii) identifying the person(s) who will be selling the securities in this State (and in the case of such persons other than the issuer and its officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the requirements of G.S. 78A-36) and describing any commissions, discounts, fees or other remuneration or compensation to be paid to such persons;
 - (iii) containing a summary of the proposed offering including:
 - (I) a description of the securities to be sold;
 - (II) the name(s) of all general partners of an issuer which is a partnership and,
- with respect to a corporate issuer or any corporate general partner(s) of any issuer which is a partnership, the date and place of incorporation and the names of the directors and executive officers of such corporation(s);
- (III) the anticipated aggregate dollar amount of the offering;
- (IV) the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;
- (V) a brief description of the issuer's business and the anticipated use of the proceeds of the offering; and
- (VI) a list of the states in which the securities are proposed to be sold;
- (iv) containing an undertaking to furnish to the administrator, upon written request, evidence of compliance with Subparagraphs (1), (2), and (3) of this Paragraph (b);
- (v) in the case of a direct participation program security, containing an undertaking to furnish to the administrator, upon written request, a copy of any written document or materials used or proposed to be used in connection with the offer and sale of the securities; and
- (vi) in the case of a viatical settlement contract, the filing shall include a copy of all written documents or materials, including advertising, used or proposed to be used in connection with the offer and sale of the securities.
- (B) A consent to service of process naming the North Carolina Secretary

of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or other similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable;

(C) A non-refundable filing fee ~~in the amount of twenty five dollars (\$25.00), as established by G.S. 78A-17(9)~~, payable to the North Carolina Secretary of State.

(5) In the case of offers of viatical settlement contracts, the persons offering the security shall deliver to the offeree written materials complying with G.S. 78A-13. Additionally, any materials used in the offering of the security shall comply with G.S. 78A-14 and shall provide each offeree written notice of his or her rights under G.S. 78A-56 and under Rule .1501 of this Chapter.

(6) Compliance with the provisions of Subparagraph (4) of this Rule shall not be required if the security is offered to not more than five individuals who reside in this State, except in the case of the offer and sale of a viatical settlement contract.

(c) Neither the issuer nor any person acting on the issuer's behalf shall offer, offer to sell, offer for sale or sell the securities claimed to be exempt under G.S. 78A-17(9) by any means or any form of general solicitation or general advertising.

Authority G.S. 78A-13; 78A-17(9); 78A-49(a).

18 NCAC 06 .1208 TRANSACTIONS EXEMPT UNDER RULE .1206: FILING REQUIREMENTS

(a) Not less than 10 business days prior to any sale of a security sold in reliance upon the exemption provided by Rule .1206 of this Section, which sale shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed, the following:

(1) A Form D (Notice of Sales of Securities Pursuant to Regulation D...and/or Uniform Limited Offering Exemption). All parts of this form, including the Appendix, shall be completed. The Form D shall be signed by a person with express written authorization to do so by the issuer, and shall be attached to a statement containing the supplemental information required by Paragraph (c) of this Rule.

(2) A copy of any written document or materials proposed to be used in connection with the offer and sale of the securities to be sold; provided, however, if any such documents or materials are not available to be filed 10 business days prior to any sale of the securities to a person who resides in this State, they shall

be filed when available, but, in any event, no later than 5 business days before any such sale. Supplements or amendments to any such written document or materials shall be filed within 5 business days after delivery to any prospective purchaser of the securities. Notwithstanding the foregoing, any written materials, disclosures required by G.S. 78A-13, and advertising subject to G.S. 78A-14 proposed to be used in connection with the offer and sale of viatical settlement contracts shall be filed with the Administrator not later than 10 days before the first sale of such securities in this State, and any supplements to such materials shall be filed with the Administrator not later than 5 days prior to their delivery to any prospective purchaser.

(3) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable.

(4) A non-refundable filing fee ~~in the amount of seventy five dollars (\$75.00) as established by G.S. 78 A-17(17)~~, payable to the North Carolina Secretary of State.

(b) The issuer shall file or caused to be filed with the administrator any amended Form D filed with the U.S. Securities and Exchange Commission in connection with the transaction, not later than 5 business days after such filing with the SEC.

(c) To comply with Subparagraph (a)(1) of this Rule, the issuer shall file with the administrator a statement signed by a person with express written authorization to execute such statement on its behalf containing the following representations:

(1) that the securities will be sold in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended;

(2) that, to the best of the issuer's knowledge, the issuer is not disqualified by the provisions of Rule .1207 of this Section from relying upon the exemption provided by Rule .1206 of this Section;

(3) that the issuer will furnish to the administrator, upon written request, evidence of compliance with Rule .1206 of this Section;

(4) that all persons who will be selling the securities in this state are in compliance with or exempt from the requirements of G.S. 78A-36; and

(5) that the issuer will notify the administrator in writing of the names and titles of all officers, directors, partners, or employees of the issuer who will be engaged in the offer or sale of the securities in this state. Such notice to the administrator shall be made prior to any offer of securities in this state.

(d) Any filing pursuant to this Rule shall be amended by filing with the administrator such information and changes as may be necessary to correct any material misstatement or omission in the filing.

(e) The provisions of this Rule shall not apply to offers or sales of a security made pursuant to Rule .1206 of this Section if the security is offered to not more than five individuals who reside in this State, except for offers or sales of viatical settlement contracts.

Authority G. S. 78A-17(17); 78A-49(a).

18 NCAC 06 .1211 NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS

An issuer offering a security that is a "covered security" under Section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on SEC Form D, a consent to service of process on a form prescribed by the Administrator, and pay a fee of ~~seventy-five dollars (\$75.00)~~ as established by G.S. 78A-31(b) no later than 15 days after the first sale in this State of such security covered under federal law. An issuer is not required to file any amendments to a Form D unless the amendment reflects a change in the offering in this State.

Authority G.S. 78A-31(b); 78A-49(a).

SECTION .1400 - REGISTRATION OF DEALERS AND SALESMEN

18 NCAC 06 .1401 APPLICATION FOR REGISTRATION OF DEALERS

(a) The application for registration as a dealer shall contain the following:

- (1) an executed Uniform Application for Registration as a Dealer (Form BD) and the appropriate schedules thereto or the appropriate successor form;
- (2) a fee ~~in the amount of two hundred dollars (\$200.00)~~ as required by G.S. 78A-37(b);
- (3) evidence of current registration as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934;
- (4) evidence of compliance with Rule .1410 of this Section; and
- (5) any other information the administrator may from time to time require which is relevant to the applicant's qualifications to engage in the business of acting as a dealer in securities.

(b) The application for registration as a dealer shall be filed as follows:

- (1) NASD member dealers shall file applications for initial registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 37441, Washington, D.C. 20013 and shall file a manually executed Form BD directly with the Securities Division. Applications for renewal of registration shall be filed only with the Central Registration Depository (see Rule .1406 of this Section);

- (2) Non-NASD member dealers shall file all applications for registration in the State of North Carolina directly with the Securities Division.

(c) The dealer shall file with the administrator, as soon as practicable but in no event later than 30 days following such event, notice of any disciplinary action taken against the dealer by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit filed against the dealer alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the dealer shall file a correcting amendment as soon as practicable but in no event later than 30 days following the date on which such information becomes inaccurate or incomplete.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) Every dealer shall notify the administrator of any change of address, the opening or closing of any office (including the office of any salesman operating apart from the dealer's premises) or any material change thereto, in writing as soon as practicable or by filing concurrently upon filing with NASD an appropriate amendment or schedule to Form BD or any successor form.

Authority G.S. 78A-36(a); 78A-37(a); 78A-37(b); 78A-37(d); 78A-38(c); 78A-49(a).

18 NCAC 06 .1402 APPLICATION FOR REGISTRATION OF SALESMEN

(a) The application for registration as a salesman shall contain the following:

- (1) an executed Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4) or the appropriate successor form;
- (2) a fee ~~in the amount of fifty five dollars (\$55.00)~~ as required by G.S. 78A-37(b); and
- (3) evidence of a passing grade of seventy percent on either:
 - (A) the Uniform Securities Agent State Law Examination (USASLE - Series 63); or
 - (B) both the Uniform Combined State Law Examination (Series 66 Exam) and the General Securities Representative Examination (Series 7 Exam) as well as the appropriate NASD examination as required by Rule .1413 of this Section.

(b) The application for registration as a salesman shall be filed as follows:

- (1) NASD member dealers shall file all salesman applications for registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 9401, Gaithersburg, MD 28898-9401.
- (2) Non-NASD member dealers shall file all salesman applications for registration in the State of North Carolina directly with the Securities Division.

(c) The salesman or the dealer for which the salesman is registered shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any disciplinary action taken against a salesman by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit, warrant, criminal warrant, or criminal indictment filed against the salesman alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the salesman or the dealer for which the salesman is registered shall file a correcting amendment as soon as practicable but in no event later than thirty days. Such filing is to be made by NASD member dealers and their salesmen to the NASAA/NASD Central Registration Depository and non-NASD member dealers and their salesmen shall make such filing directly with the Securities Division.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) A salesman shall only be registered in this State with one dealer.

Authority G.S. 78A-37(a); 78A-37(b); 78A-38(c); 78A-39(b)(4); 78A-49(a).

18 NCAC 06 .1417 APPLICATION FOR LIMITED REGISTRATION OF CANADIAN SECURITIES DEALERS AND SALESMEN

(a) An applicant for limited registration as a dealer pursuant to G.S. 78A-36.1 (the "Dealer") shall file the following with the Administrator:

- (1) a representation that the Dealer does not have an office or physical presence in this state;
- (2) a representation that the Dealer is a resident of Canada;
- (3) a representation that the Dealer will engage only in the activities described in G.S. 78A-36.1(j) in this state;
- (4) a completed application for registration as a securities dealer in the form required by the jurisdiction in Canada in which the Dealer has its head office;

(5) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Dealer names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Dealer;

(6) either:

(A) a certification by the securities regulatory agency of each jurisdiction in Canada from which the Dealer will be effecting transactions into this state stating that the Dealer is both registered and in good standing as a securities dealer in that jurisdiction, or

(B) a certification by the Investment Dealers Association of Canada confirming that the applicant maintains a membership in good standing with the Investment Dealers Association of Canada;

(7) evidence that the Dealer is a member of a Canadian self-regulatory organization ("SRO"), the Bureau des services financiers, or a Canadian stock exchange; and

(8) a filing fee ~~in the amount of two hundred dollars (\$200.00)~~, as required by G.S. 78A-36.1(i) and 78A-37(b).

(b) An applicant for limited registration as a salesman (the "Salesman") intending to effect securities transactions in this state on behalf of a Canadian dealer registered under this section shall file the following with the Administrator:

(1) a completed application for registration as a securities salesman in the form required by the jurisdiction in which the dealer has its head office;

(2) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Salesman names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Salesman;

(3) a certification by the securities regulatory agency of the jurisdiction in Canada from which the Salesman will be effecting transactions into this state stating that the Salesman is both registered and in good standing as a securities salesman in that jurisdiction; and

(4) a filing fee ~~in the amount of fifty five dollars (\$55.00)~~, as required by G.S. 78A-36.1(i) and 78A-37(b).

(c) If any information contained in any document filed with the Administrator by any dealer or salesman who has registered pursuant to G.S. 78A-36.1 is or becomes inaccurate or incomplete in any material respect, the dealer or salesman shall file a correcting amendment as soon as practicable, but in no event later than 30 days following the date on which such information becomes inaccurate or incomplete.

Authority G.S. 78A-36.1; 78A-49; 78A-37(b).

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.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: Commission for Health Services

Rule Citation: 10A NCAC 41A .0101, .0213

Effective Date: May 16, 2003

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 130A-144

Reason for Proposed Action:

10A NCAC 41A .0101 – The recent outbreak of Severe Acute Respiratory Syndrome (SARS) has resulted in an unanticipated public health risk in North Carolina. Consequently, in order to promptly identify, monitor, and control SARS in the state, it is necessary to add SARS to the list of reportable diseases.

10A NCAC 41A .0213 – The recent outbreak of Severe Acute Respiratory Syndrome (SARS) has resulted in an unanticipated public health risk in North Carolina. Consequently, it is important to promptly implement control measures that are in accordance with Centers for Disease Control and Prevention (CDC) national standards in order to control the possible spread of SARS in the state.

Comment Procedures: Comments from the public shall be directed to Chris G. Hoke, JD, 2001 Mail Service Center, Raleigh, NC 27699-2001, phone (919) 715-4168, and email chris.hoke@ncmail.net.

CHAPTER 41 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A - COMMUNICABLE DISEASES CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
(2) anthrax - 24 hours;
(3) botulism - 24 hours;
(4) brucellosis - 7 days;
(5) campylobacter infection - 24 hours;
(6) chancroid - 24 hours;
(7) chlamydial infection (laboratory confirmed) - 7 days;
(8) cholera - 24 hours;

- (9) Creutzfeldt-Jakob disease – 7 days;
(10) cryptosporidiosis - 24 hours;
(11) cyclosporiasis - 24 hours;
(12) dengue - 7 days;
(13) diphtheria - 24 hours;
(14) Escherichia coli, shiga toxin-producing - 24 hours;
(15) ehrlichiosis - 7 days;
(16) encephalitis, arboviral - 7 days;
(17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
(18) foodborne disease, including but not limited to Clostridium perfringens, staphylococcal, and Bacillus cereus - 24 hours;
(19) gonorrhea - 24 hours;
(20) granuloma inguinale - 24 hours;
(21) Haemophilus influenzae, invasive disease - 24 hours;
(22) Hantavirus infection – 7 days;
(23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
(24) Hemorrhagic fever virus infection – 24 hours;
(25) hepatitis A - 24 hours;
(26) hepatitis B - 24 hours;
(27) hepatitis B carriage - 7 days;
(28) hepatitis C, acute - 7 days;
(29) human immunodeficiency virus (HIV) infection confirmed - 7 days;
(30) legionellosis - 7 days;
(31) leptospirosis - 7 days;
(32) listeriosis – 24 hours;
(33) Lyme disease - 7 days;
(34) lymphogranuloma venereum - 7 days;
(35) malaria - 7 days;
(36) measles (rubeola) - 24 hours;
(37) meningitis, pneumococcal - 7 days;
(38) meningococcal disease - 24 hours;
(39) mumps - 7 days;
(40) nongonococcal urethritis - 7 days;
(41) plague - 24 hours;
(42) paralytic poliomyelitis - 24 hours;
(43) psittacosis - 7 days;
(44) Q fever - 7 days;
(45) rabies, human - 24 hours;
(46) Rocky Mountain spotted fever - 7 days;
(47) rubella - 24 hours;
(48) rubella congenital syndrome - 7 days;
(49) salmonellosis - 24 hours;
(50) severe acute respiratory syndrome (SARS) – 24 hours;
(50)(51) shigellosis - 24 hours;
(51)(52) smallpox – 24 hours;
(52)(53) streptococcal infection, Group A, invasive disease - 7 days;
(53)(54) syphilis - 24 hours;
(54)(55) tetanus - 7 days;

- ~~(55)~~(56) toxic shock syndrome - 7 days;
- ~~(56)~~(57) toxoplasmosis, congenital - 7 days;
- ~~(57)~~(58) trichinosis - 7 days;
- ~~(58)~~(59) tuberculosis - 24 hours;
- ~~(59)~~(60) tularemia - 24 hours;
- ~~(60)~~(61) typhoid - 24 hours;
- ~~(61)~~(62) typhoid carriage (*Salmonella typhi*) - 7 days;
- ~~(62)~~(63) typhus, epidemic (louse-borne) - 7 days;
- ~~(63)~~(64) vaccinia - 24 hours
- ~~(63)~~(65) vibrio infection (other than cholera) - 24 hours;
- ~~(64)~~(66) whooping cough - 24 hours;
- ~~(66)~~(67) yellow fever - 7 days.

(b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - (C) *Bacillus anthracis*, the cause of anthrax.
 - (D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
 - (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
 - (F) *Brucella spp.*, the causes of brucellosis.
 - (G) *Campylobacter spp.*, the causes of campylobacteriosis.
 - (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (I) *Clostridium botulinum*, a cause of botulism.
 - (J) *Clostridium tetani*, the cause of tetanus.
 - (K) *Corynebacterium diphtheriae*, the cause of diphtheria.
 - (L) *Coxiella burnetii*, the cause of Q fever.
 - (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
 - (N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.

- (O) *Ehrlichia spp.*, the causes of ehrlichiosis.
- (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
- (Q) *Francisella tularensis*, the cause of tularemia.
- (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- (S) Human Immunodeficiency Virus, the cause of AIDS.
- (T) *Legionella spp.*, the causes of legionellosis.
- (U) *Leptospira spp.*, the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (X) Poliovirus (any), the cause of poliomyelitis.
- (Y) Rabies virus.
- (Z) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (AA) Rubella virus.
- (BB) *Salmonella spp.*, the causes of salmonellosis.
- (CC) *Shigella spp.*, the causes of shigellosis.
- (DD) Smallpox virus, the cause of smallpox.
- (EE) *Trichinella spiralis*, the cause of trichinosis.
- (FF) Vaccinia virus.
- (GG) *Vibrio spp.*, the causes of cholera and other vibrioses.
- (HH) Yellow fever virus.
- (II) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
 - (A) Group A *Streptococcus pyogenes* (group A streptococci).
 - (B) *Haemophilus influenzae*, serotype b.
 - (C) *Neisseria meningitidis*, the cause of meningococcal disease.
 - (D) Vancomycin-resistant *Enterococcus spp.*
- (3) Positive serologic test results, as specified, for the following infections:
 - (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.

TEMPORARY RULES

- (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) *Chlamydia psittaci*, the cause of psittacosis.
 - (iv) *Coxiella burnetii*, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) *Ehrlichia spp.*, the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.
 - (ix) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
- (B) The presence of IgM serum antibodies to:
- (i) *Chlamydia psittaci*
 - (ii) Hepatitis A virus.
 - (iii) Hepatitis B virus core antigen.
 - (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.

Rule-making Agency: *Wildlife Resources Commission*

Rule Citation: *15A NCAC 10A .1101*

Effective Date: *May 21, 2003*

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

Authority for the rulemaking: *G.S. 113-134; 113-274; 150B-19(6)*

Reason for Proposed Action: *To provide greater flexibility in current rules regulating transportation and possession of captive deer.*

Comment Procedures: *Comments from the public shall be directed to Joan Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone (919) 733-3391, ext. 227 and email joan.troy@ncwildlife.org.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .1100 – WAIVER

15A NCAC 10A .1101 WAIVER

(a) The Wildlife Resources Commission authorizes the executive director or his designee to waive rules adopted by the Commission provided that the executive director or his designee finds:

- (1) that the rule provisions create an unnecessary hardship to the regulated community relative to the purpose for which they were enacted; or
- (2) the purpose for which the rules were enacted no longer exists.

In the event a substitute requirement is necessary to safeguard the original purpose of the rule being waived, an applicant for a waiver under this Paragraph shall comply with the substituted requirement.

(b) The Commission authorizes the executive director or his designee to waive rule provisions listed in Paragraph (c) of this Rule and subsequent Paragraphs under specified conditions and according to the following standards:

- (1) The applicant's history of past compliance or noncompliance with the laws of North Carolina and with rules promulgated by the Wildlife Resources Commission;
- (2) The Commission's ability to safeguard the interests of the resource while granting the waiver; and
- (3) The applicant's ability to meet the conditions of the waiver.

(c) The Commission authorizes the executive director or his designee to waive the rule banning intrastate transfer of cervids and to issue a transportation permit to an applicant for such a waiver provided that:

- (1) The executive director or his designee determines that the applicant is eligible for a

History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141; Filed as a Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. October 1, 1994; February 1, 1990; Temporary Amendment Eff. July 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. February 13, 2003; October 1, 2002; February 18, 2002; June 1, 2001; Amended Eff. April 1, 2003; Temporary Amendment Eff. May 16, 2003.

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

10A NCAC 41A .0213 CONTROL MEASURES -- SARS
Guidelines and recommended actions for prevention of the spread of Severe Acute Respiratory Syndrome (SARS) published by the Centers for Disease Control and Prevention (CDC) shall be the required control measures for SARS and are incorporated by reference, including subsequent amendments and editions. Copies of CDC guidelines contained in the Morbidity and Mortality weekly reports may be purchased from the Superintendent of Documents, US Government Printing Office, Washington DC 20402 for a total cost of three dollars and fifty cents (\$3.50) each.

History Note: Authority G. S. 130A-144; Temporary Adoption Eff. May 16, 2003.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

TEMPORARY RULES

waiver according to standards listed in Paragraph (b) of this Rule;

- (2) The eligible applicant shall first notify the Commission of the following:
 - (A) the tag number(s) assigned to the cervid;
 - (B) the facility of origination;
 - (C) the facility of destination;
 - (D) the date(s) upon which the transfer is to take place; and
 - (E) the means by which the cervid is to be transported; and
- (3) The executive director or his designee confirms receipt of the information requested in Subparagraph (c)(2) of this Rule.

Transportation of cervids between facilities that are licensed to the same individual shall be permitted upon the condition that the licensed applicant log the information required by Subparagraph (c)(2) of this Rule rather than submit a separate application for each transportation.

(d) The Commission authorizes the executive director or his designee to waive the rule against cervid facility expansion and to amend a license to permit expansion to an applicant for such a waiver provided that:

- (1) The executive director or his designee confirms the applicant's eligibility for a waiver according to standards listed in Paragraph (b) of this Rule;
- (2) The eligible applicant shall first notify Commission of the following:
 - (A) the location of the facility for which expansion is desired;
 - (B) the number of cervids held at that facility;
 - (C) the number of births or purchases of cervids expected within a year of the application; and
 - (D) the proposed capacity for which expansion is desired; and
- (3) The executive director or his designee confirms receipt of the information requested in Subparagraph (d)(2) of this Rule.

History Note: Authority G.S. 113-134; 113-274; 150B-19(6); Temporary Adoption Eff. May 21, 2003.

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 18A .1210*

Effective Date: *June 1, 2003*

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

Authority for the rulemaking: *G.S. 130A-275*

Reason for Proposed Action: *The temporary rule is needed to address the Listeriosis outbreak that began in Forsyth County resulting in 5 fetal deaths, 2 premature births, 2 near term*

infants were born affected and all 9 mothers were affected. The outbreak was traced to homemade raw milk cheeses.

Comment Procedures: *Written comments should be submitted to Kay S. Sigmon, DENR/Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632. Phone: (704) 483-6218, Fax: (704) 483-6218, email: kay.sigmon@ncmail.net.*

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1200 – GRADE A MILK SANITATION

15A NCAC 18A .1210 RESTRICTIONS ON DISPENSING RAW MILK

Dairy farms shall dispense raw milk or raw milk products only to a permitted milk hauler or to a processing facility for which the processing of milk is permitted, graded or regulated by a state or federal agency. However, this Rule does not prohibit the farmer or the owner of the raw milk or raw milk products from destroying the milk or from dispensing it for animal feed in accordance with any applicable state and federal regulations.

History Note: Authority G.S. 130A-275; Temporary Adoption Eff. April 2, 2001; Temporary Adoption Expired January 11, 2002; Temporary Adoption Eff. June 1, 2003.

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 18A .1301, .1304, .1312-.1313, .1319-.1321*

Effective Date: *June 1, 2003*

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

Authority for the rulemaking: *G.S. 130A-235; H.B. 1777*

Reason for Proposed Action: *These temporary amendments are to mitigate financial impact on industry from recently enacted rule amendments. Some provisions are being stalled or amended until the financial impact can be more fully considered and permanent changed are proposed.*

Comment Procedures: *Written comments should be submitted to Jim Hayes, NCDENR/Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632. Phone: (919) 715-0924, fax: (919) 715-4739, email: jim.hayes@ncmail.net*

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1300 - SANITATION OF HOSPITALS: NURSING AND REST HOMES: SANITARIUMS:

SANATORIUMS: EDUCATIONAL AND OTHER INSTITUTIONS

15A NCAC 18A .1301 DEFINITIONS

The following definitions shall apply throughout this Section in the interpretation and enforcement of this Section:

- (1) "Disinfect" means a process used on inanimate surfaces to destroy or irreversibly inactivate infectious fungi and bacteria but not necessarily their spores.
- (2) "Environmental Health Specialist" means a person authorized by the Department of Environment and Natural Resources under G.S. 130A-6 to enforce environmental health rules adopted by the Commission for Health Services.
- (3) "Institution" includes the following establishments providing room or board and for which a license or certificate of payment must be obtained from the Department of Health and Human Services, other than those operated exclusively by the State of North Carolina:
 - (a) hospital, as defined in G.S. 131E-76 including doctors' clinics with food preparation facilities;
 - (b) nursing home, as defined in G.S. 131E-101;
 - (c) sanitarium, sanatorium, and any similar establishment, other than hospital and nursing home, for the recuperation and treatment of 13 or more persons suffering from physical or mental disorders;
 - (d) ~~rest~~—adult care home, providing custodial care on a 24-hour basis for 13 or more persons, including homes for the aged;
 - (e) orphanage, or children's home providing care on a 24-hour basis for 13 or more children.

However, the term shall not include a child day care facility, an adult day service facility as defined in 15A NCAC 18A .3300 or a residential care facility as defined in 15A NCAC 18A .1600.

- (4) "Department of Environment and Natural Resources" shall mean the Secretary, or his authorized representative.
- (5) "Local health director" shall mean local health director as defined in G.S. 130A-2(6) or his authorized representative.
- (6) "Patient" means a patient or resident living in an institution as defined in this Section.
- (7) "Person" shall mean an individual, firm, association, organization, partnership, business trust, corporation, or company.
- (8) "Personal Hygiene" means maintenance of personal health, including grooming, brushing teeth, showering, applying makeup, or washing/drying face, hands, and body.

- (9) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (10) "Sanitize" means a bactericidal treatment which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. March 1, 2003 (see S.L. 2002-160); August 1, 1998; February 1, 1997; September 1, 1990; March 1, 1988; Temporary Amendment Eff. June 1, 2003.

15A NCAC 18A .1304 INSPECTIONS

- (a) Institutions shall be graded at least once each six months and food services at institutions which prepare and serve meals to 13 or more patients or residents shall be inspected at least once each quarter.
- (b) The grading of institutions shall be done on inspection forms furnished by the Department to local health departments. The form shall include at least the following information:
 - (1) the name and address of the facility;
 - (2) the name of the person in charge of the facility;
 - (3) the standards of construction and operation as listed in .1309 - .1324 of this Section;
 - (4) the score; and
 - (5) the signature of the authorized agent of the Department.
- (c) Whether or not a permit is required under G.S. 130A-248, inspections of food preparation and central dining areas in institutions serving meals to 13 or more patients or residents shall be documented separately using the inspection forms and grading system used for grading restaurants as specified in current "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600. When grading the food preparation and central dining areas of institutional food services which are not required to obtain a permit under G.S. 130A-248, the provisions of Rule .1323(d) of this Section shall supercede the provisions of Rule 15A NCAC 18A .2610(e) regarding animals in dining areas. Except as required by G.S. 130A-247 through 250, food services at institutions shall not be required to obtain foodhandling establishment permits or upgrade existing facilities with approved sanitation scores.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. March 1, 2003 (see S.L. 2002-160); September 1, 1990; June 30, 1980; Temporary Amendment Eff. June 1, 2003.

15A NCAC 18A .1312 TOILET; HANDWASHING; LAUNDRY; AND BATHING FACILITIES

(a) All institutions shall be provided with toilet, handwashing, and bathing facilities which are conveniently located and readily accessible. These facilities, and laundry facilities when provided, shall be kept clean and in good repair.

(b) Toilet facilities shall comply with the requirements of the state agency licensing the facility. Toilet rooms shall not be used for storage. Fixtures and furnishings shall be kept clean and in good repair. Durable, legible signs shall be posted or stenciled conspicuously in each toilet room for food service employees directing them to wash their hands before returning to work.

(c) Institutions in which bedpans, urinals or emesis basins are used shall provide facilities for emptying, cleaning, and disinfecting bedpans, urinals and emesis basins. Bedpans, urinals and emesis basins shall be cleaned after each use and shall be disinfected before use by other patients. Where bedpans are cleaned in patient rooms, minimum bedpan cleaning facilities shall consist of a water closet with bedpan lugs or spray arms. Where facilities for cleaning bedpans are not provided in patient rooms, bedpans shall be taken to a soiled utility room and be cleaned and disinfected using an EPA registered hospital disinfectant after each use. Where disposable bedpans are reused, they shall be labeled with the patient's name and date and shall not be used by more than one patient. Bedside commodes shall be cleaned after each use and shall be cleaned and disinfected before use by successive patients. Hand sinks shall not be used for cleaning bedpans or bedside commodes.

(d) Handwashing facilities shall be accessible to all areas where personnel can be exposed to bodily excretions or secretions and in sterile supply processing areas, medication rooms, laundry areas, ~~nutrition stations, and soiled utility rooms and clean utility rooms.~~ Any area where personnel can be exposed to bodily excretions or secretions shall have handwashing facilities located in the same room or have a doorway connecting to an adjacent room or corridor containing handwashing facilities. All lavatories shall be supplied with hot and cold running water through a mixing faucet, or with tempered warm water, soap, and sanitary towels or approved hand-drying devices. Handwashing facilities shall be provided in kitchens and any other food preparation areas in addition to any lavatories which may be provided at employees' toilet rooms. Sinks used for washing utensils and equipment shall not be accepted as a substitute for required handwashing facilities. Handwash lavatories shall be used only for handwashing. Lavatories provided for use of patients or residents shall be used only for handwashing, personal hygiene, rinsing feeding tubes and obtaining water. Lavatories used for handwashing or personal hygiene shall not be used for disposal of body fluids or cleaning soiled linens. Lavatories in medication rooms used primarily for handwashing can be used for other purposes, such as disposal of medications, which do not interfere with effective handwashing.

(e) Water heating facilities shall provide hot water within the temperature range of 100 degrees F to 116 degrees F at all lavatories and bathing facilities.

(f) Bathing facilities as required by the licensing agency shall be provided, maintained and kept clean. Bathing facilities shall be supplied with hot and cold running water and a mixing device, or tempering device. Shared bathing equipment which has contact with patient's skin shall be cleaned with detergent and an

EPA registered hospital disinfectant between patient uses. Manufacturer's instructions shall be followed for cleaning equipment with pumps. A supply of cleaning and disinfectant agents shall be accessible to bathing areas. Where disinfectants are mixed on site, the concentration of the mix shall be assured by use of a metering pump, measuring device or chemical test kit.

History Note: Authority G.S. 130A-235;

Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. March 1, 2003 (see S.L. 2002-160); September 1, 1990;

Temporary Amendment Eff. June 1, 2003.

15A NCAC 18A .1313 WATER SUPPLY

(a) Water supplies shall meet the requirements in 15A NCAC 18C or 15A NCAC 18A .1700.

(b) Non-community public water supplies shall be listed with the Public Water Supply Section, Division of Environmental Health.

(c) In institutions which use a non-community water supply, a sample of water shall be collected by the Department at least once a year and submitted to the Division of Laboratory Services or other laboratory certified by the Department to perform bacteriological examinations.

(d) Cross-connections with sewage lines, non-potable water supplies, or other potential sources of contamination are prohibited.

(e) Hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and to any other areas in which water is required in sufficient quantities to carry out all operations.

(f) The local health department shall be immediately notified if the primary water supply is interrupted for more than four hours. Each institution shall have a plan to obtain a backup water supply in the event that the water supply is lost for more than four hours. ~~The backup water supply plan shall provide for a minimum of 25 gallons of potable water per day per patient or resident for all purposes for a minimum of three days. The backup water supply plan shall provide for two liters of water per day per person for drinking and an additional 25 gallons per day per person for other purposes. The amount of water provided for uses other than drinking may be reduced if the plan includes alternatives for water use for services such as laundry and dishwashing.~~ If an assessment determines that tap water is not to be used for drinking, sources shall be prominently labeled or hooded to restrict use and potable water shall be provided.

History Note: Authority G.S. 130A-235;

Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. March 1, 2003 (see S.L. 2002-160); September 1, 1990; July 1, 1986;

Temporary Amendment Eff. June 1, 2003.

15A NCAC 18A .1319 FURNISHINGS AND PATIENT CONTACT ITEMS

(a) All furniture, bed springs, mattresses, sleeping mats, draperies, curtains, shades, venetian blinds, or other furnishings shall be kept clean and in good repair. ~~Mattresses shall have~~

~~non-absorbent cleanable covers.~~ Non-absorbent mattress covers shall be used as necessary to prevent soiling of mattresses by incontinent individuals.

(b) Clean bed linen in good repair shall be provided for each individual and shall be changed when soiled. Soiled linen shall be placed in a covered container or bag at the point of use and stored and handled so as to contain and minimize aerosolization of and exposure to any waste products. Soiled laundry shall be handled and stored separately from clean laundry using separate cleanable carts or bags. Carts used for soiled laundry shall be labeled for soiled laundry use only. If hot water is used, linen shall be washed with a detergent in water at least 71°C (160°F) for 25 minutes. If low temperature (<70°C) laundry cycles are used, chemical laundry disinfectants shall be used in accordance with the manufacturer's instructions. Clean linen shall be stored and handled in a separate room or area, or in another manner that will prevent contamination of clean linen. Laundry areas and equipment shall be kept clean.

(c) Patient contact items shall be kept clean and in good repair. Soiled patient contact items shall be taken to a designated area for cleaning and shall be stored separately from clean items. A room or area shall be provided for cleaning patient contact equipment such as wheelchairs and other large items. Patient contact items such as diaper changing surfaces which become contaminated during use shall be cleaned and disinfected after each use. Shared toys subject to mouthing shall be washed and rinsed with soap and water and disinfected with 70 percent alcohol or 100 parts per million chlorine after each day's use. Shared plush toys shall be laundered after each day's use. Shared toys which are not washable shall be gas sterilized or disposed of when soiled.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. March 1, 2003 (see S.L. 2002-160); August 1, 1998; February 1, 1997; September 1, 1990;

Temporary Amendment Eff. June 1, 2003.

15A NCAC 18A .1320 FOOD SERVICE UTENSILS AND EQUIPMENT

(a) All food service equipment and utensils used for preparing meals for 13 or more people shall comply with the requirements of "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600. Residential style rehabilitation activity kitchens with domestic utensils and equipment can be used by groups of 12 or less people to prepare meals only for members of the group. Potentially hazardous foods prepared in rehabilitation activity kitchens shall not be served to groups of more than 12 people. This shall not preclude the use of an activity kitchen as a serving area for meals catered from a main kitchen and served to groups of 13 or more people in connection with a planned event from which the public is excluded. For planned events, the equipment in the activity kitchen can be used for heating prepared foods received from a main kitchen or a commercial source. Bread machines, soup kettles and other food contact items used at nutrition stations shall be so constructed as to be easily cleanable.

(b) At activity kitchens or nutrition stations, provisions shall be made for cleaning all food service utensils and equipment and sanitizing utensils and equipment not continuously subjected to high temperatures. Where utensils and equipment are not returned to a central kitchen for cleaning, designated nutrition stations shall be equipped with at least a two compartment sink with 24 inch drainboards or counter top space at each end for handling dirty items and air drying clean items. Sinks shall be of sufficient size to submerge, wash, rinse and sanitize utensils and equipment. At nutrition stations, dish machines listed with NSF International shall meet this provision. Any area where food is portioned, served or handled shall be equipped with a separate handwash lavatory with hot and cold mixing faucet, soap and individual towels or hand drying device. Separate handwashing lavatories shall not be required for activity kitchens used only by groups of 12 or less people.

(c) All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, shall be cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once each day. All utensils and food-contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous foods shall be cleaned and sanitized prior to each use. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. March 1, 2003 (see S.L. 2002-160); September 1, 1990;

Temporary Amendment Eff. June 1, 2003.

15A NCAC 18A .1321 FOOD SUPPLIES

(a) All food and food supplies provided by the institution shall be from sources which comply with North Carolina "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 and shall be clean, free from spoilage, free from adulteration and misbranding, and safe for human consumption.

(b) Food brought from home by employees or visitors of patients or residents shall be stored separately from the institution's food supply and shall be labeled with the name of the person to receive the food and the date the food was brought in and shall be kept only as long as it is clean, and free from spoilage. Labeling shall not be required for food items stored in employee-designated or individual resident's refrigerators or rooms.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. March 1, 2003 (see S.L. 2002-160); September 1, 1990;

Temporary Amendment Eff. June 1, 2003.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting May 15, 2003, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2004 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION

REGISTER CITATION TO THE NOTICE OF TEXT

01	NCAC	30D	.0302*	16:22 NCR
01	NCAC	30H	.0101*	17:16 NCR
01	NCAC	30H	.0302*	17:16 NCR
01	NCAC	30H	.0304*	17:16 NCR
01	NCAC	30H	.0401-.0403*	17:16 NCR
01	NCAC	30H	.0501-.0502*	17:16 NCR
01	NCAC	30H	.0601*	17:16 NCR
01	NCAC	30H	.0901*	17:16 NCR
10	NCAC	26H	.0404*	17:13 NCR
11	NCAC	11A	.0501	17:18 NCR
11	NCAC	11A	.0505*	17:18 NCR
15A	NCAC	27	.0301*	17:14 NCR
21	NCAC	12	.0503*	not required G.S. 150B-21.5(5)
21	NCAC	60	.0311*	17:14 NCR
21	NCAC	66	.0206*	not required G.S. 150B-21.5(a)(2)

TITLE 1 - DEPARTMENT OF ADMINISTRATION

01 NCAC 30D .0302 PRE-SELECTION

(a) A pre-selection committee shall be established for all projects requiring professional service. On minor projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and one representative from the State Construction Office. On major projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and two representatives from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design professional.

(b) General Procedure for All Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project. This step shall take place prior to public advertisement in the Purchase Directory, because designers and consultants have a significant need to know in advance the program intent of a project in order to demonstrate their qualifications for the project in their letter of interest. The Capital Projects Coordinator shall receive all letters of interest and other qualification information either directly or from the designated contact person. After a pre-selection priority list is prepared, the list shall remain confidential except to the Secretary of the SBC. If fewer than three letters of interest are received on major projects, the project shall be readvertised in the Purchase Directory. If fewer than three letters of interest are

received following the re-advertisement, the Capital Projects Coordinator may proceed with the selection process using the data received or may advertise again.

(c) Special Procedures for Minor Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project and the qualifications of all firms expressing interest in a specific project. The Capital Projects Coordinator and a representative of the using agency shall meet with the representative from the State Construction Office for the evaluation of each firm and development of a list of three firms in priority order to be presented to the SBC. The Capital Projects Coordinator may institute the interview procedures in Paragraph (d) of this Rule if he deems it beneficial in evaluating the firms. The Capital Projects Coordinator shall submit to the Secretary of the SBC the list of three firms in priority order, including pre-selection information and written recommendations, to be presented to the SBC. The Capital Projects Coordinator shall state in the submission to the SBC that the established rules for public announcement and pre-selection have been followed.

(d) Special Procedures for Major Projects: The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The Capital Projects Coordinator shall state in his submission

that the established rules for public announcement and pre-selection have been followed.

(e) Special Procedures for Emergency Projects: On occasion, emergency design or consultation services may be required for restoration or correction of a facility condition which by its nature poses a hazard to persons or property, or when an emergency exists. Should this situation occur, in all likelihood there will not be sufficient time to follow the normal procedures described herein. The Capital Projects Coordinator on these rare occasions may declare an emergency, notify the State Construction Office and then obtain the services of a designer or consultant for consultation or design of the corrective action. In all cases, such uses of these emergency powers shall involve a written description of the condition and rationale for employing this special authority signed by the head of the agency and presented to the SBC at its next normal meeting. Timeliness for obligation of funds or other non-hazardous or non-emergency situations do not constitute sufficient grounds for invoking this special authority.

(f) Fixed Term Contract: A Funded Agency or a Using Agency may require the services of designer(s) or consultant(s) for small projects under three hundred thousand dollars (\$300,000) on a fixed term basis for one year. In such cases, designer(s) or consultant(s) for fixed term contracts shall be selected in accordance with the procedures for minor projects in Paragraph (c). In addition, no fixed term contract fee under the jurisdiction of the State Building Commission shall exceed fifty thousand dollars (\$50,000) in total volume per year regardless of the number of projects. No fee shall exceed ten thousand dollars (\$10,000) per project. Fixed term contracts may be extended for a term of one additional year. Total fees shall not exceed fifty thousand dollars (\$50,000) for the first year or one hundred thousand dollars (\$100,000) for the two-year period regardless of the number of projects.

(g) Special Procedures for Department of Environment and Natural Resources: For Division of Water Quality projects under the Wetlands Restoration Program, the Funded Agency may require the services of multiple designer(s) or consultant(s) for design and construction management of wetland, stream and riparian buffer restoration projects on a routine basis. In such cases, designer(s) or consultant(s) for such open-ended contracts shall be selected in accordance with the procedures described for minor projects. This does not preclude the Funded Agency's use of the designer selection procedures specified for major or minor projects if it elects to do so. The total volume of business in terms of negotiated design fee shall not exceed seven hundred thousand dollars (\$700,000) for the biannual contract term and no single project fee shall exceed three hundred fifty thousand dollars (\$350,000). In no case shall individual projects exceeding one million five hundred thousand dollars (\$1,500,000) in total costs be assigned for design under an open-end agreement. Open-end agreements under this procedure shall not be extended beyond a two-year term. The funded agency must readvertise on a biannual basis.

*History note: Authority G.S. 143-135.25; 143-135.26;
S.L. 2001-442, Sec. 6(c);
Eff. January 1, 1988;
Amended Eff. July 1, 1993; May 1, 1990;
Temporary Amendment Eff. May 15, 2002;
Amended Eff. August 1, 2004.*

01 NCAC 30H .0101 PURPOSE OF MANDATORY SETTLEMENT CONFERENCES

Pursuant to G.S. 143-128 (f1) and 143-135.26(11), these Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

*History Note: Authority G.S. 143-135.26 (10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0302 WHEN CONFERENCE IS TO BE HELD

The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0304 RECESSES

The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0401 ATTENDANCE

(a) All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution shall attend the mediation. Failure of a party to a construction contract dispute to attend the mediation shall result in the public owner's withholding of monthly payment to that party until such party attends the mediation.

(b) Only physical attendance, and not attendance by telephone or other electronic means, shall constitute attendance. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.

(c) Attorneys on behalf of parties may attend the mediation but are not required to do so.

(d) Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

History Note: Authority G.S. 143-135.26(10), (11);

*S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0402 FINALIZING AGREEMENT

If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel, insurance carriers and bonding companies, if any.

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0403 PAYMENT OF FEE

The mediation fee shall be paid in accordance with G.S. 143-128 (f1).

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0501 AUTHORITY OF MEDIATOR

- (a) Control of Conference. The mediator shall be in control of the conference and the procedures to be followed.
- (b) Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications with a participant may occur shall be disclosed to all other participants at the conclusion of the communications.
- (c) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0502 DUTIES OF MEDIATOR

- (a) The mediator shall define and describe the following at the beginning of the conference:
 - (1) The process of mediation;
 - (2) The difference between mediation and other forms of conflict resolution;
 - (3) The costs of the mediated settlement conference;
 - (4) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
 - (5) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - (6) Whether and under what conditions communications with the mediator shall be held in confidence during and after the conference;

- (7) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1);
- (8) The duties and responsibilities of the mediator and the participants; and
- (9) That any agreement reached shall be reached by mutual consent.

- (b) Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (c) Declaring Impasse. It is the duty of the mediator to determine that an impasse exists and that the conference shall end.
- (d) Reporting Results of Conference. The mediator shall report to the SCO or public owner within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform the SCO or public owner of the absence of any party to have been absent from the mediated settlement conference without permission. The SCO or public owner may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
- (e) Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the rules. Deadlines for completion of the conference shall be observed by the mediator unless said time limit is changed by a written order of the SCO or public owner.

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0601 COMPENSATION OF THE MEDIATOR

- (a) By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provisions of G.S. 143-128(f1) are observed.
- (b) By Appointment. When the mediator is appointed by the SCO or public owner, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;
Eff. August 1, 2004.*

01 NCAC 30H .0901 DEFINITIONS

When the phrase "SCO or public owner" is used in these Rules, "SCO" shall apply to state projects, "public owner" shall apply to non-state public projects.

*History Note: Authority G.S. 143-135.26(10), (11);
S.L. 2001-496, s. 14(b);
Temporary Adoption Eff. July 1, 2002;*

Eff. August 1, 2004.

**TITLE 10 - DEPARTMENT OF HEALTH &
HUMAN SERVICES**

**10 NCAC 26H .0404 OTHER SERVICES
PERFORMED BY PHYSICIANS AND OTHER
PRACTITIONERS**

A maximum fee is established for other services performed by physicians and other practitioners and is applicable to all specialties and settings in which the service is rendered. Payment is equal to the lower of the maximum fee or the provider's customary charge to the general public for the particular service rendered.

- (1) Fees for all services are established by applying the following method to the fees in effect on May 1, 1989:
 - (a) The higher of the inpatient or outpatient fee is selected for each service within each specialty and the weighted average of this amount is computed among all specialties. The average is weighted by the number of services billed by each specialty in 1988.
 - (b) The weighted average fee is then increased by 10 percent.
- (2) Annual fee increases are applied each January 1 based on the forecast of the gross national product (GNP) implicit price deflator, but not to exceed the percentage increase approved by the North Carolina General Assembly.
- (3) Fees for new services are established based on the fees for similar existing services. If there are no similar services the fee is established at 75 percent of the billed amount.
- (4) Fees for particular services may be increased based on administrative review if it is determined that the service is essential to the health needs of Medicaid recipients, that no alternative treatment is available, and that a fee adjustment is necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients. A fee may also be decreased based on administrative review if it is determined that the fee may exceed the Medicare allowable amount for the same or similar services, or if the fee is higher than Medicaid fees for similar services, or if the fee is deemed unreasonable in relation to the skills, time, and other resources required to provide the particular service.

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; Eff. January 4, 1993; Temporary Amendment Eff. March 7, 2002; Temporary Amendment Expired December 27, 2002. Amended Eff. August 1, 2004.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 11A .0505 DESIGNATION OF CPA

(a) Each insurer required by this Section to file an annual audited financial report must within 60 days after becoming subject to such requirement, file with the Commissioner a Designation of CPA letter indicating the name and address of the CPA retained to conduct the annual audit set forth in this Section. Insurers not retaining a CPA on the effective date of this Section shall provide the Designation of CPA letter not less than two months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain an Accountant's Appointment Letter from such CPA, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the North Carolina General Statutes and Administrative Code that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying such exceptions as he may believe appropriate. In addition, the CPA must affirm that he is aware of and will comply with the provisions of 11 NCAC 11A .0511.

(c) If a CPA who was not the CPA for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall within 30 days of the date the CPA is engaged notify the Department of this event. The insurer shall concurrently furnish the Commissioner with a separate letter stating whether in the 24 months preceding such engagement there were any disagreements with the former CPA on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request such former CPA to furnish a letter addressed to the insurer stating whether the CPA agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former CPA to the Commissioner together with its own. If the insurer cannot secure such a letter from the former CPA, the insurer shall provide a statement to the Commissioner specifying the attempts by the insurer to obtain the letter from the former CPA and the reasons, if any, given by the former CPA to provide such a letter or by the insurer for its failure to secure such a letter, or both.

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3); Eff. December 1, 1990; Amended Eff. April 1, 1993; Temporary Amendment Eff. February 15, 2003; Amended Eff. August 1, 2004.

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES**

15A NCAC 27 .0301 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) The Commission shall accept applications and renewal requests for certification as a well contractor from any person who is at least 18 years of age and whose application meets all the following conditions:

- (1) Each application shall be submitted on forms provided by the Commission, which are designed for requesting certification as a well contractor by way of examination, reexamination, or temporary certification and must be properly and accurately completed and submitted with an appropriate fee to the office of the chairman of the Commission.
- (2) Each application has been determined to be complete by the Commission. Incomplete applications and applications not accompanied by an appropriate fee and attachments shall not be processed and shall be returned to the applicant.
- (3) Each application shall contain proof of experience as provided in Paragraph (f) of this Rule.
- (4) Except for those applications where renewal of certification is requested, each application shall include a request for the well contractor examination.

(b) Applicants who have intentionally supplied false information must wait 12 months before resubmitting an application for certification.

(c) The Commission shall not schedule an applicant to take the required examination until his application has been reviewed and the applicant has met all other conditions for certification. The applicant must pass the examination within three consecutive attempts or within a one year period of time after application submittal, whichever expires first, or a new application shall be required. An applicant who has failed the examination after three consecutive attempts shall be required to obtain eight PDH units prior to resubmittal of an application for certification.

(d) A certification shall not be issued until the applicant passes the required examination and pays the appropriate fee.

(e) A certification issued by the Commission shall be valid in every county in the state.

(f) Proof of 18 months_of full-time experience in well construction activities shall be demonstrated by providing one of the following:

- (1) An affidavit from at least one currently certified well contractor, who has not committed any violation of 15A NCAC 02C or 15A NCAC 27 within the past two years, attesting that the applicant has been working in well contractor activities under the supervision of a certified well contractor for the equivalent of a minimum of 18 months full-time and submits appropriate payroll records as proof.
- (2) Any other proof of working in well contractor activities for a minimum of 18 months. At a minimum, the proof submitted shall demonstrate that the applicant has received a level of instruction in well construction

techniques and practices found in publications used as the basis for a course of study or apprenticeship program, as shown in Paragraph (h)(1-4) of this Rule. Proof submitted must also show that the applicant has a working knowledge of the 15A NCAC 02C .0100 (Well Construction Rules), the 15A NCAC 27 (Well Contractor Certification Rules) and applicable statutes.

(g) An affidavit from at least one currently certified well contractor, who has not committed any 15A NCAC 02C or 15A NCAC 27 violations within the past two years, attesting that the applicant has been working in well contractor activities under the supervision of a certified well contractor for an equivalent of six months full-time and supplies appropriate payroll records, shall be accepted in lieu of meeting the requirements of Paragraph (f) of this Rule, if the applicant also furnishes proof of completion of one of the following:

- (1) Completion of a course of study in well construction techniques approved by the Well Contractor's Certification Commission and offered by a community college within the N.C. Department of Community Colleges with a passing grade; or
- (2) Completion of an apprenticeship program approved by the Well Contractor's Certification Commission and approved by the N.C. Department of Labor in well construction; or
- (3) Completion of a similar course of study or apprenticeship program as approved by the Well Contractor's Certification Commission.

(h) The WCCC shall approve a course of study or apprenticeship program whose educational materials or program meets technical aspects of well construction. The course of study or apprenticeship program shall provide the level of instruction in well construction techniques and practices found in publications recognized by the National Ground Water Association (NGWA) or other publications determined by the Commission to be equivalent to those recognized by NGWA. Examples of equivalent publications include the following:

- (1) "Manual of Water Well Construction Practices";
- (2) "Well Drilling Manual";
- (3) "Ground Water Handbook"; or
- (4) Any other peer-reviewed published document on well construction activities.

History Note: Authority G.S. 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440; Temporary Adoption Eff. December 15, 1998; Eff. August 1, 2000; Codifier determined that findings did not meet criteria for temporary rule on July 12, 2002; Temporary Adoption Eff. September 12, 2002; Amended Eff. August 1, 2004.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0503 RENEWAL OF LICENSE

(a) Form. A licensee's application for renewal requires the licensee to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the licensee to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the licensee on the form itself.

(b) The Board shall require a licensee to submit an audited financial statement if there is any evidence indicating that the licensee may be unable to meet its financial obligations. A licensee shall be required to provide evidence of continued financial responsibility satisfactory to the Board if there are indications that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities. Except as provided herein, evidence of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter. A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement with a classified balance sheet as part of any application for renewal. A corporate licensee shall notify the Board of its dissolution or suspension of its corporate charter within 30 days of such dissolution or suspension.

(c) Display. The certificate of renewal of license granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a period of 155 Days to Expire on December 1, 1989; Amended Eff. December 1, 1989; RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment; Amended Eff. September 1, 1992; Temporary Amendment Eff. May 31, 1996; Amended Eff. June 1, 2003; April 1, 2003; August 1, 2002; April 1, 1997.

CHAPTER 60 - BOARD OF REFRIGERATION EXAMINERS

21 NCAC 60 .0311 PERMITS

(a) The refrigeration license number of the licensee shall appear on all applications for permits.

(b) A licensee shall assure that a permit is obtained from the local Building Code enforcement official before commencing any installation work for which a license is required by the Board. The licensee shall also assure that a request for final inspection is made within 10 days of subsequent completion of

the work for which a license is required, absent agreement with the owner and the local Building Code enforcement official.

(c) A licensee shall obtain permits and allow his number to appear on permits only for work over which he will provide general supervision until the completion of the work, for which he holds the contract and for which he receives all contractual payments.

(1) General supervision is that degree of supervision which is necessary and sufficient to ensure that the work is performed in a competent manner and with the requisite skill and that the work is done timely, safely and in accordance with applicable codes and rules. General supervision requires that the review of the work be performed in person by the licensee while the work is in progress.

(2) Each business office for which a licensee is responsible shall be actively and locally supervised by that licensee who shall have primary responsibility and a corresponding amount of time personally involved in the work contracted for or performed by that office.

History Note: Authority G.S. 87-54; 87-58(g); Eff. May 1, 1988; Amended Eff. August 1, 2004; July 1, 2000; April 1, 1989.

CHAPTER 66 - VETERINARY MEDICAL BOARD

21 NCAC 66 .0206 MINIMUM STANDARDS FOR CONTINUING EDUCATION

Each person holding a veterinary license, a faculty certificate, a zoo veterinary certificate or a veterinary technician registration issued by the Board shall comply with the standards in this Rule, which standards shall be a condition precedent to the renewal of a license certificate or registration, respectively. Except as otherwise qualified, the criteria with respect to continuing veterinary medical education of a person holding a certificate of registration as a veterinary technician shall be the same as that for a licensed veterinarian. The standards are as follows:

- (1) Veterinarians shall earn 20 credit hours each calendar year.
- (2) Veterinary technicians registered with the Board shall earn 12 credit hours every two calendar years.
- (3) Veterinarians may request and be granted an extension of time, not to exceed six months, to satisfy the continuing education requirement if the veterinarian provides evidence of an incapacitating illness or evidence of other circumstance which constituted a severe and verifiable hardship such that to comply with the continuing education requirement would have been impossible or unreasonably burdensome. If the incapacitating illness or circumstance is likely to result in loss of life of the veterinarian the Board shall exempt the veterinarian from the unearned portion of the continuing education requirement for that renewal period.

- (4) Credit hours may be earned as follows: one hour credit for each hour of attendance at in-depth seminars such as seminars sponsored by the American Veterinary Medical Association (AVMA), the American Animal Hospital Association (AAHA), the North Carolina Veterinary Medical Association (NCVMA), and academies and schools of veterinary medicine. Only one hour credit may be acquired for attendance at a local sectional association meeting. The Board shall consider additional course offerings for approval for continuing education credit, provided that the Board is furnished sufficient information to establish that the course content and quality is substantially comparable to the course offerings by those seminars sponsored by the organizations or institutions listed in this Subparagraph. Approval for continuing education credit for courses other than those specified herein shall be obtained prior to attendance at a course; however, the Board may waive the requirement of approval prior to attendance at the course if circumstances beyond the veterinarian's or registrant's control prevented obtaining the prior approval. Only three hours credit per year may be acquired from review of an audio or video cassette or computer-based training. The audio or video cassette or computer-based training must be approved by the Board, and the veterinarian shall furnish a copy, or substantially the equivalent of it, and sufficient documentation for the Board to make an appropriate evaluation for approval.
- (5) Each veterinarian shall keep a record of credit hours earned. Each year he or she shall certify on a form provided by the Board the number of credit hours earned. The Board shall mail the form to each veterinarian at the time of annual renewal.
- (6) During the calendar year in which a veterinarian graduates from veterinary college or during the calendar year in which a veterinary technician graduates from veterinary technician school, a veterinarian or veterinary technician, respectively, shall not be required to earn continuing education credits for that portion of the calendar year remaining from the date when the license or registration was issued to the end of the calendar year.

History Note: Authority G.S. 90-185(6); 90-186(1); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. June 1, 2003; May 1, 1996; May 1, 1989; January 1, 1987.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, June 19, 2003, 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 by Friday, June 13, 2003 to the RRC staff, the agency, and the individual Commissioners. 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

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dr. Walter Futch
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

June 19, 2003 July 17, 2003
August 21, 2003 September 18, 2003
October 16, 2003

Commission Review/Administrative Rules

Log of Filings (Log #198)
April 22, 2003 through May 20, 2003

DEPARTMENT OF ADMINISTRATION

Policy 01 NCAC 30I .0101 Adopt
Point Values For Good Faith Efforts 01 NCAC 30I .0102 Adopt

NC BOARD OF AGRICULTURE

Importation Requirements: Brucellosis 02 NCAC 52B .0204 Amend

DHHS

Applicability and Scope 10 NCAC 01M .0101 Amend
Complaints 10 NCAC 01M .0102 Amend
Investigation 10 NCAC 01M .0103 Amend
Written Determination 10 NCAC 01M .0104 Amend
Reconsideration 10 NCAC 01M .0105 Amend
Records 10 NCAC 01M .0106 Amend
Other Remedies 10 NCAC 01M .0107 Amend
Construction 10 NCAC 01M .0108 Amend
Applicability and Scope 10 NCAC 01N .0101 Amend
Applicability and Scope 10 NCAC 01N .0101 Amend
Complaints 10 NCAC 01N .0102 Amend
Investigation 10 NCAC 01N .0103 Amend
Written Determination 10 NCAC 01N .0104 Amend
Reconsideration 10 NCAC 01N .0105 Amend
Records 10 NCAC 01N .0106 Amend
Other Remedies 10 NCAC 01N .0107 Amend
Construction 10 NCAC 01N .0108 Amend
Applicability and Scope 10 NCAC 01O .0101 Amend
Complaints 10 NCAC 01O .0102 Amend
Investigation 10 NCAC 01O .0103 Amend
Resolution of Matters 10 NCAC 01O .0104 Amend
Reconsideration 10 NCAC 01O .0105 Amend
Definitions 10 NCAC 20A .0102 Amend
Rates of Payment 10 NCAC 20C .0119 Amend
Services Covered by or Exempt from Financial Needs 10 NCAC 20C .0205 Amend
Financial Needs Test 10 NCAC 20C .0206 Amend
Priority Categories 10 NCAC 20C .0603 Amend
Case Finding and Information and Referral Programs 10 NCAC 20C .0606 Amend

RULES REVIEW COMMISSION

OF ENVIRONMENT & NATURAL RESOURCES

Snapper Grouper	15A NCAC 03M .0506	Amend
Deer White Tailed	15A NCAC 10B .0203	Amend
Deer White Tailed	15A NCAC 10B .0203	Amend
Wild Turkey	15A NCAC 10B .0209	Amend
Open Seasons	15A NCAC 10B .0302	Amend
Tagging Furs	15A NCAC 10B .0402	Amend
Public Mountain Trout Waters	15A NCAC 10C .0205	Amend
Spawning Areas	15A NCAC 10C .0208	Amend
Possession of Certain Fishes	15A NCAC 10C .0211	Amend
Fish Hatcheries	15A NCAC 10C .0212	Amend
Open Seasons Creel and Size Limits	15A NCAC 10C .0305	Amend
Manner of Taking Nongame Fishes Purchase and Sale	15A NCAC 10C .0401	Amend
Taking Nongame Fishes for Bait	15A NCAC 10C .0402	Amend
Special Device Fishing	15A NCAC 10C .0404	Amend
Permitted Special Devices and Open Seasons	15A NCAC 10C .0407	Amend
Descriptive Boundaries	15A NCAC 10C .0503	Amend
General Regulations Regarding Use	15A NCAC 10D .0102	Amend
Hunting on Game Lands	15A NCAC 10D .0103	Amend
Fishing on Game Lands	15A NCAC 10D .0104	Amend
Fees for Rabies Tags, Links, and Rivets	15A NCAC 19G .0102	Amend
Chemistry Quality Assurance	15A NCAC 20D .0243	Amend
Grant Applications	15A NCAC 21A .0817	Amend
Maximum Funding Level	15A NCAC 21A .0818	Amend
Criteria For Project Selection	15A NCAC 21A .0822	Amend
NC STATE BOARD OF PSYCHOLOGY		
Continuing Education	21 NCAC 54 .2104	Amend

**AGENDA
RULES REVIEW COMMISSION
June 19, 2003**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. 1 NCAC 30H .0102; .0201-.0205; .0301; .0303; .0305; .0404; .0701; .0801; .1001 (DeLuca)
 - B. Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 (DeLuca)
 - C. Department of Insurance – 11NCAC 11A .0503; .0504; .0506 (Bryan)
 - D. Board of Pharmacy – 21 NCAC 46 .1812 (DeLuca)
 - E. Board of Pharmacy – 21 NCAC 46 .2502 (DeLuca)
 - F. Cultural Resources Commission – 7 NCAC 4S .0104 (DeLuca)
 - G. Board of Elections – 8 NCAC Chapter 1-12 (DeLuca) To be considered at October Meeting
- IV. Review of rules (Log Report #198)
- V. Commission Business
- VI. Next meeting: July 17, 2003

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

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC ABC Commission v. Issa Fuad Shaikh T/A Variety Pic Up #14	01 ABC 0874	Conner	12/03/02	
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm.	01 ABC 1396	Wade	06/26/02	
NC ABC Commission v. Headlights, Inc. T/A Headlights	01 ABC 1473	Wade	06/28/02	
NC ABC Commission v. Jerry Lynn Johnson T/A E & J Millenium	02 ABC 0115	Conner	10/23/02	
Roy Hoyt Durham, Lisa Chambers Durham t/a Lincoln House v. NC ABC Commission	02 ABC 0157	Mann	12/03/02	
Edward L. Mumford v. NC Alcoholic Control Commission	02 ABC 0264	Conner	08/29/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
Jrs Nigh Hawk, James Theron Lloyd Jr v. NC ABC Commission	02 ABC 0629	Chess	11/19/02	17:13 NCR 1116
NC ABC Commission v. Cevastiano Hernandes T/A Cristy Mexican Store	02 ABC 0667	Gray	10/17/02	
NC ABC Commission v. Easy Street Bistro, Inc. T/A Raleigh Live	02 ABC 0781	Wade	10/23/02	
Scott Patrick Windsor T/A Depot v. NC Alcoholic Beverage Comm.	02 ABC 0909	Hunter	02/26/03	
NC ABC Commission v. Pantana Bob's, Inc., T/A Pantana Bob's	02 ABC 1145	Mann	03/28/03	
NC ABC Commission v. Yosef, Inc., t/a Bayleaf Convenience & Deli	02 ABC 1612	Chess	04/21/03	
Lloyd Jarreau v. NC Alcoholic Beverage Control Commission	03 ABC 0050	Morrison	04/22/03	
<u>APPRAISAL BOARD</u>				
NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
<u>CEMETARY COMMISSION</u>				
Lee Memory Gardens, Inc. v. NC Cemetary Commission	02 COM 0126	Gray	09/19/02	
<u>UTILITIES COMMISSION</u>				
Tracy Woody v. State of NC Utilities Commission	02 COM 1004	Morrison	08/26/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Carol Peebles v. Crime Victims Compensation Commission	02 CPS 0180	Gray	02/05/03	
Linda Hawley v. Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
Elbert Reid, Jr. v. Crime Victims Compensation Commission	02 CPS 0431	Conner	11/13/02	
Francis Michael McLaurin on behalf of B.W. McLaurin v. Crime Victims Compensation Commission	02 CPS 0760	Chess	11/19/02	
Willie Ray Lucas v. Crime Victims Compensation Commission	02 CPS 0770	Wade	01/06/03	
Claudia White v. Crime Victims Compensation Commission	02 CPS 0894	Conner	01/08/03	
Patricia Ann Pitts v. Gaston Co. Courthouse, Judge Jesse Caldwell	02 CPS 1134	Morrison	04/08/03	
Phyllis Ponder Duren v. Crime Victims Compensation Commission	02 CPS 1173	Gray	11/06/02	
Judith Simpson v. Crime Victims Compensation Commission	02 CPS 1317	Chess	03/17/03	17:21 NCR 1970
Brenda S. DuBois on behalf of victim Priscilla Bryant v. Dept. of Crime Control & Public Safety, Div. of Victim Comp. Services	02 CPS 1332	Lassiter	09/20/02	
William S. McLean v. Crime Victims Compensation Commission	02 CPS 1600	Lassiter	11/18/02	
<u>ADMINISTRATION</u>				
Jeffrey Thomas Farmer v. GACPD (Governor's Advocacy for Persons With Disabilities)	03 DOA 0300	Lassiter	04/21/03	

CONTESTED CASE DECISIONS

AGRICULTURE

All Creatures Great & Small v. NC Dept. of Ag. & Con. Svcs. 01 DAG 1398 Gray 04/02/03

HEALTH AND HUMAN SERVICES

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

Lisa Williams v. NC DHHS, Div. of Soc. Svc., Child Supp. Enf. Sec.	01 DCS 2351	Elkins	10/28/02	17:11 NCR 1024
Chiffon R Robeson, Ronald V Robeson v DHHS, Div. of Child Dev.	00 DHR 1030	Gray	02/28/03	
Thelma Street v. NC DHHS	01 DHR 0303	Reilly	09/17/02	
Mary Edge v. DHHS, Div. of Child Development	01 DHR 0720	Gray	04/01/03	
Trula Freeman v. DHHS, Div. of Child Development	01 DHR 1190	Gray	04/25/03	
Emilia E Edgar v. DHHS, Div. of Facility Services	01 DHR 1356	Hunter	09/09/02	
Evelia Williams v. DHHS	01 DHR 1750	Conner	07/15/02	
Mack Lumpkin v. DHHS, Div. of Medical Assistance	01 DHR 2080	Gray	04/25/03	
Jacob Jones v. NC DHHS, Div. of Medical Assistance	01 DHR 2169	Wade	10/04/02	
Kathy Mumford v. DHHS, Div. of Facility Services	01 DHR 2253	Chess	07/26/02	
Brenda L. McQueen v. DHHS, Div. of Facility Services	01 DHR 2321	Morrison	10/17/02	
Tammy Baldwin v. DHHS, Div. of Facility Services	01 DHR 2329	Morrison	10/16/02	
Pamela S Vuncannon v. DHHS, Div of Child Development	01 DHR 2332	Chess	11/18/02	
James Bell v. NC DHHS, Div. of Facility Services	01 DHR 2340	Elkins	06/27/02	
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Ramiro Ramos v. NC DHHS and Chris Hoke, State Registrar	01 DHR 2366	Conner	09/11/02	
Effie M. Williams v. NC Department of Health and Human Services	02 DHR 0001	Gray	08/08/02	
Kathy Denise Urban v. NC DHHS, Div. of Facility Services	02 DHR 0055	Hunter	09/10/02	
Betty Carr v. DHHS, Div. of Facility Services	02 DHR 0070	Mann	09/10/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Ursula Philomena Nwapa v. DHHS	02 DHR 0091	Wade	12/18/02	
Lollipop's Learning Tree #2, Lori Kirkling, ID #32001062 v. DHHS,	02 DHR 0095	Gray	02/28/03	
Albemarle Home Care & Ginger Parrish, PhD v. DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
Shonta R. Fox v. Dept. of Health & Human Services	02 DHR 0218	Conner	11/08/02	
Franklin Shane Early v. DHHS, Walter B Jones, ADATC	02 DHR 0239	Gray	04/01/03	
Birgit James v. Dept. of Health & Human Services	02 DHR 0255	Connor	07/01/02	
Geraldine Rountree Cooper v. DHHS, Div. of Facility Services	02 DHR 0267	Elkins	07/15/02	
Gemela Kidada Davis v. DHHS, Div. of Facility Services	02 DHR 0283	Lassiter	02/24/03	
Unieca Richardson v. DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Greg McKinney & Virgie Elaine McKinney v. DHHS	02 DHR 0301	Mann	08/01/02	
Jerry Dean Webber v. DHHS, Broughton Hospital	02 DHR 0306	Conner	08/28/02	
Donna R Anderson v. DHHS, Broughton Hospital	02 DHR 0340	Gray	08/01/02	
Notisha Utley v. DHHS, Division of Facility Services	02 DHR 0379	Conner	07/26/02	
Isa Spaine v. Department of Health & Human Services	02 DHR 0403	Chess	06/24/02	
Debra A. Browner v. DHHS, Broughton Hospital	02 DHR 0405	Conner	08/28/02	
Vernon Farley v. DHHS, Div. of Medical Assistance	02 DHR 0450	Gray	01/29/03	
NC Community Association v. DHHS, Off. of Economic Opportunity	02 DHR 0497	Morrison	12/11/02	17:14 NCR 1200
Bill & Suzy Crawford for (NEELY) Crawford v. DHHS	02 DHR 0539	Wade	12/18/02	
Mooreville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section	02 DHR 0541	Chess	08/07/02	
Wayne Douglas Temples v. DHHS, NC Off. of Emer. Med. Svcs.	02 DHR 0543	Morrison	10/09/02	
Mark Thomas v. DHHS, Div. of Facility Services	02 DHR 0555	Chess	10/17/02	
Eli Maxwell v. DHHS, Div. of Facility Services, Health Care Registry	02 DHR 0556	Lassiter	08/08/02	
Robin Lee Arnold v. DHHS, Div. of Facility Services	02 DHR 0558	Conner	08/15/02	
Laura Sheets v. DHHS, Div. of Facility Services	02 DHR 0569	Conner	10/17/02	
Terry A. Bolick v. DHHS	02 DHR 0618	Conner	02/26/03	
Evelyn Denise Humphrey v. DHHS, Div. of Facility Services	02 DHR 0624	Morrison	08/08/02	
Amy D McFarland v. DHHS, Div. of Facility Services	02 DHR 0647	Wade	03/28/03	
Sara E Parker v. DHHS	02 DHR 0659	Gray	04/17/03	
James Parks v. Dept. of Health and Human Services	02 DHR 0680	Morrison	08/07/02	
Andrea Green, Parent, on behalf of her minor child, Andrew Price v. The Durham Clinic	02 DHR 0682	Gray	11/07/02	
Lisa Murphy v. DHHS, Division of Facility Services	02 DHR 0694	Mann	07/26/02	
Vernessa B Pittman v. DHHS	02 DHR 0734	Chess	11/21/02	
Mary's Family Care #2, Beulah Spivey v. OAH	02 DHR 0735	Morrison	08/27/02	
Clinita Faye Hooker v. DHHS, Div. of Facility Services	02 DHR 0748	Lassiter	01/02/03	
Miranda Lynn Stewart v. DHHS, Div. of Facility Services	02 DHR 0791	Mann	11/08/02	17:12 NCR 1086
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	
Jeffrey Wayne Radcliff v. DHHS	02 DHR 0838	Conner	12/16/02	
Mr. Mohamed Mohamed v. DHHS, Women's & Children's Health (WIC Program)	02 DHR 0866	Chess	10/02/02	
Mooreville Hospital Management Assoc, Inc. d/b/a Lake Norman Reg. Med. Ctr v. DHHS, Div. of Fac. Svcs, CON Section, Robert J Fitzgerald in his official capacity as Director of the Div of Fac Svcs, and Lee B Hoffman in her official capacity as Chief of the CON Section and The Presbyterian Hospital and the Town of Huntersville	02 DHR 0888	Morrison	11/26/02	17:13 NCR 1120
Cleon A Gibbs v. Division of Medical Assistance (DMA)	02 DHR 0901	Elkins	12/16/02	
Martha L Cox v. DHHS, Div. of Facility Services	02 DHR 0935	Morrison	10/25/02	
Tracy Woody v. Coop Ex. Svc, Coll of Ag & Life Sc Family &	02 DHR 0944	Morrison	09/25/02	

CONTESTED CASE DECISIONS

Consumer Svcs, In-Home Breastfeeding Support Program & Nash Co. Dept. of Social Svcs, Child Protective Svcs & State WIC Program for Nash County			
Stacy L Pleaze-Wilson v. DHHS, Health Care Personnel Registry	02 DHR 0973	Wade	01/31/03
Sheryl L Hoyle v. DHHS, Div. of Facility Services	02 DHR 1009	Conner	10/24/02
Carmelita T. England v. Ms. Lisa Moor, Chief Advocate, Black Mtn Ctr.	02 DHR 1033	Chess	08/15/02
Gloria Dean Gaston v. Office of Administrative Hearings	02 DHR 1081	Morrison	07/26/02
Teresa King v. Division of Mental Health	02 DHR 1154	Chess	12/19/02
Maria Goretti Obialor v. DHHS, Div. of Facility Services	02 DHR 1187	Mann	09/11/02
Lashanda Skinner v. DHHS	02 DHR 1190	Lassiter	09/09/02
Robert A. Thomas v. DHHS, Div. of Facility Services	02 DHR 1254	Lassiter	09/13/02
Janet Cook v. Division of Medical Assistance	02 DHR 1272	Lassiter	11/15/02
Shirley's Development Center, Shirley Campbell v. State of DHHS, Div. of Child Development	02 DHR 1309	Morrison	10/08/02
Joann V Blakeney v. Piedmont Behavior Healthcare	02 DHR 1319	Conner	12/16/02
Jack Irizarry v. DHHS, Div. of Facility Services, Adult Care License Sec.	02 DHR 1331	Elkins	02/19/03
Timothy W Andrews for Ridgecrest Retirement LLC v. DHHS, Div of Facility Services	02 DHR 1417	Elkins	11/26/02
Psychiatric Solutions, Inc. d/b/a Holly Hill Hospital v. Div. of Medical Assistance, DHHS	02 DHR 1499	Elkins	12/12/02
Evy's Group Care v. DHHS, Div. of Mental Health, Program Accountability	02 DHR 1462	Gray	01/27/03
LatissueMcRae v. Dept Health Care Personnel Registry Section	02 DHR 1533	Lassiter	01/14/03
Marquelle's Enrichment Center for Edith James & Wilhelmenia Bridges v. Div. of Child Dev. Regulatory Services Section	02 DHR 1537	Gray	01/27/03
Betty J. Hastings v. Office of Administrative Hearings	02 DHR 1592	Lassiter	02/11/03
Twakeena Rachel Simmons v. Office of Administrative Hearings	02 DHR 1626	Chess	01/13/03
Joyce Jeanette Jones v. DHHS, Div. of Facility Services	02 DHR 1663	Conner	11/15/02
Peggy Renee Smith v. DHHS, Div. of Facility Svcs, Hlth Care Per Reg	02 DHR 1683	Lassiter	11/13/02
Queen Esther Hampton Fant v DHHS, Div. of Facility Services	02 DHR 1751	Elkins	03/07/03
Sherry D Tucker v. DHHS, Div. of Facility Services	02 DHR 1753	Mann	01/02/03
Mary A. Johnson v. DHHS	02 DHR 1885	Wade	03/13/03
Donna Stillie v. Nurse Registry for CAN's	02 DHR 1940	Chess	01/15/03
Opportunities Industrialization Center of America, Inc. (via counsel, David C. Smith) v. DHHS	02 DHR 1982	Chess	01/27/03
Shirley Suggs v. DHHS, Division of Facility Services	02 DHR 2038	Gray	02/13/03
Ziad El-Hilou, A&T Food v. Food & Nutrition Service – USDA, and DHHS	02 DHR 2165	Elkins	01/08/03
Donna W. Roach v. DHHS	02 DHR 2187	Chess	03/07/03

Heather Lail v DHHS, Health Care Personnel Registry	03 DHR 0014	Gray	02/26/03
Antonia Oates for Allan Jamal Meadows v. DHHS, Div. of Med. Asst.	03 DHR 0115	Lassiter	04/17/03
Opportunity House, Anthony P Moore v. Div. of Fac. Svcs., Mental Health Licensure & Cert Sec, W Jeff Horton - Chief	03 DHR 0213	Lassiter	04/17/03
Baxter Douglas Fleming v. DHHS, Division of Public Health. Of Fac. Svcs.	03 DHR 0264	Lassiter	04/21/03
Dianne Sturdivant v. DHHS	03 DHR 0277	Gray	04/29/03
Robert Felton v. Office of Administrative Hearings	03 DHR 0305	Wade	05/12/03
Janice Terry v. NC Nurse Aide I Registry	03 DHR 0321	Lassiter	04/21/03
Kristin Diana Lackey v. DHHS, Div. of Facility Services	03 DHR 0366	Gray	05/07/03
Cynthia T. Marsh v. DHHS, Div. of Facility Services	03 DHR 0369	Gray	05/07/03

ADMINISTRATION

San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02
James J. Lewis v. DOA, Gov. Advocacy Council for Persons w/Disabilities	02 DOA 0545	Chess	08/26/02

JUSTICE

Darren P Botticelli v. DOJ, Company Police Program	02 DOJ 0898	Lassiter	03/20/03
Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis	02 DOJ 1038	Gray	08/08/02

Alarm Systems Licensing Board

Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02
Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02
Jeffery Lee Garrett v. Alarm Systems Licensing Board	02 DOJ 0908	Morrison	08/06/02
Robert Bradley Tyson v. Alarm Systems Licensing Board	02 DOJ 1266	Morrison	10/09/02
Larry Thomas Medlin Jr. v. Alarm Systems Licensing Board	02 DOJ 1433	Lassiter	11/19/02
Lottie M Campbell v. Alarm Systems Licensing Board	02 DOJ 1602	Mann	11/27/02
Katherine Claire Willis v Alarm Systems Licensing Board	02 DOJ 1953	Gray	03/04/03
John Courtney Rose v Alarm Systems Licensing Board	02 DOJ 1954	Morrison	12/19/02
Adam David Braswell v Alarm Systems Licensing Board	02 DOJ 1955	Morrison	12/19/02
Jason Lee Davenport v. Alarm Systems Licensing Board	02 DOJ 1956	Morrison	12/19/02

Private Protective Services Board

Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02
Benita Lee Luckey v. Private Protective Services Board	02 DOJ 0530	Elkins	07/12/02
Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02
Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02
Barry Snadon, Sr. v. Private Protective Services Board	02 DOJ 0907	Elkins	07/12/02
Gregory Darnell Martin v. Private Protective Services Board	02 DOJ 0916	Morrison	08/06/02
Marvin Ray Johnson v. Private Protective Services Board	02 DOJ 0945	Morrison	08/06/02
Quincey Adam Morning v. Private Protective Services Board	02 DOJ 1084	Morrison	08/06/02
Philip Garland Cameron v. Private Protective Services Board	02 DOJ 1258	Morrison	09/06/02
Jamaal Ahkiem Gittens v. Private Protective Services Board	02 DOJ 1260	Conner	01/08/03

CONTESTED CASE DECISIONS

Desantis Lamarr Everett v. Private Protective Services Board	02 DOJ 1259	Morrison	09/06/02
Junius Buddy Weaver Jr v. Private Protective Services Board	02 DOJ 1432	Morrison	11/21/02
John Curtis Howell v. Private Protective Services Board	02 DOJ 1562	Lassiter	10/04/02
Lenora Topp v. Private Protective Services Board	02 DOJ 2238	Chess	04/21/03
Douglas Blair McClure v. Private Protective Services Board	03 DOJ 0248	Morrison	04/24/03
Richard Renard Porter v. Private Protective Services Board	03 DOJ 0249	Chess	04/21/03

Sheriffs' Education & Training Standards Commission

Kevin Warren Jackson v. Sheriffs' Education & Training Stds. Comm.	01 DOJ 1587	Chess	07/16/02
Andrew Arnold Powell Jr v. Criminal Justice & Training Stds. Comm.	01 DOJ 1771	Chess	11/26/02
Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0004	Mann	06/28/02
Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm.	02 DOJ 0057	Gray	07/15/02
Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0089	Conner	06/25/02
Clarence Raymond Adcock v. Criminal Justice Ed. & Trng. Stds. Comm.	02 DOJ 0104	Chess	09/09/02
Joseph Garth Keller v. Criminal Justice & Trng. Stds. Comm.	02 DOJ 0170	Gray	09/11/02
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02
Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0304	Reilly	07/17/02
Michael A Carrion v. Criminal Justice Educ & Trng Stds. Comm.	02 DOJ 0416	Conner	09/25/02
Wallace A. Hough, Jr. v. Criminal Justice & Training Stds. Comm.	02 DOJ 0474	Morrison	08/08/02
Jerome Martrice Johnson v. Criminal Justice Educ. & Trng. Stds. Comm.	02 DOJ 0484	Elkins	09/23/02
Antonio Fitzgerald McNeil v. Criminal Justice Educ. & Trng. Stds. Comm.	02 DOJ 0526	Wade	09/25/02
Wanda L. Grant v. Sheriffs' Education & Training Standards Comm.	02 DOJ 0602	Mann	10/18/02
Bentrell Blocker v. Sheriffs' Educ. & Training Stds. Commission	02 DOJ 0603	Chess	11/15/02
Sharon L. Joyner v. Sheriffs' Educ. & Training Stds. Commission	02 DOJ 0604	Morrison	09/05/02
Debra E. Taylor v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0605	Wade	11/05/02
Keith E. Kilby, Sr. v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0609	Lassiter	08/07/02
John R. Tucker v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0632	Morrison	06/26/02
Eddie Kurt Newkirk v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0870	Gray	08/28/02
Marshall Decarlos Williams v. Criminal Justice Educ. & Trng. Stds. Comm.	02 DOJ 1039	Conner	12/16/02
Mike Doyle Colvin Jr v. Sheriffs' Educ. & Training Standards Comm.	02 DOJ 1122	Chess	10/25/02
Dennis Damon Foster v. Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 1162	Mann	10/18/02
Vickie Renee Kirkland v. Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 1163	Gray	10/14/02
Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm.	02 DOJ 1420	Wade	06/27/02
Charles S Grainger v. Criminal Justice Educ. & Training Stds. Comm.	02 DOJ 1584	Wade	02/07/03
Mark A Faucette Sr. v. Criminal Justice & Training Stds. Comm.	02 DOJ 1585	Chess	01/02/03
Ralph Joseph Abramo, Jr v. Sheriffs' Educ. & Training Standards Comm.	02 DOJ 2299	Conner	04/08/03
Helen Marie Williams v Sheriffs' Education & Training Stds. Comm.	02 DOJ 1788	Gray	03/10/03
Ricky Hargrove v. Criminal Justice Education & Training Stds. Comm.	02 DOJ 1946	Elkins	01/26/03
Christopher John Hubacker v Criminal Justice Ed. & Trng. Stds. Comm.	02 DOJ 2118	Morrison	03/21/03

TAX REVIEW BOARD

Michael W. May v. Tax Review Board	03 DST 0192	Chess	04/08/03
------------------------------------	-------------	-------	----------

DEPARTMENT OF PUBLIC INSTRUCTION

Melvin Quincy Etheridge v. Department of Public Instruction	02 EDC 1174	Mann	02/11/03
---	-------------	------	----------

ENVIRONMENT AND NATURAL RESOURCES

Enviro-Soil, Inc. v. St. of NC DENR, Div. of Env. Management	94 EHR 1296	Gray	12/03/02
Town of Belville v. NC DENR, Div. of Coastal Management	96 EHR 0598	Gray	07/29/02
Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 0363 ⁵	Conner	11/21/02
Ronald Gold Overcash v. DENR, Div. of Waste Management	00 EHR 0662 ¹⁰	Wade	04/04/03
Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 1475 ⁵	Conner	11/21/02
Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1	01 EHR 0182 ⁴	Conner	11/04/02
Squires Enterprises, Inc. v. NC DENR (LQS00-091)	01 EHR 0300	Mann	09/23/02
Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1	01 EHR 0312 ⁴	Conner	11/04/02
Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality	01 EHR 0976	Chess	07/16/02
SRF Dev. Corp. v. NC DENR, Div. of Land Resources	01 EHR 1040 ³	Gray	10/02/02
SRF Dev. Corp. v. NC DENR, Div. of Land Resources	01 EHR 1402 ³	Gray	10/02/02
Rhett & Julie Taber, Robert W. Sawyer, John T. Talbert, Stephen Bastian, Dr. Ernest Brown, Thomas Read, Keith Brown, Fred Johnston, James L. Dickens, James T. Coin, Eleanor Coin & James Vaughn v. NC DENR, Div. of Coastal Management	01 EHR 1512	Conner	09/11/02
Grassy Creek Neighborhood Alliance Inc v. DHHS, Div. of Waste Mgmt, & City of Winston Salem & City/County Utility Commission	01 EHR 1585	Mann	02/07/03
Lucy, Inc. George Chemall v. NC DENR, Div. of Waste Management	01 EHR 1695	Morrison	10/22/02
Town of Ocean Isle Beach v. NC DENR	01 EHR 1885	Chess	07/31/02
Citizens Against the Asphalt Plant, a chapter of Blue Ridge Environmental	01 EHR 2278	Wade	04/09/03

17:06 NCR 557

CONTESTED CASE DECISIONS

Defense League, Inc., a NC Corp. v. DENR, Div. of Air Quality and John L Pace Enterprises, Inc. d/b/a Tarheel Paving Company Valley Proteins, Inc. v. NC DENR, Div. of Air Quality	01 EHR 2362	Mann	09/26/02	
Frederick M. and Anne C. Morris, et al v. NC DENR, Div. of Air Quality and Martin Marietta Materials, Inc. Helen Smith v. NC DENR	02 EHR 0068	Gray	10/18/02	
Helen R. Bass v. County of Durham	02 EHR 0152	Morrison	08/09/02	
Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0191	Gray	06/26/02	
J.B. Hooper v. NC DENR	02 EHR 0244	Gray	06/05/02	
Elwood Montgomery v. NC DENR, Div. of Waste Management	02 EHR 0285	Conner	08/21/02	
J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0329	Wade	09/26/02	
Kathy Teel Perry v. Environmental Health Division	02 EHR 0395	Mann	06/10/02	
Linda L. Hamrick v. NC DENR	02 EHR 0576	Chess	10/09/02	
Mitchell Oil Company Larry Furr v. DENR	02 EHR 0600	Conner	07/23/02	
Johnnie Burgess v. NC DENR, Div. of Waste Management	02 EHR 0676	Lassiter	08/07/02	
County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality	02 EHR 0688	Morrison	10/11/02	
Ronald Gold Overcash v. DENR, Div. of Waste Management	02 EHR 0690	Chess	06/17/02	
Ronald Gold Overcash v. DENR, Div. of Waste Management	02 EHR 0732 ¹⁰	Wade	04/04/03	
Ronald Gold Overcash v. DENR, Div. of Waste Management	02 EHR 0733 ¹⁰	Wade	04/04/03	
Michael John Barri v. New Hanover Co. Health Dept./Env. Health	02 EHR 0742	Conner	09/03/02	
Christopher L. Baker v. City of Asheville	02 EHR 0763	Gray	09/11/02	
Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm.	02 EHR 0777	Wade	07/11/02	
Ronald Gold Overcash v. DENR, Div. of Waste Management	02 EHR 0835 ¹⁰	Wade	04/04/03	
Infiltrator Systems, Inc., v. DENR & Ring Industrial Group, LP	02 EHR 0836	Morrison	03/03/03	
E Scott Stone, Env & Soil Serv. Inc v. NC DENR, Div. of Env Health	02 EHR 1305	Mann	11/20/02	
Thomas Tilley, Trustee v DENR, Div. of Water Quality	02 EHR 1466	Elkins	03/10/03	
GT of Hickory, Inc, Cole Alexander Gaither v. NC DENR	02 EHR 1534	Lassiter	11/18/02	
Brian Drive LLC, Cole Alexander Gaither v. NC DENR	02 EHR 1535	Lassiter	11/18/02	
Ronald E. Petty v. Office of Administrative Hearings	02 EHR 1183	Gray	09/20/02	
Madison M Day v Environment & Natural Resources	02 EHR 1307	Mann	12/12/02	
Randall E Kissiah v. Richmond Co. Health Dept, Env. Health Section	02 EHR 1671 ⁹	Conner	02/12/03	
Randall E Kissiah v. Richmond Co. Health Dept, Env. Health Section	02 EHR 1945 ⁹	Conner	02/12/03	
Bobby Long v. DENR	02 EHR 2026	Lassiter	02/11/03	
Lawrence N Ferguson, Jr. (SGI) and Ready Mixed Concrete Co. (RMC) v. NC DENR Underground Storage Tank Secion, Trust Fund Branch	02 EHR 2181	Chess	01/15/03	
Estate of Annie W Mullen v. DENR, Div. of Waste Management	03 EHR 0198	Lassiter	04/03/03	
<u>ENGINEERS AND LAND SURVEYORS</u>				
NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02	
<u>TEACHERS & ST. EMP. COMP MAJOR MEDICAL PLAN</u>				
Philip M Keener v. Bd. of Trustees & Exec. Admin. for the State Health Plan	02 INS 0252	Mann	12/11/02	17:14 NCR 1205
Sandra Halperin v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0337	Elkins	10/02/02	
Seena Binder v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0766	Wade	12/18/02	
Bryan Atarian v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0837	Elkins	01/06/03	
Louise Rodgers on behalf of George Rodgers v. St. of NC Teachers' and St. Emp. Comprehensive Major Medical Plan	02 INS 1546	Gray	03/13/03	
Fillippo Pagano v. St of NC Teachers' & St. Emp. Comprehensive Major Medical Plan	02 INS 1694	Chess	03/21/03	
Charles Brent & Marisha Boone v Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 1589	Conner	02/18/03	
Timothy Tereszczok v. St of NC Teachers' & St. Emp. Comp Maj Med Plan	02 INS 2040	Chess	05/06/03	
Lorraine Carol Collins v Teachers & St Emp Comp Major Med Plan	02 INS 2235	Elkins	03/17/03	
<u>MISCELLANEOUS</u>				
Howard A Reeves, Walter W Norris v. Swansboro Bd. of Adjustment	02 MIS 2208	Morrison	12/23/02	
<u>NURSING HOME ADMINISTRATORS</u>				
State Bd. of Examiners for Nursing Home Administrators v. Yvonne Washburn	02 NHA 0915	Morrison	09/25/02	
<u>OFFICE OF STATE PERSONNEL</u>				
Helen McIntyre v. UNC-TV, University of Chapel Hill	97 OSP 1164	Gray	12/20/02	
Robin Heavner Franklin v. Lincoln Co. Dept. of Social Services	98 OSP 1239	Conner	08/28/02	
Danny Wilson Carson v. NC DHHS, NC School for the Deaf	99 OSP 0641	Gray	11/15/02	
Theodore M Banks v. DOC, Harnett Correctional Institute	00 OSP 0474 ⁷	Gray	12/20/02	
Laura C. Seamons v. NC DHS/Murdoch Center	00 OSP 0522	Wade	06/28/02	
James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist.	00 OSP 0722	Wade	06/28/02	
Diane Oakley v. DHHS/John Umstead Hospital	00 OSP 1186	Gray	02/18/03	
Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02	17:01 NCR 93
Theodore M Banks v. DOC, Harnett Correctional Institute	00 OSP 1258 ⁷	Gray	12/20/02	
Berry Eugene Porter v. Department of Transportation	01 OSP 0019	Gray	07/03/02	
C.W. McAdams v. Div. of Motor Vehicles	01 OSP 0229	Conner	09/30/02	
Linda R. Walker v. Craven County Health Department	01 OSP 0309	Gray	07/12/02	
Thomas Michael Chamberlin v. Dept of Crime Control & Pub. Safety	01 OSP 0479	Gray	11/19/02	
J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services	01 OSP 0734	Morgan	06/06/02	
Dennis Covington v. NC Ag. & Tech. State University	01 OSP 1045	Wade	06/28/02	
Reginald Ross v. Department of Correction	01 OSP 1122/23	Wade	06/28/02	
Bob R Napier v. Department of Correction	01 OSP 1379	Lassiter	09/26/02	17:09 NCR 914

CONTESTED CASE DECISIONS

Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02	17:01 NCR	93
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02		
Joseph E. Teague, Jr. PE, CM v. Dept. of Transportation	01 OSP 1511	Lassiter	10/17/02		
Marshall E Carter v Department of Transportation	01 OSP 1516	Wade	12/19/02		
Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC	01 OSP 1559	Gray	08/13/02		
Anthony W. Price v. Eliz City State University	01 OSP 1591	Lassiter	11/05/02		
Wade Elms v. Department of Correction	01 OSP 1594	Gray	06/27/02		
Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR	103
Linwood Dunn v. NC Emergency Management	01 OSP 1691	Lassiter	08/21/02		
Gladys Faye Walden v. Department of Correction	01 OSP 1741	Mann	07/12/02		
Bruce A Parsons v. Gaston County Board of Health	01 OSP 2150	Gray	11/04/02		
Barbara A. Harrington v. Harnett Correctional Institution	01 OSP 2178	Conner	09/03/02		
Joy Reep Shuford v. Department of Correction	01 OSP 2179	Overby	06/25/02		
Debra R. Dellacroce v. NC DHHS	01 OSP 2185	Conner	09/11/02		
Thomas E Bobbitt v. NC State University	01 OSP 2196 ⁶	Reilly	11/21/02		
Thomas E Bobbitt v. NC State University	01 OSP 2197 ⁶	Reilly	11/21/02		
Jana Washington v Department of Corrections (Central Prison)	01 OSP 2224	Wade	12/19/02		
Joseph Kevin McKenzie v. DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02		
Bryan Aaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02		
Theressa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02		
Mark Wayne Faircloth v. Forest Service	01 OSP 2374	Conner	06/20/02		
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 2385 ²	Elkins	08/07/02		
James Donoghue v. Department of Correction	02 OSP 0011	Mann	08/26/02		
Robert N. Roberson v. DOC, Div. of Community Corrections	02 OSP 0059	Conner	10/14/02		
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR	329
Stacey Joel Hester v. Dept. of Correction	02 OSP 0071	Gray	10/18/02		
Gwendolyn Gordon v. Department of Correction	02 OSP 0103	Gray	10/24/02	17:14 NCR	1218
Gwendolyn Gordon v. NC Department of Correction	02 OSP 0103	Gray	11/25/02	17:14 NCR	1223
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	02 OSP 0110 ²	Elkins	08/07/02		
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02		
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02		
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02		
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02		
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02		
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02		
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02		
Karen Lynette Smith v Dr. Steven Ashby, Dir. The Durham Center	02 OSP 0316	Elkins	12/18/02		
Gerald W Jones v. NC Dept. of Transportation	02 OSP 0318	Wade	10/25/02		
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02		
Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02		
Ronald P Covington v. NC DOC, Dept. of Prisons	02 OSP 0404	Morrison	11/07/02		
Isiah A Black Jr v. NC DOC Div of Community Corrections	02 OSP 0435	Morrison	11/05/02		
Michael Forreest Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02		
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02		
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02		
Trayce H Butler v Durham County Dept. of Social Services	02 OSP 0499	Wade	02/11/03		
Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02		
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02		
Robert L. Swinney v. NC Dept. of Transportation	02 OSP 0570	Lassiter	10/23/02		
Janet Watson v. Nash Co. DSS, Carl Daughtry, Director	02 OSP 0702	Chess	08/13/02		
Lisa A Forbes v Dorothea Dix Hospital	02 OSP 0757	Wade	02/11/03		
Jackie Brannon v. Durham Co. Social Services, Daniel Hudgins	02 OSP 0769	Wade	12/19/02		
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02		
Alber L Scott v. UNC General Administration	02 OSP 0828	Gray	01/15/03		
Linda Kay Osbon v. Isothermal Community College	02 OSP 0911	Elkins	09/25/02		
Deona Renna Hooper v. NCC Police Dept, NCCU	02 OSP 0984	Lassiter	10/31/02		
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02		
Jerry J. Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	09/05/02		
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02		
Ella Fields-Bunch v. Martin-Tyrrell-Washington Dist. Health Dept.	02 OSP 1037	Conner	10/16/02		
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02		
Karen C. Weaver v. State of NC Dept. of Administration	02 OSP 1052	Lassiter	10/25/02		
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02		
John C Candillo v. Roselyn Powell					
John C Candillo v. Roselyn Powell, Jud. Div Chief, NC DOCC, Jud Div. 3	02 OSP 1067	Conner	10/21/02		
Juanita M Brown v. DOC, Harnett Correctional Institution	02 OSP 1104 ⁸	Wade	01/13/03		
Hoyte Phifer, Jr. v. UNC-Greensboro	02 OSP 1105	Gray	01/15/03		
Carolyn Davis v Durham Co. MHDDSAS Area Authority	02 OSP 1116	Lassiter	01/16/03		
Donald B. Smith v. NC DOC, Div. of Community Corrections	02 OSP 1117	Chess	10/03/02		
Russell V Parker v Capt Dennis Daniels Pasquotank Corr. Inst	02 OSP 1127	Lassiter	11/05/02		
Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02		
James J. Lewis v. Department of Correction	02 OSP 1158	Mann	08/20/02		
James J. Lewis v. Department of Commerce/Industrial Commission	02 OSP 1179	Mann	09/19/02		
Kerry Lynn Fraser v. DHHS	02 OSP 1256	Conner	05/07/03		
Melvin Kimble v. NC Dept. of Crime Control & Public Safety	02 OSP 1318	Lassiter	11/06/02		
Gwendolyn H Abbott v. Wayne Talbert, Asst Super. NC DOC, Div. of Prisons, Dan River Work Farm (3080)	02 OSP 1334	Conner	12/03/02		

CONTESTED CASE DECISIONS

Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1367 ⁷	Gray	12/20/02
Mark Tony Davis v DHHS	02 OSP 1372	Overby	02/12/03
Marie D Barrentine v. Robert William Fisher, NC Probation/Parole	02 OSP 1410	Elkins	02/11/03
Onyedika Nwaebube v Employment Security Commission of NC	02 OSP 1443	Gray	01/24/03
Alber LScott v UNC General Administration	02 OSP 1444	Gray	01/22/03
Esther L Jordan v. Pasquotank Correctional Ins. (Ernest Sutton)	02 OSP 1453	Conner	02/06/03
Martha Ann Brooks v. State of NC Brown Creek Correctional Inst.	02 OSP 1468	Chess	10/25/02
Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1482 ⁷	Gray	12/20/02
James Orville Cox II v. NC DOC, Adult Probation/Parole	02 OSP 1526	Chess	10/17/02
Renee Shirley Richardson v Albert Blake, Interim Dir. of Eng Svcs, DDH	02 OSP 1551	Gray	12/20/02
Juanita M Brown v. DOC, Harnett Correctional Institution	02 OSP 1599 ⁸	Wade	01/13/03
Terence L. Hardy v. NC Highway Patrol	02 OSP 1670	Chess	04/24/03
Kevin W Lawrence v DOC, Division of Prisons	02 OSP 1675	Conner	02/18/03
Rashad A Rahman v. South East Region Mental Health	02 OSP 1669	Lassiter	01/09/03
Leonard Williams v. Durham Co Dept of Soc. Svcs, Children's Svcs	02 OSP 1681 ¹¹	Elkins	04/08/03
L Ozetta Parker v. Person Co. Dept of Social Svcs; Carole Thomas, Supervisor	02 OSP 2116	Chess	03/27/03
Alwilda G. George v. Sanford Correctional Center	02 OSP 2317	Elkins	02/06/03
William H Haney, Jr. v. DHHS, Div. of Vocational Rehabilitation, Michael Easley, Carmen Hooker Odom, et al.	02 OSP 2327	Elkins	03/26/03

JoAnn Whitfield Shandy v Dept. of Correction	03 OSP 0022	Lassiter	04/17/03
Jennifer Howard v Sampson Correctional Center	03 OSP 0042	Elkins	02/24/03
Bobby C Lee v Dorothea Dix Hospital	03 OSP 0096	Lassiter	03/07/03
Gerald B Bond, Jr. v. DOT, DMV Enforcement	03 OSP 0120	Elkins	05/13/03
Cynthia Ann Hartzell v. NC State University	03 OSP 0157	Lassiter	04/17/03
Leonard Williams v. Durham Co Dept of Soc. Svcs, Children's Svcs	03 OSP 0498 ¹¹	Elkins	04/08/03

SUBSTANCE ABUSE PROFESSIONAL BOARD

NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02
---	-------------	-------	----------

UNIVERSITY OF NORTH CAROLINA

Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR 571
Sharon Reed v. UNC Hospitals	02 UNC 1284	Conner	11/11/02	
Shirley Lally v UNC Hospitals	02 UNC 1325	Conner	03/11/03	
Dee C Driver/Jenny Driver one and the same and Philip L Driver v. UNC Hospitals	02 UNC 1635	Gray	01/15/03	
Yvonne Schreiner v. UNC Hospitals	02 UNC 2202	Chess	04/15/03	
Augustine Vendetti v. UNC Hospitals	02 UNC 2316	Elkins	04/23/03	

-
- 1 Combined Cases
 - 2 Combined Cases
 - 3 Combined Cases
 - 4 Combined Cases
 - 5 Combined Cases
 - 6 Combined Cases
 - 7 Combined Cases
 - 8 Combined Cases
 - 9 Combined Cases
 - 10 Combined Cases
 - 11 Combined Cases