

# NORTH CAROLINA *REGISTER*

**VOLUME 21 • ISSUE 07 • Pages 547 - 689**

**October 2, 2006**

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## **Contact List for Rulemaking Questions or Concerns**

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

### **Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

Office of Administrative Hearings

Rules Division

Capehart-Crocker House

(919) 733-2678

424 North Blount Street

(919) 733-3462 FAX

Raleigh, North Carolina 27601-2817

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1307 Glenwood Ave., Suite 159

(919) 733-2721

Raleigh, North Carolina 27605

(919) 733-9415 FAX

contact: Joe DeLuca Jr., Staff Director Counsel

joe.deluca@ncmail.net

Bobby Bryan, Staff Attorney

bobby.bryan@ncmail.net

Lisa Johnson, Administrative Assistant

lisa.johnson@ncmail.net

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management

116 West Jones Street

(919) 733-7061

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

contact: Nathan Knuffman

nathan.knuffman@ncmail.net

### **Governor's Review**

Reuben Young

reuben.young@ncmail.net

Legal Counsel to the Governor

(919) 733-5811

116 West Jones Street (919) 733-5811

Raleigh, North Carolina 27603

### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

karenc@ncleg.net

Jeff Hudson, Staff Attorney

jeffreyh@ncleg.net

### **County and Municipality Government Questions or Notification**

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Jim Blackburn or Rebecca Troutman

jim.blackburn@ncacc.org

Rebecca Troutman

rebecca.troutman@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Anita Watkins

awatkins@ncmlm.org

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2006 – December 2006

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
20:13	01/03/06	12/08/05	01/18/06	03/06/06	03/20/06	05/01/06	05/09/06	09/30/06
20:14	01/17/06	12/21/05	02/01/06	03/20/06	04/20/06	06/01/06	01/07	10/14/06
20:15	02/01/06	01/10/06	02/16/06	04/03/06	04/20/06	06/01/06	01/07	10/29/06
20:16	02/15/06	01/25/06	03/02/06	04/17/06	04/20/06	06/01/06	01/07	11/12/06
20:17	03/01/06	02/08/06	03/16/06	05/01/06	05/22/06	07/01/06	01/07	11/26/06
20:18	03/15/06	02/22/06	03/30/06	05/15/06	05/22/06	07/01/06	01/07	12/10/06
20:19	04/03/06	03/13/06	04/18/06	06/02/06	06/20/06	08/01/06	01/07	12/29/06
20:20	04/17/06	03/24/06	05/02/06	06/16/06	06/20/06	08/01/06	01/07	01/12/07
20:21	05/01/06	04/07/06	05/16/06	06/30/06	07/20/06	09/01/06	01/07	01/26/07
20:22	05/15/06	04/24/06	05/30/06	07/14/06	07/20/06	09/01/06	01/07	02/09/07
20:23	06/01/06	05/10/06	06/16/06	07/31/06	08/21/06	10/01/06	01/07	02/26/07
20:24	06/15/06	05/24/06	06/30/06	08/14/06	08/21/06	10/01/06	01/07	03/12/07
21:01	07/03/06	06/12/06	07/18/06	09/01/06	09/20/06	11/01/06	01/07	03/30/07
21:02	07/17/06	06/23/06	08/01/06	09/15/06	09/20/06	11/01/06	01/07	04/13/07
21:03	08/01/06	07/11/06	08/16/06	10/02/06	10/20/06	12/01/06	01/07	04/28/07
21:04	08/15/06	07/25/06	08/30/06	10/16/06	10/20/06	12/01/06	01/07	05/12/07
21:05	09/01/06	08/11/06	09/16/06	10/31/06	11/20/06	01/01/07	01/07	05/29/07
21:06	09/15/06	08/24/06	09/30/06	11/14/06	11/20/06	01/01/07	01/07	06/12/07
21:07	10/02/06	09/11/06	10/17/06	12/01/06	12/20/06	02/01/07	05/08	06/29/07
21:08	10/16/06	09/25/06	10/31/06	12/15/06	12/20/06	02/01/07	05/08	07/13/07
21:09	11/01/06	10/11/06	11/16/06	01/01/07	01/22/07	03/01/07	05/08	07/29/07
21:10	11/15/06	10/24/06	11/30/06	01/15/07	01/22/07	03/01/07	05/08	08/12/07
21:11	12/01/06	11/07/06	12/16/06	01/30/07	02/20/07	04/01/07	05/08	08/28/07
21:12	12/15/06	11/22/06	12/30/06	02/13/07	02/20/07	04/01/07	05/08	09/11/07

## **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 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**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed 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.

**EXECUTIVE ORDER NO. 106****HISTORICALLY UNDERUTILIZED BUSINESSES**

**WHEREAS**, it is North Carolina's collective expectation that all citizens of the state will be given equal opportunities to participate in providing State government with the goods and services it requires; and

**WHEREAS**, it is my expectation, as Governor of the State, that this will be accomplished without regard to race, gender, or disabling condition; and

**WHEREAS**, when the General Assembly set the purchasing policy for the State, it encouraged State agencies to provide contracting opportunities for small and historically underutilized businesses (hereinafter "HUBs") as defined in North Carolina General Statutes §143-48, which include businesses owned by minorities, women, and the disabled; and

**WHEREAS**, it is my desire that a coordinated effort is undertaken to eliminate any barriers which may have acted as impediments to equal opportunities for HUBs in doing business with the State.

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

Each executive branch agency should strive to increase the total amount of goods and services acquired by it from HUB vendors, whether directly as principal contractors or indirectly as subcontractors or otherwise. It is expected that each agency will issue an aspirational goal of at least ten percent (10%), by dollar amount, of the State's purchases of goods and services that will be derived from minority owned businesses and at least five percent (5%) that will be derived from disabled and women owned businesses.

The HUBs Office shall assist each agency in developing a plan and providing technical assistance to reach the recommended objectives related to the purchase of goods and services.

The State Purchasing Officer, the Director of the State Construction Office, and the Director of the State Property Office shall continue to implement guidelines and procedures that ensure that the State's contracts contain specific requirements that compel contractors doing business with the State to comply with federal Equal Employment Opportunity Requirements or their equivalent.

The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, local boards of education, and each of heads of the Council of State agencies are encouraged and invited to participate in this Executive Order.

This order supersedes any previously issued order, is effective immediately, and remains in effect until December 31, 2008, unless earlier modified.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-eighth day of August in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.

---

Michael F. Easley  
Governor

**ATTEST:**

---

Elaine F. Marshall  
Secretary of State

EXECUTIVE ORDER NO. 107  
PROCLAMATION OF A STATE OF EMERGENCY  
DUE TO TROPICAL STORM ERNESTO

**WHEREAS**, I have determined that a state of emergency, as defined in G.S. §166A-4 and G.S. §14-288.1(10), exists in the State of North Carolina, due to the approach and proximity of Tropical Storm Ernesto, beginning on August 31, 2006.

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

Section 1. Pursuant to G.S. §§166A-5 and 14-288.15, I, therefore, proclaim the existence of a state of emergency in the State.

Section 2. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. §143B-476.

Section 5. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This proclamation shall become effective immediately.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this thirty-first day of August in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.

---

Michael F. Easley  
Governor

**ATTEST:**

---

Elaine F. Marshall  
Secretary of State

*Note from the Codifier: 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  
Executive Director

Mailing Address  
PO Box 27255  
Raleigh, NC 27611-7255

August 24, 2006

The Honorable Bill Daughtride  
340B Legislative Office Building  
Raleigh, NC 27603-5925

Dear Representative Daughtride:

This is to formalize our conversation yesterday in which you requested an advisory opinion pursuant to G.S. 163-278.23 regarding permissible uses of campaign funds from a candidate's campaign committee. You want to ensure that your committee complies with current law as well as changes in the law which become effective October 1, 2006.

It is my understanding that your committee would like to make expenditures to a charitable organization. More specifically, your committee would like to purchase a gas grill and donate it to a non-profit organization which would use it for fund raising purposes.

This is a legitimate use of campaign funds under our current campaign finance laws. Under Session Law 2006-161, which becomes effective October 1, 2006, the law is more specific about permissible committee expenditures. Campaign committees may make "[c]ontributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or organizations will be permitted subject to the restriction that the candidate or the candidate's listed family members may not be employed by the organization." Under both current law and Session Law 2006-161, any expenditures by a campaign committee would need to be disclosed on campaign finance reports filed with this office.

This opinion is based upon the facts as stated in our conversation on August 23, 2006. 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

U.S. Department of Justice

Civil Rights Division

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JKT:MSR:ALP:jdh  
DJ 166-012-3  
2006-5048

*Voting Section – NWB.  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530*

August 10, 2006

David A. Holec, Esq.  
City Attorney  
P.O. Box 7207  
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to four annexations (Ordinance Nos. 06-15, 06-29, 06-30 and 06-31) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 3, 2006.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the reminder of the sixty-day review period. Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John Tanner  
Chief, Voting Section



**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

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 MH/DD/SAS intends to amend the rule cited as 10A NCAC 27G .0813 and repeal the rules cited as 10A NCAC 27G .1501 - .1504.

**Proposed Effective Date:** April 1, 2007

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rule by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by October 17, 2006.

### **Reason for Proposed Action:**

**10A NCAC 27G .0813-** The proposed amendment is necessary to update information concerning the appeals process for denial of a request to waive a licensure rule and reflect the contested case requirements in accordance with G.S. 150B, Article 3. The proposed amendment changes the language to bring the rules into compliance with the statute.

**10A NCAC 27G .1501 - .1504-** The proposed repeal of these rules is necessary since new rules have been adopted for facilities previously licensed in accordance with 10A NCAC 27G .1500 and the language is no longer reflective of the licensure requirement for these facilities. The new rules became effective on 4/1/2006 for facilities providing Intensive Residential services and have been codified in 10A NCAC 27G .1800.

**Procedure by which a person can object to the agency on a proposed rule:** The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.

**Comments may be submitted to:** Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email Cindy.Kornegay@ncmail.net

**Comment period ends:** December 1, 2006

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission

approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

### **Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$3,000,000)
- ☒ None

## **CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES**

### **SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

#### **SECTION .0800 - WAIVERS AND APPEALS**

#### **10A NCAC 27G .0813 WAIVER OF LICENSURE RULES**

(a) The Director of DFS may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on, but not limited to, the following:

- (1) the nature and extent of the request;
- (2) the existence of safeguards to ensure that the health, safety, or welfare of the clients will not be threatened;
- (3) the determination that the waiver will not affect the health, safety, or welfare of clients;
- (4) the existence of good cause; and
- (5) documentation of ~~area board governing body~~ approval when requests are from ~~area programs~~ an area authority or county program and contract agencies of ~~area programs~~ an area authority or county program, or documentation of governing body approval when requests are from private facilities not contracting with ~~area programs~~ an area authority or county program.

(b) Requests for waivers shall be sent to the Director, Division of Facility Services, 2718 Mail Service Center, Raleigh, North Carolina 27699-2718.

(c) The request shall be in writing and shall contain:

- (1) the name, address and telephone number of the requester;
- (2) the name, address and telephone number of the facility for which the waiver is requested;
- (3) the rule number and title of the rule or requirements for which waiver is being sought;
- (4) a statement of facts showing:
  - (A) reason for, and the nature and extent of, the request; and
  - (B) that the health, safety or welfare of clients will not be threatened.
- (5) documentation of area board governing body approval when requests are from area programs an area authority or county program and contract agencies of area programs area/county programs, or documentation of governing board body approval when requests are from private facilities not contracting with area programs an area authority or county program.

(d) Prior to issuing a decision on the waiver request, the Director of DFS shall consult with the Director of DMH/DD/SAS, and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver request shall be issued in writing by the Director of DFS and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the Commission, the Director of DMH/DD/SAS shall send a copy of the decision to all Commission members.

(f) The decision of the Director of DFS regarding a waiver request may be appealed to the Commission Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. 10A NCAC 26A .0200. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

(g) Waivers shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

*Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147.*

### **SECTION .1500 - INTENSIVE RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE EMOTIONALLY DISTURBED OR WHO HAVE A MENTAL ILLNESS**

#### **10A NCAC 27G .1501 SCOPE**

(a) ~~An intensive residential treatment facility for children and adolescents with emotional or behavioral disturbances or both is a short term, 24 hour residential program providing a structured living environment for children and adolescents who do not meet criteria for acute inpatient care and whose needs require more intensive treatment and supervision than would be available in a community residential treatment facility. Intensive residential treatment is not intended to be a long term residential placement for children and adolescents who must be permanently removed from their homes.~~

~~(b) Services shall be designed to address the functioning level of the child and adolescent and include training in self control, communication skills, social skills, and behavioral skills necessary to move to a community setting. Services may also include monitoring medication trials.~~

~~(c) The target populations to be served in an intensive residential setting are children and adolescents for whom removal from home or a community based residential setting is essential to facilitate treatment. Intensive residential treatment is targeted toward children and adolescents who no longer meet criteria for inpatient psychiatric services and need a step down placement prior to community placement, or those who have been placed in a community residential setting and need a more intensive treatment program.~~

~~(d) Treatment, services and discharge plans by intensive residential treatment facilities shall be coordinated with other individuals and agencies within the client's local system of care.~~

*Authority G.S. 143B-147.*

#### **10A NCAC 27G .1502 STAFF**

~~(a) Each facility shall have a director who has a minimum of three years experience in child or adolescent services and who has educational preparation in administration, education, social work, nursing, psychology or a related field.~~

~~(b) At all times, at least two direct care staff members shall be present with every six children or adolescents in each residential unit.~~

~~(c) When two or more clients are in the facility, an emergency on-call staff shall be readily available by telephone or page and able to reach the facility within 30 minutes.~~

~~(d) If the facility is hospital based, staff shall be specifically assigned to this program, with responsibilities clearly separate from those performed on an acute medical unit or other residential units.~~

~~(e) Each child or adolescent admitted to a facility shall have a weekly consultation with a psychiatrist to review medications and to ensure that the psychiatrist is involved in the development of a transition plan to a less restrictive setting or to a more acute inpatient setting.~~

~~(f) Clinical consultation shall be provided weekly by a qualified mental health professional.~~

~~(g) Clinical consultation with staff from the responsible area program shall occur weekly in order to assist with the development of a treatment plan in a community-based setting.~~

*Authority G.S. 143B-147.*

#### **10A NCAC 27G .1503 OPERATIONS**

~~(a) Capacity. Each unit shall serve no more than a total of 12 persons. If the facility has more than one residential unit, the capacity of each unit shall be limited to 12 children and adolescents. Any facility licensed or approved to provide these services for a greater capacity as of the effective date of these Rules shall continue to provide services at no more than the licensed or approved capacity.~~

~~(b) Residential units. Each residential unit shall be administered, staffed, and located to function separately from all other residential units in the facility.~~

- ~~(c) Length Of Stay. Efforts for discharge to a less restrictive community residential setting shall be documented from the date of admission.~~
- ~~(d) Hours Of Operation. Each facility shall operate as a 24-hour facility at least 50 weeks per year.~~
- ~~(e) Family Involvement. Family members or other responsible adults shall be involved in the development and implementation of treatment plans in order to assure a smooth transition to a less restrictive setting.~~
- ~~(f) Education. Children and adolescents residing in an intensive residential treatment facility shall receive appropriate educational services, either through a facility-based school, "home-based" services, through a day treatment program or other services consistent with federal and State law. Transition to a public school setting shall be part of the treatment plan.~~
- ~~(g) Clothing. Each child or adolescent shall have his own clothing and shall have training and help in its selection and care.~~
- ~~(h) Personal Belongings. Each child or adolescent shall be entitled to age appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.~~
- ~~(i) Transition Planning. Representatives from agencies and institutions serving a child or adolescent shall meet at admission and 30 days prior to discharge in order to assure that a plan for transition to a lesser restrictive residential setting is in place. Family members or guardians or both of the child shall be present at these meetings.~~

Authority G.S. 143B-147.

#### 10A NCAC 27G .1504 PHYSICAL PLANT

- ~~(a) The facility may be hospital based. The units shall be self-contained and separate from acute medical units and other residential units in a clearly defined physical setting.~~
- ~~(b) Beds may not be shared with an acute medical unit.~~
- ~~(c) Subject to building and fire codes, the facility may be locked to prevent both entry and exit.~~

Authority G.S. 143B-147.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to repeal the rule cited as 10A NCAC 28I .0401 and the Department of Health and Human Services-DMH/DD/SAS intends to adopt the rule cited as 10A NCAC 28I .0402.*

**Proposed Effective Date:** April 1, 2007

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rule by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by October 17, 2006.*

**Reason for Proposed Action:** *It is proposed that 10A NCAC 28I .0401 be repealed and that 10A NCAC 28I .0402 be adopted to replace it. The proposed repeal and adoption is necessary to*

*update the requirements concerning firearms and state facilities. The current rule was adopted in 1976 under the rulemaking authority of the Commission for MH/DD/SAS. S.L. 1985-589 repealed previous mental health statutes codified in G.S. 122 and created a new Chapter, G.S. 122C. G.S. 122C-112.1(a)(10) states the Secretary shall operate state facilities and adopt rules pertaining to their operation. Therefore, it is necessary that the Commission for MH/DD/SAS repeal the current rule and that the Secretary adopt a new rule concerning firearms and state facilities. The proposed adoption is necessary to update the requirements concerning firearms and state facilities. The proposed rule requires each state operated facility to develop and implement written policies concerning firearms. It allows law enforcement officers to carry firearms into non-patient and resident care areas of the facility, such as the officer of law enforcement department or other buildings on campus as part of safety patrol.*

**Procedure by which a person can object to the agency on a proposed rule:** *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

**Comments may be submitted to:** *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email Cindy.Kornegay@ncmail.net*

**Comment period ends:** December 1, 2006

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.*

#### Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$3,000,000)
- ☒ None

### CHAPTER 28 – MENTAL HEALTH: STATE OPERATED FACILITIES AND SERVICES

#### SUBCHAPTER 28I – OTHER RULES PERTAINING TO STATE OPERATED FACILITIES AND SERVICES

#### SECTION .0400 - MISCELLANEOUS

**10A NCAC 28I .0401 FIREARMS**

~~No firearms shall be brought into the buildings of any institution of the Division. Law officers shall either leave firearms in their locked motor vehicle or deposit their firearms with responsible staff personnel of the institution.~~

*Authority G.S. 143B-147.*

**10A NCAC 28I .0402 FIREARMS**

(a) Each state facility shall develop and implement written policies concerning firearms.

(b) The written policies shall include:

- (1) a provision stating that only a law enforcement official may bring a firearm onto the grounds of the facility;
- (2) a provision setting forth the areas of the facility where firearms are prohibited. At a minimum, each facility's policy shall prohibit firearms from any patient or resident care area unless a law enforcement official determines it is necessary to ensure client or staff safety; and
- (3) a provision stating that prior to entering an area of the facility where firearms are prohibited, a law enforcement official shall:
  - (A) secure his or her firearm in his or her locked motor vehicle or;
  - (B) deposit his or her firearm in a secured site as designated by the facility.

*Authority G.S. 122C-112.1.*

**TITLE 13 – DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend the rule cited as 13 NCAC 07F .0605.*

**Proposed Effective Date:** *February 1, 2007*

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Requests for a public hearing concerning the proposed rule may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, NC 27699-1101; or via facsimile at (919) 733-4235. Objections shall include the specific rule citation(s) for which the hearing is being requested, the nature of the request, and the complete name(s) and contact information for the individual(s) submitting the request for public hearing.*

**Reason for Proposed Action:** *Effective August 27, 2006, Section 102(b) of Senate Bill 602/S.L. 2006-264 (=H668) provides that the Department of Labor may adopt temporary rules in connection with its requirements regarding fall protection for tower climbers. A temporary rule was filed on*

*September 6, 2006 with the Office of Administrative Hearings for publication on their website. In order to replace the anticipated temporary rule, it is necessary to permanently amend 13 NCAC 07F .0605 as it relates to third-party and employer provided rescue procedures/ requirements.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on December 1, 2006.*

**Comments may be submitted to:** *Erin T. Gould, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, NC 27699-1101, phone (919) 733-0368, fax (919) 733-4235, email erin.gould@nclabor.com*

**Comment period ends:** *December 1, 2006*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.*

**Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$3,000,000)
- ☒ None

**CHAPTER 07 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

**SUBCHAPTER 07F - STANDARDS**

**SECTION .0600 – COMMUNICATION TOWER STANDARDS**

**13 NCAC 07F .0605 FALL PROTECTION**

(a) General.

- (1) Prior to employees climbing the tower at heights above six feet, the employer shall

ensure that 100% fall protection systems compatible with the tasks assigned are provided, used, and maintained.

- (2) The rules in this Section shall not require the retrofitting of communication towers; provided, that employees who are exposed to fall hazards above six feet while performing work on communication towers are protected from such hazards by means of a 100% fall protection system.

(b) Pre-Climb Planning and Inspection. In addition to the criteria for pre-climb planning and inspection included in Paragraph (g) of this Rule, the employer shall ensure that the following items occur prior to employees climbing the tower at heights above six (6) feet:

- (1) All climbing jobs shall be planned by a competent person.
- (2) All climbing facilities shall be visually inspected daily at the tower base by a competent person for rust, corrosion, deterioration, or other hazards. Additionally, the employer shall ensure that the climbing facilities are visually inspected for these items, as it is ascended, to the elevation point where work is being performed. If any such hazard is identified during this inspection, employees shall not use the climbing facility until such hazards are abated.
- (3) A competent person shall ensure that all fall protection equipment is inspected prior to each use for wear, damage, defect or other deterioration by employees who have been trained in accordance with 13 NCAC 07F .0609. Defective equipment shall be identified as defective and immediately removed from service.
- (4) Components of a fall protection system and the fall protection equipment utilized by employees shall be compatible with one another and shall be utilized in accordance with the manufacturer's recommendations.
- (5) The employer shall ensure that the planning and inspections are performed and documented. The documentation shall be maintained on site while work is being performed, and thereafter by the employer at its place of business. The documentation shall include the date of the planning and inspection, the name of the competent person performing the planning and inspection, and the site location.

(c) Fall Protection Systems. In order to comply with the requirements of Subparagraph (a)(1) of this Rule, the employer may permit employees to utilize the 100% fall protection systems described in Paragraphs (d) through (g) of this Rule. If the fall protection systems described therein are not present on the tower, the employer shall not permit employees to climb the tower at heights above six feet unless:

- (1) an alternative means of 100% fall protection is utilized that is at least as effective as the fall protection systems described in Paragraphs (d) through (g) of this Rule;
- (2) an alternative means of access to the work area is utilized such as an aerial lift or elevated work platform; or
- (3) the employer can demonstrate that the requirements for a fall protection plan under Paragraph (i) of this Rule have been met.

(d) Guardrail Systems. The employer shall ensure that guard rail systems and their components that are utilized by employees as a means of 100% fall protection conform to the criteria in 29 CFR 1926.502(b).

(e) Personal Fall Arrest Systems (PFAS). The employer shall ensure that personal fall arrest systems and their components that are utilized by employees as a means of 100% fall protection conform to the criteria in 29 CFR 1926.502(d), and are utilized according to the manufacturer's recommendations. When utilized by employees as an anchorage as part of a PFAS, the employer shall ensure that step bolts and the attachment point to the structure are designed to meet the requirements of an approved anchorage in accordance with 29 CFR 1926.502(d), and are designed to ensure the connector will not slip off the end of the step bolt.

(f) Positioning Device System. The employer shall ensure that positioning device systems and their components that are utilized by employees as a means of 100% fall protection conform to the criteria in 29 CFR 1926.502(e).

(g) Ladder Safety Systems. The employer shall ensure that, in addition to the applicable criteria in 29 CFR 1926, Subpart X, ladder safety systems and related support systems for fixed ladders that are utilized by employees as a means of 100% fall protection conform to the following criteria:

- (1) Prior to climbing the structure, the employer shall ensure that the employee(s) have tested the ladder safety system for proper operation and that all components utilized with the ladder safety system are compatible.
- (2) To perform the test required by Subparagraph (g)(1) of this Rule, the employee(s) shall:
  - (A) Approach the ladder at the base and connect to the functional safety climb system;
  - (B) Climb to a height less than six feet;
  - (C) Forcibly engage the device without letting go of the ladder;
  - (D) If the device functions as intended, the employee(s) shall begin the ascension;
  - (E) If the device does not function properly, the employee(s) shall immediately descend the structure and shall not utilize the device until it functions properly;
- (3) If a ladder is obstructed, inhibiting the effective use of the ladder safety system, an alternative means of 100% fall protection shall

be utilized that is at least as effective as the types of fall protection described by this Rule.

(h) Fall Protection Plan. This Paragraph applies when employees are working on a structure where no adequate tie-off anchorage point(s) exist, the fall protection systems described in Paragraph (c) of this Rule are not feasible or create a greater hazard, and the work can not be completed utilizing an alternative means of access to the work area such as an aerial lift or elevated work platform. If an employer demonstrates the foregoing conditions are present, then in addition to the criteria in 29 CFR 1926.502(k), the employer shall conform to the following provisions:

- (1) The employer shall ensure that each employee under the fall protection plan has been trained as a qualified climber.
- (2) The fall protection plan shall be made available and communicated to exposed employee(s) prior to the employee(s) beginning work, and such communication shall be documented.
- (3) The fall protection plan shall identify each location on the tower structure where fall protection methods as described in Paragraph (c) of this Rule cannot be used. As soon as adequate tie-off anchorage points or other fall protection systems can be established, the employer shall utilize any of the fall protection systems described in Paragraph (c) of this Rule.

(i) Emergency and Rescue Procedures.

- (1) The employer shall establish procedures for prompt rescue of employees in the event of an emergency, which shall include whether the employer will designate its own employees to perform the rescue procedures or whether the employer will designate a third-party to perform the rescue procedures. The procedures shall be documented and available for review by the Deputy Commissioner of Labor for Occupational Safety and Health or his designee, upon request.
- (2) Employer to Perform Rescue Procedures. An employer whose employees have been designated to provide elevated (high angle) rescue and emergency services shall take the following measures:
  - (A) Ensure at least two trained and designated rescue employees are on site when employees are working at heights over six feet on the tower, provided however, where there are only two employees on site, then an employer may comply with the requirements of this Part if one employee is a trained and designated

rescue employee and one employee ~~has been designated by the employer as a probationary employee and has been employed for less than six-nine months and has received documented orientation from the employer outlining steps to take in an emergency;~~

- (B) Ensure that personal protective equipment (PPE) and high angle rescue equipment needed to conduct elevated rescues are provided, used and maintained by the designated rescue employees;
  - (C) Train designated rescue employees so they are proficient in the use and maintenance of PPE and high angle rescue equipment needed to conduct elevated rescues; and
  - (D) Train designated rescue employees to perform assigned rescue duties to ensure that they become competent to perform such duties, including conducting simulated rescue operations at least once every 12 months.
- (3) Third-Party to Perform Rescue Procedures. An employer who designates a third-party rescue and emergency service to provide elevated (high angle) rescue and emergency services shall take the following measures:
- (A) ~~Evaluate a prospective rescue team or service's ability~~ Obtain verification from the third-party rescue team or service that it is able to respond to a rescue summons in a timely manner, considering the hazard(s) identified; manner;
  - (B) ~~Evaluate a prospective rescue team or service's ability, in terms of proficiency~~ Obtain verification from the third-party rescue team or service that it is proficient with rescue-related tasks and equipment, to function appropriately while equipment as they relate to rescuing climbers from elevated heights on communication structures;
  - (C) Select a rescue team or service from those evaluated that has verified it has the capability to reach the victim(s) and is equipped for and capable of performing the needed rescue services;
  - (D) Provide the selected rescue team or service selected with access to contact information regarding all towers/structures from which rescue may be necessary so that the rescue

service can develop appropriate rescue plans and practice rescue ~~operations; operations as it deems necessary; and~~

- (E) Inform ~~each~~ the selected rescue team or service, prior to the first day on which employee(s) perform work at heights over six feet on the tower, of the site and location of the tower(s) to be climbed; the hazard(s) identified on the site; the number of employees that will climb the tower(s); the height(s) at which employee(s) will be working; the name(s) and telephone number(s) for any employer contact(s); and, any other information that is requested by the rescue team or service.

(j) First Aid/CPR Training and Supplies. In addition to the requirements of 29 CFR 1910.151 and 29 CFR 1926.50, the employer shall ensure that at least two employees on site are trained and hold current certifications in basic first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross or any other organization whose standards are equivalent to the American Red Cross; provided, however, where there are only two employees on site, then an employer may comply with the requirements of this Paragraph if one employee is trained and holds current certifications in basic first aid and CPR and one employee has been designated by the employer as a probationary employee and has been employed for less than six months.

*Authority G.S. 95-131.*

\*\*\*\*\*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend the rule cited as 13 NCAC 20 .0101 and repeal the rules cited as 13 NCAC 20 .0302 - .0303.

**Proposed Effective Date:** February 1, 2007

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Requests for a public hearing concerning the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections shall include the specific rule citation(s) for which the hearing is being requested, the nature of the request, and the complete name(s) and contact information for the individual(s) submitting the request for public hearing.

**Reason for Proposed Action:** Effective August 27, 2006, Section 52(b) of Senate Bill 602/S.L. 2006-264 (=H668) provides that the Department of Labor shall adopt temporary rules to clarify the procedural requirements for the

administration of controlled substance examinations. Said temporary rules were filed on September 6, 2006, with the Office of Administrative Hearings for publication on their website. In order to replace the anticipated temporary rules and remain consistent with G.S. 95, Article 20, it is necessary to permanently amend 13 NCAC 20 .0101 and permanently repeal 13 NCAC 20 .0302 - .0303.

**Procedure by which a person can object to the agency on a proposed rule:** Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on December 1, 2006.

**Comments may be submitted to:** Erin T. Gould, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, NC 27699-1101, phone (919) 733-0368, fax (919) 733-4235, email erin.gould@nclabor.com

**Comment period ends:** December 1, 2006

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$3,000,000)
- ☒ None

**CHAPTER 20 – CONTROLLED SUBSTANCES  
EXAMINATION REGULATION**

**SECTION .0100 – DEFINITIONS**

**13 NCAC 20 .0101 DEFINITIONS**

As used in G.S. 95, Article 20 and this Chapter:

- (1) "All actions" means procedures performed on the sample to detect, identify, or measure controlled substances. Examples include, but

- are not limited to, "examinations and screening for controlled substances," "controlled substances testing," "drug testing," "screening," "screening test," "confirmation," and "confirmation test".
- (2) "Chain of custody" means the process of establishing the history of the physical custody or control of the sample from the time the examiner provides the container for the sample to the examinee through the later of:
- (a) The reporting of the negative result to the examiner;
  - (b) The 90 day period specified in G.S. 95-232(d); or
  - (c) The completion of the retesting described in G.S. 95-232(f).
- (3) "On-site" means any location, other than an approved laboratory, at which a screening test is performed on prospective employees. For example, "on-site" locations include, but are not limited to, the examiner's place of business or a hospital, physician's office, or third-party commercial site operated for the purpose of collecting samples to be used in controlled substance examinations.
- (4) "Sample" means the examinee's urine, blood, hair or oral fluids obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing.
- (5) "Employer or person charged" means an examiner found by the Commissioner to have violated G.S. 95, Article 20.
- (6) "Preliminary screening procedure" means a controlled substance examination that uses a single-use test device that:
- (a) Is easily portable and can be administered on-site;
  - (b) Meets the requirements of the U.S. Food and Drug Administration for commercial distribution contained in Title 21, Part 807 of the Code of Federal Regulations; and
  - (c) Meets the generally accepted cutoff levels contained in the Mandatory Guidelines for Federal Workplace Drug Testing Programs adopted by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration in 69 FR 19644.
- (7) "Single-use test device" means the reagent-containing unit of a test system that:
- (a) Is in the form of a sealed container or cartridge that has a validity check, a nonresealable closure, or an evidentiary tape that ensure detection of any tampering;

- (b) Is self-contained and individually packaged;
- (c) Is discarded after each test; and
- (d) Does not allow any test component or constituent of a test system to interact between tests.

*Authority G.S. 95-231; 95-232; 95-234.*

### SECTION .0300 - USE OF CONTRACTORS

#### 13 NCAC 20 .0302 CURRENT EMPLOYEES

~~The examiner shall contract with an approved laboratory to perform the screening and confirmation test for current employees.~~

*Authority G.S. 95-232; 95-234.*

#### 13 NCAC 20 .0303 PROSPECTIVE EMPLOYEES

~~The examiner may perform the screening test for prospective employees or may contract with an approved laboratory for the screening test for prospective employees. The examiner shall contract with an approved laboratory for the confirmation test for prospective employees.~~

*Authority G.S. 95-232; 95-234.*

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## TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0308.*

**Proposed Effective Date:** May 1, 2007

**Public Hearing:**

**Date:** November 1, 2006

**Time:** 6:00 p.m.

**Location:** Western Piedmont Community College, Moore Hall, 1001 Burkemont Avenue, Morganton, NC 28655

**Reason for Proposed Action:** Table Rock Chapter of Trout Unlimited, Catawba Riverkeeper Foundation and American Rivers petitioned the EMC for rulemaking to reclassify three sections totaling approximately eleven miles of the mainstem of the Catawba River from the Lake James Bridgewater Dam to the City of Morganton water intake in Burke County, North Carolina, to add the supplemental Trout waters (Tr) classification. No fisheries data for the upper one-mile section of the mainstem below the dam was submitted; therefore, this portion of the river is ineligible for the Tr designation. The North Carolina Wildlife Resources Commission documented year round trout populations and reproduction in the two remaining sections, which total approximately ten miles. Based on these two findings, the two river sections (from a point 0.6 miles upstream of Muddy Creek to a point 1.2 miles upstream of



Canoe Creek and from a point 1.2 miles upstream of Canoe Creek to a point 0.7 miles upstream of Canoe Creek (City of Morganton water supply intake)) do warrant the supplemental classification to Tr. The purposes of this reclassification proposal are to recognize officially the use in these sections of the Catawba River as habitat for trout reproduction and survival and set a water quality provision to support and protect this use year round. In an effort to protect trout reproduction and survival in the sections of the Catawba River to be reclassified, the applicable water quality standard for dissolved oxygen shall be: not less than 6.0 mg/l from November 2 through May 30; and not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l between the last day of May and the first day of November. Because of the artificially created habitat and trout stocking of these sections of the Catawba River, it is important to note that the tributaries to these sections of the Catawba River are not supporting trout and are not proposed to be reclassified.

**Procedure by which a person can object to the agency on a proposed rule:** You may attend the public hearing and make relevant verbal comments, and/or submit written comments, data or other relevant information by December 1, 2006. The Hearing Officer may limit the length of time that you may speak at the public hearing so that all those who wish to speak may have an opportunity to do so. The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (General Statute 150B 21.2(g)). Written comments may be submitted to: Jeff Manning, DENR/Division of Water Quality/ Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, jeff.manning@ncmail.net or by calling Jeff Manning at (919) 733-5083 extension 579.

**Comments may be submitted to:** Jeff Manning, DENR/Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919) 733-5083 extension 579, fax (919) 715-5637, email jeff.manning@ncmail.net

**Comment period ends:** December 1, 2006

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or

facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

- ☐ **State**
- ☐ **Local**
- ☐ **Substantive** (≥\$3,000,000)
- ☒ **None**

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS**

**SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS**

**15A NCAC 02B .0308 CATAWBA RIVER BASIN**

- (a) The schedule may be inspected at the following places:
  - (1) Clerk of Court:
    - Alexander County
    - Avery County
    - Burke County
    - Caldwell County
    - Catawba County
    - Gaston County
    - Iredell County
    - Lincoln County
    - McDowell County
    - Mecklenburg County
    - Union County
    - Watauga County
  - (2) North Carolina Department of Environment and Natural Resources:
    - (A) Mooresville Regional Office  
~~919 North Main Street~~ 610 East Center Avenue, Suite 301  
 Mooresville, North Carolina
    - (B) Asheville Regional Office  
~~Interchange Building~~  
~~59 Woodfin Place~~ 2090 US Highway 70  
 Asheville, Swannanoa, North Carolina.
- (b) Unnamed Streams. Such streams entering South Carolina are classified "C."
- (c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:
  - (1) March 1, 1977;
  - (2) August 12, 1979;
  - (3) April 1, 1982;
  - (4) January 1, 1985;
  - (5) August 1, 1985;
  - (6) February 1, 1986;
  - (7) March 1, 1989;
  - (8) May 1, 1989;
  - (9) March 1, 1990;
  - (10) August 1, 1990;

- (11) August 3, 1992;
  - (12) April 1, 1994;
  - (13) July 1, 1995;
  - (14) September 1, 1996;
  - (15) August 1, 1998;
  - (16) April 1, 1999;
  - (17) August 1, 2000;
  - (18) August 1, ~~2004~~ 2004;
  - (19) May 1, 2007.
- (d) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1989 as follows:
- (1) Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.
- (e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:
- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C.
  - (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.
- (f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:
- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW.
  - (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.
- (g) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:
- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B.
  - (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.
- (i) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.
- (j) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective September 1, 1996 as follows:
- (1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and
  - (2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV&B CA.
- (k) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the South Fork Catawba River [Index No. 11-129-(0.5)] and Hoyle Creek [Index No. 11-129-15-(1)] from Class WS-IV to Class WS-V.
- (l) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 as follows:
- (1) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class C Tr HQW; and
  - (2) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries, from Class C Tr to Class C Tr HQW and from Harris Creek to McDowell County SR 1434, including all tributaries, from Class C to Class C HQW.
- (m) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 with the reclassification of a portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31)] from Class WS-IV & B and WS-IV to Class WS-V & B and WS-V.
- (n) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 with the reclassification of Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW.
- (o) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended April 1, 1999 as follows:

- (1) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV&B to Class WS-IV&B CA; and
- (2) The primary classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and
- (3) The primary classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.
- (p) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.
- (q) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2004 with the reclassification of a segment of three surface waters, more specifically Henry Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to Class WS-V ORW.
- (r) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended May 1, 2007 with the reclassification of the Catawba River [Index No. 11-(31.5)] from a point 0.6 mile upstream of Muddy Creek to a point 1.2 miles upstream of Canoe Creek from WS-IV to WS-IV Tr and Catawba River [Index No. 11-(32.3)] from a point 1.2 miles upstream of Canoe Creek to a point 0.7 mile upstream of Canoe Creek (Morganton water supply intake) from WS-IV CA to WS-IV Tr CA. Named and unnamed tributaries to this portion of the Catawba River are not classified as Trout. Between the last day of May and the first day of November the water quality standard for dissolved oxygen shall not be less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l.
- Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

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**APPROVED RULES**

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*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting August 17, 2006 and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are 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 have been entered into the North Carolina Administrative Code.*

APPROVED RULE CITATION	REGISTER CITATION TO THE NOTICE OF TEXT
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02	NCAC 52K .0101-.0102	20:22 NCR
02	NCAC 52K .0201	20:22 NCR
02	NCAC 52K .0301*	20:22 NCR
02	NCAC 52K .0302	20:22 NCR
02	NCAC 52K .0401-.0404	20:22 NCR
02	NCAC 52K .0405-.0406*	20:22 NCR
02	NCAC 52K .0407	20:22 NCR
02	NCAC 52K .0501-.0502	20:22 NCR
02	NCAC 52K .0601*	20:22 NCR
02	NCAC 52K .0602-.0604	20:22 NCR
02	NCAC 52K .0701*	20:22 NCR
02	NCAC 52K .0703	20:22 NCR
04	NCAC 03A .0101*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0101*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0111*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0201-.0202*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0204*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0301*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0401*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0701-.0703*	n/a G.S. 150B-21.5(4)
04	NCAC 03C .0801-.0804*	n/a G.S. 150B-21.5(4)
04	NCAC 03D .0101*	n/a G.S. 150B-21.5(4)
04	NCAC 03D .0201-.0202*	n/a G.S. 150B-21.5(4)
04	NCAC 03E .0101*	n/a G.S. 150B-21.5(4)
04	NCAC 03E .0201*	n/a G.S. 150B-21.5(4)
04	NCAC 03E .0302*	n/a G.S. 150B-21.5(4)
04	NCAC 03F .0201*	n/a G.S. 150B-21.5(4)
04	NCAC 03H .0102-.0103*	n/a G.S. 150B-21.5(4)
04	NCAC 03J .0101*	n/a G.S. 150B-21.5(4)
04	NCAC 03K .0101*	n/a G.S. 150B-21.5(4)
04	NCAC 03L .0102*	n/a G.S. 150B-21.5(4)
10A	NCAC 13D .2104*	20:12 NCR
12	NCAC 11 .0201*	20:12 NCR
15A	NCAC 01J .0101-.0102	20:21 NCR
15A	NCAC 01J .0201-.0205	20:21 NCR
15A	NCAC 01J .0301-.0304	20:21 NCR
15A	NCAC 01J .0401-.0403	20:21 NCR
15A	NCAC 01J .0502-.0505	20:21 NCR
15A	NCAC 01J .0601-.0604	20:21 NCR
15A	NCAC 01J .0606	20:21 NCR
15A	NCAC 01J .0701-.0704	20:21 NCR
15A	NCAC 01J .0801-.0803	20:21 NCR
15A	NCAC 01J .0901-.0904	20:21 NCR
15A	NCAC 01J .1001-.1002	20:21 NCR
15A	NCAC 01J .1101-.1102	20:21 NCR

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*APPROVED RULES*

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15A	NCAC	01J	.1401	20:21 NCR
15A	NCAC	01J	.1402*	20:21 NCR
15A	NCAC	01J	.1501	20:21 NCR
15A	NCAC	01J	.1601-.1602	20:21 NCR
15A	NCAC	01J	.1701*	20:21 NCR
15A	NCAC	01J	.1801*	20:21 NCR
15A	NCAC	01J	.1901-.1902*	20:21 NCR
15A	NCAC	01J	.2001-.2003*	20:21 NCR
15A	NCAC	01J	.2101*	20:21 NCR
15A	NCAC	01J	.2201*	20:21 NCR
15A	NCAC	02B	.0309	20:17 NCR
15A	NCAC	02D	.0543*	20:17 NCR
15A	NCAC	02H	.0122-.0123	20:07 NCR
15A	NCAC	02H	.0201-.0206	20:07 NCR
15A	NCAC	02H	.0208-.0209	20:07 NCR
15A	NCAC	02H	.0211	20:07 NCR
15A	NCAC	02H	.0213	20:07 NCR
15A	NCAC	02H	.0215	20:07 NCR
15A	NCAC	02H	.0217-.0225	20:07 NCR
15A	NCAC	02H	.0227	20:07 NCR
15A	NCAC	02T	.0101-.0102	20:07 NCR
15A	NCAC	02T	.0103-.0106*	20:07 NCR
15A	NCAC	02T	.0107	20:07 NCR
15A	NCAC	02T	.0108*	20:07 NCR
15A	NCAC	02T	.0109	20:07 NCR
15A	NCAC	02T	.0110-.0111*	20:07 NCR
15A	NCAC	02T	.0112	20:07 NCR
15A	NCAC	02T	.0113-.0118*	20:07 NCR
15A	NCAC	02T	.0120*	20:07 NCR
15A	NCAC	02T	.0201*	20:07 NCR
15A	NCAC	02T	.0203*	20:07 NCR
15A	NCAC	02T	.0204	20:07 NCR
15A	NCAC	02T	.0301-.0306*	20:07 NCR
15A	NCAC	02T	.0401	20:07 NCR
15A	NCAC	02T	.0402-.0403*	20:07 NCR
15A	NCAC	02T	.0404	20:07 NCR
15A	NCAC	02T	.0405*	20:07 NCR
15A	NCAC	02T	.0501	20:07 NCR
15A	NCAC	02T	.0504-.0508*	20:07 NCR
15A	NCAC	02T	.0601*	20:07 NCR
15A	NCAC	02T	.0604-.0607*	20:07 NCR
15A	NCAC	02T	.0701-.0702*	20:07 NCR
15A	NCAC	02T	.0704-.0708*	20:07 NCR
15A	NCAC	02T	.0801	20:07 NCR
15A	NCAC	02T	.0804-.0806*	20:07 NCR
15A	NCAC	02T	.0901*	20:07 NCR
15A	NCAC	02T	.0902	20:07 NCR
15A	NCAC	02T	.0903-.0905*	20:07 NCR
15A	NCAC	02T	.0906	20:07 NCR
15A	NCAC	02T	.0907-.0914*	20:07 NCR
15A	NCAC	02T	.1001*	20:07 NCR
15A	NCAC	02T	.1003-.1008*	20:07 NCR
15A	NCAC	02T	.1101-.1109*	20:07 NCR
15A	NCAC	02T	.1110	20:07 NCR
15A	NCAC	02T	.1111*	20:07 NCR
15A	NCAC	02T	.1201-.1209*	20:07 NCR
15A	NCAC	02T	.1301*	20:07 NCR
15A	NCAC	02T	.1302	20:07 NCR
15A	NCAC	02T	.1303-.1306*	20:07 NCR

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**APPROVED RULES**

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15A	NCAC	02T	.1401-.1404*	20:07 NCR
15A	NCAC	02T	.1501	20:07 NCR
15A	NCAC	02T	.1502-.1507*	20:07 NCR
15A	NCAC	02T	.1601	20:07 NCR
15A	NCAC	02T	.1602*	20:07 NCR
15A	NCAC	02T	.1604-.1608*	20:07 NCR
15A	NCAC	07B	.0802*	20:04 NCR
15A	NCAC	07H	.1102*	20:17 NCR
15A	NCAC	07H	.1103	20:17 NCR
15A	NCAC	07H	.1203	20:17 NCR
15A	NCAC	07H	.1302*	20:17 NCR
15A	NCAC	07H	.1303	20:17 NCR
15A	NCAC	07H	.1403	20:17 NCR
15A	NCAC	07H	.1503*	20:17 NCR
15A	NCAC	07H	.1603	20:17 NCR
15A	NCAC	07H	.1703	20:17 NCR
15A	NCAC	07H	.1803	20:17 NCR
15A	NCAC	07H	.1903	20:17 NCR
15A	NCAC	07H	.2003	20:17 NCR
15A	NCAC	07H	.2102*	20:17 NCR
15A	NCAC	07H	.2103	20:17 NCR
15A	NCAC	07H	.2203	20:17 NCR
15A	NCAC	07H	.2303	20:17 NCR
15A	NCAC	07H	.2403	20:17 NCR
15A	NCAC	07H	.2503	20:17 NCR
15A	NCAC	07H	.2603	20:17 NCR
15A	NCAC	07H	.2703	20:17 NCR
17	NCAC	07B	.3902-.3905*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4101-.4107*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4109*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4202-.4203*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4205-.4207*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4301*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4303*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4603-.4604*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4609*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4614-.4615*	n/a G.S. 150B-1(d)(4)
21	NCAC	03	.0302*	20:22 NCR
21	NCAC	14P	.0105	19:18 NCR
21	NCAC	36	.0403*	20:18 NCR
21	NCAC	36	.0406*	20:18 NCR
21	NCAC	53	.0402*	20:19 NCR
25	NCAC	01D	.0115*	20:19 NCR

These rules are subject to the next Legislative Session. (See S.L. 2002-167, s.3.(c))

15A	NCAC	02E	.0601	20:13 NCR
15A	NCAC	02E	.0602-.0610*	20:13 NCR
15A	NCAC	02E	.0612-.0615*	20:13 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

15A	NCAC	18A	.2831*	20:14 NCR
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**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES****02 NCAC 52K .0301 SIGNAGE**

An animal contact exhibit shall provide visible signage at the entrance and exit of the exhibit to educate the public regarding:

- (1) the fact that animal contact may pose a health risk;
- (2) items that are prohibited in animal areas;

- (3) high risk populations, including:
  - (a) the elderly;
  - (b) children under the age of six; and
  - (c) women who are pregnant; and
- (4) the location of hand-washing stations.

*History Note:* Authority G.S. 106-520.3A;  
Eff. September 1, 2006.

**02 NCAC 52K .0405 STAFFING; COMPLIANCE**

An animal contact exhibit shall be staffed at all times of operation by at least one person who has the authority to ensure that the exhibit complies with this Subchapter. The owner, operator or person in charge of an animal contact exhibit shall be responsible for compliance with this Subchapter, and shall not knowingly permit violations by its employees, agents or patrons.

*History Note:* Authority G.S. 106-520.3A;  
Eff. September 1, 2006.

**02 NCAC 52K .0406 SURFACES; EXHIBIT AREAS**

- (a) Surfaces in the animal contact exhibit that can be touched by both fair patrons and animals shall be made of impervious material, and shall be cleaned and disinfected daily and at any time visible contamination is present.
- (b) All animal fencing, feed troughs, and open watering systems shall be disinfected prior to and at the end of each fair.
- (c) Contact animal exhibits shall be held on impervious surfaces whenever feasible.
- (d) Impervious exhibit areas shall be cleaned and disinfected at the end of the fair.
- (e) Exhibit areas that are not impervious shall be cleaned of all manure at the end of the fair and shall not be used for human activities for at least six months after cleaning.

*History Note:* Authority G.S. 106-520.3A;  
Eff. September 1, 2006.

**02 NCAC 52K .0601 HEALTH CERTIFICATE; VACCINATIONS**

- (a) An official certificate of veterinary inspection, as defined in 02 NCAC 52B .0202, a rabies vaccination certificate (when applicable), and any other documentation required by the State Veterinarian for species or state of origin, shall accompany all animals contained in a public contact setting.
- (b) Animals for which there is an approved rabies vaccine, but which are too young to receive rabies vaccination, are prohibited from animal contact exhibits.
- (c) Rabies vaccination shall be administered at least three months prior to and no more than one year prior to the event.
- (d) If no licensed rabies vaccine exists for a particular species (such as rabbits, goats, llamas, and camels), no vaccination is required.

*History Note:* Authority G.S. 106-520.3A;  
Eff. September 1, 2006.

**02 NCAC 52K .0701 PERMITTING**

- (a) Each animal contact exhibit shall be inspected and permitted by the Department prior to opening at a sanctioned agricultural fair.
- (b) Permitting applications for animal contact exhibits will be included in the annual County Fair Handbook distributed by the Department. Applications and other information shall be forwarded by the fair manager to all contracted animal contact exhibits or completed by fair staff for exhibits operated by the fair.
- (c) In order to be permitted when the fair opens, an animal contact exhibit shall be set up and ready for inspection at least two hours before the fair opens.
- (d) Permits shall be valid for exhibition at other fairs listed on the permit application, unless the permit has been suspended or revoked.
- (e) A permit may be suspended or revoked by the Commissioner or his authorized representative for any violation of this Subchapter or G.S. 106-520.3A, in accordance with the Administrative Procedure Act.

*History Note:* Authority G.S. 106-520.3A;  
Eff. September 1, 2006.

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**TITLE 04 – DEPARTMENT OF COMMERCE**

**04 NCAC 03A .0101 NAME: LOCATION AND ADDRESS**

The Office of the Commissioner of Banks is located at 316 West Edenton Street, Raleigh, North Carolina. The mailing address for the Office of the Commissioner of Banks and all of its officers and employees is 4309 Mail Service Center, Raleigh, North Carolina 27699-4309. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m.

*History Note:* Authority G.S. 53-92; 150B-10;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; July 1, 1990; February 9, 1978.

**04 NCAC 03C .0101 APPLICATION**

A new bank, industrial bank or trust company shall be incorporated and chartered in the manner prescribed in G.S. 53-2 through G.S. 53-8 and in no other way. A charter application, on a form provided by the Office of the Commissioner of Banks, together with a copy of the proposed Articles of Incorporation and payment of the prescribed fee, must be filed with:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note:* Authority G.S. 53-2; 53-92; 53-122(3);  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; September 1, 1990; November 1, 1982; July 24, 1979; August 1, 1978.

**04 NCAC 03C .0111 NATIONAL BANK**

## CONVERSION

(a) A national bank may apply for authority to convert to a state bank. An application for conversion must be made on a form provided by the Office of the Commissioner of Banks. The application for conversion, together with a copy of the proposed articles of incorporation and payment of the prescribed fee, must be filed with:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

(b) Upon receipt of a copy of the articles of incorporation and the completed application for conversion, the Commissioner shall make an examination into all the facts connected with the conversion. Following the completion of that examination, the Commissioner shall issue a written decision approving or disapproving the application pursuant to G.S. 53-14.

(c) Upon approval by the Commissioner of Banks, he shall forward to the Secretary of State for appropriate filing the articles of incorporation along with the certification of approval. The Commissioner shall issue to the bank a Bank Certificate (Form 45) and any Branch Certificate (Form 47) as needed.

*History Note: Authority G.S. 53-2; 53-3; 53-4; 53-5; 53-14; 53-104; 53-122(3);  
Eff. September 26, 1979;  
Amended Eff. September 1, 2006; September 1, 1990; August 1, 1988.*

## **04 NCAC 03C .0201 ESTABLISHMENT OF BRANCHES AND LIMITED SERVICE FACILITIES**

Banks may establish branches or limited service facilities upon written approval of the Commissioner of Banks pursuant to G.S. 53-62 and as set out in this rule.

- (1) Application. An application to establish a branch bank or limited service facility must be submitted in writing on a form provided by the Office of the Commissioner of Banks. The application, together with the fee prescribed in 04 NCAC 03C .1601, must be filed with:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

- (2) Notice of filing of an application. Upon acceptance of an application for filing, the applicant shall publish a notice of the filing of the application in a newspaper published in the city, town or county where the branch or limited service facility is proposed to be located. The required public notice must be approved by the Commissioner of Banks prior to publication. The Commissioner of Banks shall mail a notice of the filing of the application to each state-chartered bank operating a banking office in the community to be served by the proposed branch or limited service facility. A copy of the notice shall be mailed to the Regional Administrator of

National Banks for the National Bank Region for North Carolina. The publication shall include:

- (a) the name and location of the main office of the bank making the application;
  - (b) the name and location of the branch or limited service facility being opened;
  - (c) a statement that the public may submit written comments on the application to the Commissioner of Banks;
  - (d) a statement that the comment period shall end 14 days from the date of publication.
- (3) Written comments. Any interested person may submit to the Commissioner of Banks written comments and information on an application within 14 days after the notice has been published as provided in Item (2) of this Rule. All written comments received during the comment period shall become part of the official record compiled with respect to the application.
  - (4) Examination by Commissioner. Upon receipt of a completed application, the Commissioner of Banks shall conduct an examination into all the facts connected with the establishment of a branch or limited service facility.
  - (5) Action by Commissioner. No final decision may be made by the Commissioner of Banks until the comment period has expired. The final decision of the Commissioner of Banks on an application shall be in writing and include findings of fact and conclusions of law.
  - (6) Notification of Commissioner's action. The applicant and all persons who have made written requests for such notice shall be given notice of the Commissioner of Banks' final decision on each application.
  - (7) Request for review by Banking Commission. The applicant or any interested person may request the State Banking Commission to review the decision of the Commissioner of Banks with respect to an application to establish a branch or limited service facility within 14 days from the time the Commissioner of Banks issues his written decision. The request for review must be in writing and must be sent to the address shown in Item (1) of this Rule.
  - (8) Review by Banking Commission. When requested by the applicant or any interested person, the decision of the Commissioner of Banks shall be reviewed at a public hearing by the State Banking Commission at its next regular or called meeting. Following the



- public hearing, the State Banking Commission shall issue its final order approving, modifying or disapproving the decision of the Commissioner of Banks. Notice of the public hearing shall be published in a newspaper published in the city, town or county where the proposed branch or limited service facility is to be located at least 10 days prior to the scheduled hearing.
- (9) Decision by Commissioner final. If there has been no written request for review within the 14-day period as provided in Item (7) of this Rule, the decision issued by the Commissioner of Banks shall become final with respect to the application.
- (10) Commissioner to set requirements. When a bank acquires one or more branches or limited service facilities in connection with a reorganization in which the Commissioner of Banks or other depository financial institution regulator has found one or more depository financial institutions to be in an insolvent, unsafe or unsound condition, the Commissioner of Banks shall set all requirements pertaining to notice and publication, time limitations, and any comment period pursuant to G.S. 53-104.

*History Note: Authority G.S. 53-4; 53-14; 53-62; 53-92; 53-104;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; June 1, 1995; July 1, 1991;*  
*October 1, 1990; November 1, 1982.*

#### **04 NCAC 03C .0202 DISCONTINUANCE**

No bank may close a branch without the written approval of the Commissioner of Banks pursuant to G.S. 53-62.

- (1) Procedure. The procedures provided in G.S. 53-62(e) must be followed in connection with any closing of a branch or limited service facility not subject to Rule .0203 of this Section. The applicant shall give public notice as required by G.S. 53-62(e) in connection with the conversion of a branch to a limited service facility. The required public notice to be published must be approved by the Commissioner of Banks prior to publication pursuant to G.S. 53-62(e). As set out in this Rule, the public notice shall include:
- (a) the name and location of the main office of the bank making the application;
  - (b) the name and location of the branch or limited service facility being closed;
  - (c) a statement that the public may submit written comments on the application to the Commissioner of Banks and may request a hearing;

- (d) a statement that the comment period will end 14 days from the date of the publication.
- (2) Written comments. Any interested person may submit to the Commissioner of Banks written comments and information on an application to discontinue within 14 days after the last notice has been published as required by G.S. 53-62(e). All written comments received during the comment period shall become part of the official record compiled with respect to the application.
- (3) Examination by Commissioner. Upon receipt of an application, the Commissioner of Banks shall conduct an examination into all the facts connected with the request to close a branch. The Commissioner of Banks will hold a public hearing as provided in G.S. 53-62(e) if there has been a request by an interested person.
- (4) Action by Commissioner. No final decision may be made by the Commissioner of Banks until the comment period has expired. The final decision of the Commissioner of Banks on an application to discontinue shall be issued in writing and include findings of fact and conclusions of law.
- (5) Notification of Commissioner's action. The applicant and all persons who have made written requests for notice shall be given notice of the Commissioner of Banks' final decision on each application.
- (6) Request for review by Banking Commission. The applicant or any other interested person may request the State Banking Commission to review the decision of the Commissioner of Banks with respect to an application to discontinue a branch within 14 days from the time the Commissioner of Banks issues his written decision. The request must be in writing and sent to:  
 Office of the Commissioner of Banks  
 4309 Mail Service Center  
 Raleigh, North Carolina 27699-4309.
- (7) Review by Banking Commission. When requested by the applicant or by any interested person, the decision of the Commissioner of Banks shall be reviewed at a public hearing by the State Banking Commission at its next regular or called meeting. Following the public hearing, the State Banking Commission shall issue its final order approving, modifying or disapproving the decision of the Commissioner of Banks. Notice of the public hearing shall be published in a newspaper published in the city, town or county where the branch is to be discontinued at least 10 days prior to the scheduled hearing.
- (8) Decision by Commissioner final. If there has been no written request for review within the

14-day period as provided in Item (6) of this Rule, the decision issued by the Commissioner of Banks shall become final with respect to the application to discontinue.

- (9) Commissioner to set requirements. Where a bank discontinues one or more branches in connection with a reorganization in which the Commissioner of Banks or other bank regulator has found one or more banks to be in an insolvent, unsafe, or unsound condition, the Commissioner of Banks shall set all requirements pertaining to notice and publication, time limitations, and any comment period pursuant to G.S. 53-104.

*History Note: Authority G.S. 53-4; 53-62; 53-92; 53-104; Eff. February 1, 1976; Amended Eff. September 1, 2006; June 1, 1995; October 1, 1990; November 1, 1982.*

**04 NCAC 03C .0204 CONVERSION OF BRANCH TO LIMITED SERVICE FACILITY**

(a) A bank may convert a branch to a limited service facility upon written approval of the Commissioner of Banks pursuant to G.S. 53-62 and as set out in this Rule.

(b) Procedure. Any bank desiring to convert an existing branch to a limited service facility must apply in writing for authority to do so from the Commissioner of Banks and pay the fee set out in 04 NCAC 03C .1601. The letter must identify the name and location of the branch to be converted, the reason for the conversion, the services presently offered at the branch, and the services that will be discontinued upon conversion.

(c) Publication. The applicant shall give public notice as required by G.S. 53-62(e) in connection with the conversion of a branch to a limited service facility. The required public notice to be published must be approved by the Commissioner of Banks prior to publication pursuant to G.S. 53-62. As set out in this Rule, the publication shall include:

- (1) the name and location of the branch to be converted;
- (2) the services presently offered at the branch that will be discontinued upon conversion.

(d) Written comments. Any interested person may submit to the Commissioner of Banks written comments and information on an application to convert a branch to a limited service facility within 14 days after the last notice has been published pursuant to Paragraph (2) of this Rule. All written comments received during the comment period shall become part of the official record compiled with respect to the application.

(e) Examination by Commissioner. Upon receipt of an application to convert, the Commissioner of Banks shall conduct an examination into all the facts connected with the conversion of a branch. The Commissioner of Banks shall hold a public hearing if there has been a request by an interested person.

(f) Action by Commissioner. No final decision may be made by the Commissioner of Banks until the comment period has expired. The final decision of the Commissioner of Banks on a request to convert a branch to a limited service facility shall be

issued in writing and include findings of fact and conclusions of law.

(g) Notification of Commissioner's Action. The applicant and all persons who have made written requests for notice shall be given notice of the Commissioner of Banks' final decision on each application.

(h) Request for Review by Banking Commission. The applicant or any other interested person may request the State Banking Commission to review the decision of the Commissioner of Banks with respect to an application to convert a branch to a limited service facility within 14 days from the time the Commissioner of Banks issues his written decision. The request must be in writing and sent to:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

(i) Decision by Commissioner Final. If there has been no written request for review within the 14-day period as provided in Paragraph (7) of this Rule, the decision issued by the Commissioner of Banks shall become final with respect to the request to convert.

*History Note: Authority G.S. 53-62; 53-92; 53-104; 53-122(3); Eff. September 1, 1990; Amended Eff. September 1, 2006; June 1, 1995.*

**04 NCAC 03C .0301 CHANGE OF LOCATION OF MAIN OFFICE, BRANCH OR LTD SVC FACILITY**

No bank may change the location of a branch, limited service facility or main office without the written approval of the Commissioner of Banks pursuant to G.S. 53-62 and as set out in this Rule.

- (1) Application. Applications on a form provided by the Commissioner, together with the fee prescribed in 04 NCAC 03C .1601, shall be filed with:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

- (2) Notice of filing of an application. Upon acceptance of an application for filing, the Commissioner of Banks applicant shall publish a notice of the filing of the application in a newspaper published in the city, town or county where the branch, limited service facility or main office is to be located. The required public notice must be approved by the Commissioner of Banks prior to publication pursuant to G.S. 53-62. The Commissioner of Banks shall mail a notice of the filing of the application to each state-chartered bank operating a banking office in the community served by the branch, limited service facility or main office. A copy of the notice shall be mailed to the Regional Administrator of National Banks for the National Bank Region for North Carolina. As set out in this rule, the public notice shall include:

- (a) the name and location of the main office of the bank making the application;
  - (b) the name and location of the branch, limited service facility, or main office being relocated;
  - (c) the location where the branch, limited service facility, or main office is being located;
  - (d) a statement that the public may submit written comments on the application to the Commissioner of Banks any may request a hearing;
  - (e) a statement that the comment period will end 14 days from the date of the publication.
- (3) Written comments. Any interested person may submit to the Commissioner of Banks written comments and information on an application within 14 days after the notice has been published as provided in Item (2) of this Rule. All written comments received during the comment period shall become part of the official record compiled with respect to the application.
- (4) Examination by Commissioner. Upon receipt of a completed application for relocation the Commissioner of Banks shall conduct an examination into all the facts connected with the change of location.
- (5) Action by Commissioner. No final decision may be made by the Commissioner of Banks until the comment period has expired. The final decision of the Commissioner of Banks on an application shall be issued in writing and shall include findings of fact and conclusions of law.
- (6) Notification of Commissioner's action. The applicant and all persons who have made written request for notice, shall be given notice of the Commissioner of Banks' final decision on each application.
- (7) Request for review by Banking Commission. The applicant or any interested person may request the State Banking Commission to review the decision of the Commissioner of Banks with respect to an application to relocate a branch, limited service facility or main office within 14 days from the time the Commissioner of Banks issues his written decision. The request for review must be in writing and must be sent to the address shown in Item (1) of this Rule.
- (8) Review by Banking Commission. When requested by the applicant or any interested person, the decision of the Commissioner of Banks shall be reviewed at a public hearing by the State Banking Commission at its next regular or called meeting. Following the

public hearing, the State Banking Commission shall issue its final order approving, modifying or disapproving the decision of the Commissioner of Banks. Notice of the public hearing shall be published in a newspaper published in the city, town or county where the branch, limited service facility or main office is to be located at least 10 days prior to the scheduled hearing.

- (9) Decision by Commissioner final. If there has not been a written request for review within the 14-day period as provided in Item (7) of this Rule, the decision issued by the Commissioner of Banks shall become final with respect to the application.

*History Note: Authority G.S. 53-62; 53-92; 53-104; 53-122(3);  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; June 1, 1995; September 1, 1990; November 1, 1982; August 1, 1978.*

#### **04 NCAC 03C .0401 APPLICATION**

(a) Before a bank may consolidate with or transfer its assets and liabilities to another bank it must first obtain the consent of the Commissioner of Banks. This Rule does not apply where the consolidation or merger is with a national bank and the surviving corporation is to be a national bank.

(b) Application for consent to consolidate must be accomplished by filing with the Commissioner of Banks the following:

- (1) certified copies of all the proceedings by the banks' directors and stockholders;
- (2) a copy of the agreement to consolidate; and
- (3) FDIC Form 102.

The latter form incorporates all statutory requirements and criteria and contains marketing data, various financial schedules and appropriate consideration of competitive factors. The form may be obtained from:

Regional Director  
Federal Deposit Insurance Corporation  
Marquis One Tower  
245 Peachtree Center Avenue, N.E., Suite 1200  
Atlanta, Georgia 30303

and shall be filed, together with the prescribed fee, with:  
Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-12; 53-92;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; September 1, 1990; July 24, 1979.*

#### **04 NCAC 03C .0701 EXAMINING COMMITTEE REPORT**

(a) The board of directors of each state bank, on a form provided by the Office of the Commissioner of Banks, shall submit the results of an annual examination by an examining committee appointed by the bank's board of directors pursuant to

G.S. 53-83. The form contains a balance sheet and a questionnaire covering various statutory and regulatory requirements and is required to be filed annually and is due not later than June 30 for the preceding year. The form shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

(b) In lieu of the examination by a committee of directors required in Paragraph (a) of this Rule, the Board may engage a certified public accounting firm to conduct an examination sufficiently broad in scope so as to allow the accounting firm to render an opinion on the bank's financial statement. The Board may attach this report to the examination form provided by the Office of the Commissioner of Banks and file the same, together with the accounting firm's management letter and management's response, to the Commissioner of Banks at the address in Paragraph (a) of this Rule, not later than June 30 for the preceding year.

*History Note: Authority G.S. 53-83; 53-92; 53-99;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; July 1, 1990; September 26, 1979.*

**04 NCAC 03C .0702 REPORTS OF CONDITION AND INCOME**

Every state bank shall submit a report of condition and income to the Commissioner of Banks no later than 30 days after the end of each calendar quarter. The report of condition and income form shall be obtained from and submitted to:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-92; 53-105;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; July 1, 1990; September 26, 1979.*

**04 NCAC 03C .0703 PUBLISHER'S COPY, REPORT OF CONDITION AND INCOME**

Every state bank shall submit along with each report of condition and income a summary of the report which has been published in a newspaper of general circulation where the bank is located. If there is no newspaper published or circulated in the place where the bank is located, then the report summary must be published in a newspaper of general circulation nearest the bank. Proof of publication shall be furnished the Commissioner of Banks in the form of a certificate or affidavit of publication. A form shall be obtained from and submitted to:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-92; 53-105;*

*Eff. February 1, 1976;  
Amended Eff. September 1, 2006; July 1, 1990.*

**04 NCAC 03C .0801 OATH OF DIRECTORS**

Each director of a state bank, on a form provided by the Office of the Commissioner of Banks, shall execute a statutory oath. Each director shall provide his address and his signature under oath on the form. The form must be executed in duplicate annually within 30 days after the election of a director and shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-80; 53-81; 53-92;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; May 1, 1992; September 26, 1979.*

**04 NCAC 03C .0802 DEPOSITORY BANKS**

The board of directors of each state bank, on a form provided by the Office of the Commissioner of Banks, shall request the Commissioner of Banks to approve the proposed depositories of the bank pursuant to G.S. 53-84. The form is required to be filed in duplicate annually and shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-84; 53-92;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; May 1, 1992; September 26, 1979.*

**04 NCAC 03C .0803 OTHER REAL ESTATE**

The board of directors of each state bank, on a form provided by the Office of the Commissioner of Banks, shall request the Commissioner of Banks to approve holding for one year real estate acquired by foreclosure, etc., that had not been disposed of by the end of the previous year pursuant to G.S. 53-43(3)c. The form is required to be filed in duplicate annually and shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-43(3)c; 53-92;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; May 1, 1992; September 26, 1979.*

**04 NCAC 03C .0804 SUSPENSION OF INVESTMENT AND LOAN LIMITATION**

The board of directors of each state bank, on a form provided by the Office of the Commissioner of Banks, may request the Commissioner of Banks to suspend the bank's investment

limitation or its loan limitation to a particular borrower for a period of 120 days pursuant to G.S. 53-49. The form incorporates the required resolution of the bank's board of directors and shall be accompanied by financial statements of the borrower(s) and shall be filed in triplicate. This report and the information contained therein is confidential and neither the report nor any of its contents shall be made available to the public. The form shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note:* Authority G.S. 53-49; 53-92; 53-99;  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; May 1, 1992.*

**04 NCAC 03D .0101 APPLICATION**

Before any bank may act in any fiduciary capacity without bond, it shall first obtain a license from the Commissioner of Banks and such license shall be renewed annually pursuant to G.S. 53-160. The Board of Directors, on a form provided by the Office of the Commissioner of Banks, shall request a license to operate a trust department and incorporate all statutory requirements and criteria. The form shall be in the name of the board of directors, signed by the president, and must be accompanied by the statutory license fee. The form shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note:* Authority G.S. 53-92; 53-160;  
*Eff. February 1, 1976.*  
*Amended Eff. September 1, 2006.*

**04 NCAC 03D .0201 EXAMINING COMMITTEE  
REPORT OF TRUST DEPARTMENT**

The board of directors of each state bank with a trust department, on a form provided by the Office of the Commissioner of Banks, shall submit annually the results of a required examination of the trust department of a state bank conducted by an examining committee appointed by the bank's board of directors. The form contains a balance sheet and a questionnaire covering various statutory and regulatory requirements. The form shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note:* Authority G.S. 53-83; 53-92;  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; September 26, 1979.*

**04 NCAC 03D .0202 REPORT OF TRUST  
DEPARTMENT**

Each state bank with a trust department, on a form provided by the Office of the Commissioner of Banks, shall submit annually a report reflecting the condition of the trust department as of the last calendar day of the year. The form contains a balance sheet and data concerning the number and composition of accounts. The form shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note:* Authority G.S. 53-92; 53-106;  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; September 26, 1979.*

**04 NCAC 03E .0101 APPLICATION**

(a) No person shall make loans under the provisions of the North Carolina Consumer Finance Act without first obtaining a license from the Commissioner of Banks. The application for a consumer finance license shall contain a request for a license to operate a business under the North Carolina Consumer Finance Act, incorporate all statutory requirements and criteria, and include payment of the statutory fee. The form shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

(b) Upon receipt of an application for a consumer finance license, the Commissioner of Banks shall give written notice of the application to all licensees operating within the community proposed to be served as described in the application. Where a licensee holds two or more licenses the notification is to be mailed to the home office of such licensee. The notification may be by copy of acknowledgment to the applicant.

(c) Following an investigation of the application pursuant to G.S. 53-168, the Commissioner of Banks shall decide as to:

- (1) approval of the application,
- (2) denial of the application.

*History Note:* Authority G.S. 53-92; 53-95; 53-104; 53-168;  
53-185; 150B-21.2;  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; January 1, 1993; August 1, 1978.*

**04 NCAC 03E .0201 OPERATION OF OTHER  
BUSINESS IN SAME OFFICE**

(a) No licensee shall operate any other business in the same office with its consumer finance business except upon written approval of the Commissioner of Banks pursuant to G.S. 53-172(b).

(b) Any other loan business conducted at the same location where a licensee makes loans pursuant to Chapter 53, Article 15 of the North Carolina General Statutes, must be operated through a separate corporate entity.

(c) Application for other business authority shall be made upon a form provided by the Office of the Commissioner of Banks

and shall be accompanied by a fee of twenty five dollars (\$25.00). The form shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

(d) Upon approval of the application, the Commissioner of Banks will issue a Certificate of Authority which shall be posted in a public area of a licensee's office.

*History Note: Authority G.S. 53-92; 53-122(3); 53-168; 53-172; 53-185; 150B-21.2;*

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; January 1, 1993.*

#### **04 NCAC 03E .0302 ANNUAL REPORT**

Each licensee under the North Carolina Consumer Finance Act, on a form provided by the Office of the Commissioner of Banks, shall file an annual report with the Commissioner of Banks on or before March 31 each year. The form shall contain various schedules which reflect the financial condition of the licensee as well as the results of its operations. The form along with necessary instructions relative to its execution shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-92; 53-184(b); 53-185; 150B-21.1;*

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; January 1, 1993; September 26, 1979.*

#### **04 NCAC 03F .0201 DEFINITIONS**

(a) As used in this Subchapter, unless the context clearly requires otherwise:

- (1) Terms defined in G.S. 53-193 shall have the same meaning as set forth therein;
- (2) "Money Transmitters Act" shall mean the Money Transmitters Act codified at Chapter 53, Article 16 of the North Carolina General Statutes (G.S. 53-192, et seq.);
- (3) "State" shall mean the State of North Carolina;
- (4) "Applicant" shall mean a person who applies for a license under the Money Transmitters Act;
- (5) "Controlling person" shall mean any person as defined in G.S. 53-246(7) who owns or holds with the power to vote 10% or more of the equity securities of the applicant or licensee, or who has the power to direct the management and policy of the applicant or licensee;
- (6) "Executive officer" shall have the same meaning as set forth in Regulation "O," promulgated by the Board of Governors of the Federal Reserve System and codified in the

Code of Federal Regulations at Title 12, Chapter II, Part 215;

(7) "Agent" shall mean a person, partnership, corporation, or other entity authorized by a licensee to sell or issue checks of the licensee in this State as a service or for a fee or other consideration on the behalf of the licensee;

(8) "Location" shall mean any place of business within this State operated by the licensee or the licensee's agent at which checks of the licensee are issued or sold.

(b) An application for a license, amendment to the application, annual statement, notice, or any other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-193; 53-196; 53-206.1; 150B-21.2;*

*Eff. February 1, 1993;*

*Amended Eff. September 1, 2006; June 1, 1995.*

#### **04 NCAC 03H .0102 REGIONAL BANK HOLDING COMPANY ACQUISITIONS**

(a) Regional bank holding companies may acquire North Carolina banks or bank holding companies upon written approval of the Commissioner of Banks pursuant to G.S. 53-211.

(b) Application. An application to acquire a North Carolina bank or bank holding company must be submitted in writing on a form provided by the Office of the Commissioner of Banks. The application must be filed with:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

(c) Application fees. The application fees required by statute for acquisition by a regional bank holding company in North Carolina under the North Carolina Regional Reciprocal Banking Act shall be tendered upon application.

(d) Notice of filing/written comments. Within 30 days of acceptance of a completed application for filing, the Commissioner of Banks shall publish a notice of the filing of the application as set forth in G.S. 53-211(d). Within 14 days of the published notice, any interested person may submit written comments and information concerning the application to the Commissioner of Banks. All written comments received during the comment period shall become a part of the official record compiled with respect to the application. The Commissioner of Banks may extend the comment period if, on the basis of information already available, or upon the nature or volume of initial public comment, he determines that the public need or the intent of the statute is best served by an extension of such comment period.

(e) Examination by Commissioner. Upon receipt of a completed application, the Commissioner of Banks shall conduct an examination into all the facts connected with the proposed acquisition in accordance with Articles 17 and 18 of Chapter 53.

(f) Action by Commissioner. No final decision may be made by the Commissioner of Banks until the comment period has expired. The final decision of the Commissioner of Banks on an application shall be in writing and include findings of fact and conclusions of law.

(g) Notification of Commissioner's action. The applicant and all persons who have made written requests for such notice shall be given notice of the Commissioner of Banks' final decision on each application.

*History Note:* Authority G.S. 53-211; 53-214(b);  
Eff. May 1, 1992;  
Amended Eff. September 1, 2006; April 1, 1999.

**04 NCAC 03H .0103 BANK HOLDING COMPANY  
REGISTRATION**

Bank holding companies controlling North Carolina federally chartered or state chartered banks, or which control nonbank subsidiaries (direct or indirect) having offices located in the state shall register with the Commissioner of Banks on a form provided by the Office of the Commissioner of Banks. Initial registrations shall be completed no later than 180 days after becoming a bank holding company as set forth in G.S. 53-227 and annual registrations shall be completed not later than July 1st of each year thereafter, continuing until such time that the bank holding company no longer meets the registration requirements as set forth in G.S. 53-227. Forms may be obtained from and shall be filed along with associated fees with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note:* Authority G.S. 53-227; 53-230;  
Eff. May 1, 1992;  
Amended Eff. September 1, 2006.

**04 NCAC 03J .0101 DEFINITIONS; FILINGS**

(a) As used in this Subchapter, unless the context clearly requires otherwise:

- (1) "Applicant" shall have the same meaning as set forth in G.S. 53-246(1).
- (2) "Commission" shall have the same meaning as set forth in G.S. 53-246(2).
- (3) "Commissioner" shall have the same meaning as set forth in G.S. 53-246(3).
- (4) "Controlling person" shall mean any person as defined in G.S. 53-246(7) who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the registrant.
- (5) "Creditor" shall have the same meaning as set forth in G.S. 53-246(4).
- (6) "Creditor fee" shall mean the fee imposed by the creditor which funds the refund anticipation loan in consideration for funding the refund anticipation loan.

- (7) "Debtor" shall have the same meaning as set forth in G.S. 53-246(5).
- (8) "Electronic filing fee" shall mean the fee imposed by the facilitator in consideration for the electronic filing of a tax return.
- (9) "Executive officer" shall have the same meaning as such term is defined in Regulation "O" promulgated by the Board of Governors of the Federal Reserve System, and codified in the Code of Federal Regulations at Title 12, Chapter II, Part 215.
- (10) "Facilitator" shall have the same meaning as set forth in G.S. 53-246(6).
- (11) "Facilitator loan fee" shall mean the fee imposed by the facilitator in consideration for assisting the debtor in obtaining the refund anticipation loan.
- (12) "Income tax return preparation fee" shall mean the fee imposed by a person in consideration for preparation of the debtor's tax returns.
- (13) "Loan-related fee" shall mean any fee other than a creditor fee, facilitator loan fee or electronic filing fee paid by the debtor for transmittal to third persons who provide services in connection with the refund anticipation loan.
- (14) "Person" shall have the same meaning as set forth in G.S. 53-246(7).
- (15) "Refund anticipation loan" shall have the same meaning as set forth in G.S. 53-246(8).
- (16) "Refund Anticipation Loan Act" shall mean the Refund Anticipation Loan Act codified at Chapter 53, Article 20 of the North Carolina General Statutes (G.S. 53-245, et seq.).
- (17) "Refund anticipation loan fee" shall have the same meaning as set forth in G.S. 53-246(9) and shall include a creditor fee, facilitator loan fee, and loan-related fee as defined herein.
- (18) "Registrant" shall have the same meaning as set forth in G.S. 53-246(10).
- (19) "Transmitter" shall mean any person as defined herein who transmits electronic returns directly to the Internal Revenue Service. This term shall include persons who receive information to be reformatted and transmitted to the Internal Revenue Service, i.e., third-party transmitters.

(b) An application for registration or any report, notice, form or other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

*History Note:* Authority G.S. 53-245; 53-246; 53-248; 53-253; 150B-21.2;  
Eff. September 1, 1993;  
Amended Eff. September 1, 2006.

**04 NCAC 03K .0101 DEFINITIONS; FILINGS**

(a) As used in this Subchapter, unless the context clearly requires otherwise:

- (1) Terms defined in G.S. 53-257 shall have the same meaning as set forth therein;
- (2) "Accounting period" shall mean either a period of 12 months (or less in the first year of operation) ending December 31 or a fiscal year of not more than 12 months (or less in the first year of operation) ending on the last day of any month except December;
- (3) "Application fee" shall mean any fee accepted by an authorized lender or lenders in connection with an application for a reverse mortgage loan including any charge for soliciting, processing, placing or negotiating a reverse mortgage loan. The term does not include a third-party fee as such term is defined in Subparagraph (a)(8) of this Rule;
- (4) "Certified Financial Statements" shall mean the Statement of Financial Position, Income Statement, Statement of Cash Flows, and Statement of Retained Earnings which have been attested by a certified public accountant;
- (5) "Person" shall mean an individual, corporation, partnership, trust, association, or other entity;
- (6) "Regulation Z" shall mean Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified at 12 CFR Part 226, et seq.;
- (7) "RESPA" shall mean the Real Estate Settlement Procedures Act, codified at 12 USC 2601, et seq.;
- (8) "Third-Party fee" shall mean the fees or charges paid by the borrower for a mortgage loan to the lender for transmittal to third persons who provide services in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney's fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges;
- (9) "Truth In Lending Act" shall mean Title I of the Consumer Credit Protection Act, as amended, and codified at 15 USC 1601, et seq..

(b) Any application for authorization to make reverse mortgage loans, or any report, annual statement, amendment to application, notice or other document which is required by law or rule shall be filed with the Commissioner of Banks located at 316 West Edenton Street, Raleigh, North Carolina 27603. The mailing address is 4309 Mail Service Center, Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53-257; 53-259; 53-271(a); Eff. January 1, 1995; Amended Eff. September 1, 2006.*

**04 NCAC 03L .0102 FILINGS**

Any application for a license, or any report, application for annual renewal, amendment to application, renewal notice or other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309

or, if not mailed, then delivered to:

Office of the Commissioner of Banks  
316 West Edenton Street  
Raleigh, North Carolina 27603.

*History Note: Authority G.S. 53-92; 53-93; 53-288; Eff. July 1, 2000; Amended Eff. September 1, 2006.*

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**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10A NCAC 13D .2104 REQUIREMENTS FOR LICENSURE RENEWAL OR CHANGES**

(a) The Department shall renew the facility's license at the end of each calendar year, if the following occur:

- (1) The licensee maintains and submits to the Department, at least 30 days prior to the licensure expiration date, statistical data for the State's medical facilities plan and review for certificate of need determination. The Department shall provide forms annually to the facility for this purpose.
- (2) The facility is in conformance with G.S. 131E-102(c).
- (3) The combination facility shall specify on the annual license renewal application with which rules for the adult care home beds it plans to comply for the upcoming calendar year. The rule selection shall be effective for the duration of the renewed licensed year. The facility may choose one of the following:
  - (A) nursing home licensure rules under this Subchapter;
  - (B) adult care home licensure rules under 10A NCAC 13F; or
  - (C) a combination of nursing home and adult care home licensure rules. The facility shall identify in writing the specific rule governing compliance with the adult care home rules and shall identify in writing the specific requirements governing compliance with the nursing home rules.

(b) The facility shall notify the Nursing Home Licensure and Certification Section of the Division of Facility Services in writing and make changes in the licensure application at least 30 days prior to the occurrence of the following:



- (1) a change in the name or names under which the facility is presented to the public;
- (2) a change in the legal identity (licensee) which has ownership responsibility and liability (such information shall be submitted by the proposed new owner);
- (3) a change in the licensed bed capacity; or
- (4) a change in the location of the facility.

The Department shall issue a new license following notification and verification of data submitted.

(c) The facility shall notify the Nursing Home Licensure and Certification Section of the Division of Facility Services within one working day following the occurrence of:

- (1) change in administration;
- (2) change in the director of nursing;
- (3) change in facility mailing address or telephone number;
- (4) changes in magnitude or scope of services; or
- (5) emergencies or situations requiring relocation of patients to a temporary location away from the facility.

*History Note: Authority G.S. 131E-104;  
Eff. January 1, 1996;  
Amended Eff. September 1, 2006.*

## **TITLE 12 – DEPARTMENT OF JUSTICE**

### **12 NCAC 11 .0201 APPLICATION FOR LICENSE**

(a) Each applicant for a license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant card provided by the Board;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification one inch by one inch in size;
- (3) statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months; and
- (4) the applicant's application fee.

(b) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other acceptable proof.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules during the personal meeting. The applicant shall sign a form provided by the Board indicating that they have reviewed the information with the

Board's representative and that they have an understanding of G.S. 74D and the administrative rules.

(d) Each applicant for a branch office license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by the branch office application fee.

*History Note: Authority G.S. 74D-2; 74D-3; 74D-5; 74D-7;  
Temporary Rule Eff. January 9, 1984, for a period of 120 days to expire on May 7, 1984;  
Eff. May 1, 1984;  
Amended Eff. September 1, 2006; March 1, 1993; July 1, 1987;  
January 1, 1986.*

## **TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

### **15A NCAC 01J .1402 DEFINITIONS**

In addition to the definitions in G.S. 159G-20, the following definitions apply to this Subchapter:

- (1) "Act" means the Water Infrastructure Act of 2005, G.S. 159G
- (2) "Award" means the offer by the receiving agency to enter into a commitment for a specified amount.
- (3) "Award of contract" means the award by the recipient to a contractor of a contract to construct the project as bid.
- (4) "Bid" means the amount of money for which a contractor offers to construct the project.
- (5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.
- (6) "Commitment" means a binding agreement to pay loan or grant funds to an eligible applicant at some future time.
- (7) "Date of completion" means the date on which the project has been completed, as determined by the receiving agency.
- (8) "Effective date of receipt" means the earlier of the date an application is either postmarked or received at the principal offices of the receiving agency in Raleigh, North Carolina.
- (9) "Fiscal year" means the state fiscal year, beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. In referring to a specific fiscal year, the year named is the calendar year in which the fiscal year ends. For example, "Fiscal Year 1988" refers to the fiscal year beginning July 1, 1987 and ending June 30, 1988.
- (10) "Inspection" means inspection or inspections of a project to determine percentage completion of the project and compliance with applicable federal, state and local laws or rules.

- (11) "Orders" means any restrictive measure, related to the operation of its water or wastewater system, issued to an applicant. Such measures may be included in, but are not restricted to, Administrative Orders, Special Orders, Special Orders by Consent, Judicial Orders, or issued or proposed permits, permit modifications or certificates.
  - (12) "Project" means the works described in the application.
  - (13) "Priority review period" means July 1 through December 31 and January 1 through June 30 of each fiscal year.
  - (14) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications related to public water systems and the Division of Water Quality with respect to receipt of applications related to wastewater systems.
  - (15) "Regional water supply system" means:
    - (a) A public water system that serves two or more local units of government, or
    - (b) A public water system that demonstrates each of the following:
      - (i) A specific plan to provide drinking water throughout the territory of a local unit of government, except that a municipality shall also demonstrate a specific plan to provide drinking water outside its extraterritorial jurisdiction;
      - (ii) Shares water supply facility resources with another public water system; and
      - (iii) An interlocal agreement or joint resolution to be a part of an interconnected regional water system within 10 years.
  - (16) "Regional wastewater system" means a wastewater system of a municipality, county, sanitary district, or other political subdivision of the State or combination thereof that serves two or more units of government.
  - (17) "Water Reclamation" means the production of a high level treated effluent as a reusable, non-potable water source.
  - (18) "Water Reuse" means the actual use or application of reclaimed water in or on areas which require water but do not require potable water quality.
- (a) Conservation or reuse of water - An applicant may receive a maximum of 6 bonus points for meeting the following criteria as applicable:
    - (1) An applicant demonstrates it has a continuing I/I program in its wastewater sewer maintenance program. (Wastewater Projects Only) - 2 points
    - (2) An applicant demonstrates it has a continuing water loss reduction program in its water supply system program. (Water Supply Projects Only) - 2 points
    - (3) An applicant demonstrates it has:
      - (A) Established a water conservation incentive rate structure - 2 points
      - (B) Created effective incentives for new or replacement installation of low flow faucets, shower heads, and toilets - 1 point
      - (C) A water reclamation or reuse system - 2 points
  - (b) Comprehensive Land-use Plan - An applicant may receive a maximum of 6 bonus points for meeting the following criteria:
    - (1) An applicant demonstrates that steps have been taken toward adoption of a comprehensive land-use plan such as the adoption of a zoning ordinance. - 1 point
    - (2) An applicant demonstrates that it has adopted a comprehensive land-use plan that meets the requirements of G.S. 153A, Article 18 or G.S. 160A, Article 19, or applicant is not authorized to adopt a comprehensive land-use plan but is located in whole or in part in a local government unit that has adopted a comprehensive land-use plan, and that the proposed project is consistent with the plan. - 2 points
    - (3) An applicant demonstrates that the comprehensive land-use plan exceeds the minimum state standards for the protection of water resources. - 2 points
    - (4) An applicant demonstrates that actions have been taken toward implementation of the comprehensive land-use plan. - 2 points
  - (c) Flood Hazard Ordinance - An applicant may receive a maximum of 4 bonus points for the following criteria:
    - (1) A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A or no part of the service area of the project is located within the 100-year floodplain. - 2 points
    - (2) This plan (ordinance) exceeds the minimum standards. - 2 points
  - (d) Sound management – Fiscal responsibility of the applicant (maximum points--6). The value of this categorical element shall be the sum of the points awarded by Subparagraphs (1) to (3) of this Paragraph and the receiving agency may seek the comments of the Secretary of the Local Government Commission:

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006.*

**15A NCAC 01J .1701 COMMON CRITERIA**

- (1) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state. - 2 points
  - (2) The applicant public water system or wastewater system is fiscally self-sufficient. - 2 points
  - (3) Estimated revenues will provide for future administration, operation, debt principal and interest, and capital outlay and reserve. - 2 points
- (e) Financial need (maximum -- 5 points). The value of this Paragraph will be the sum of the points assigned under Subparagraphs (1) and (2) of this Paragraph.
- (1) The annual average residential cost of water, wastewater, and stormwater fees exceeds the following percentage of the median household income of the community:
    - (A) 2% - 3 points, or
    - (B) 1.5% - 2 points
  - (2) 20 times (Total Indebtedness plus Total Estimated Project Cost) divided by the total Appraised Property Valuation. (maximum – 2 points) Note: 20 is a factor to add points.
- (f) Capital Improvement Plan - The project implements an applicant's capital improvement plan as defined in G.S. 159G-23(7). - 4 points
- (g) Coastal Habitat Protection - Plan
- (1) The project is either in a county not subject to the Plan or implements a recommendation of a plan as defined in G.S. 159G-23(8). (Wastewater Projects Only)- 4 points
  - (2) For a water supply project that implements a recommendation of a plan as defined in G.S. 159G-23(8) and its priority points total is within 4 points of another project that affects a county subject to that Plan that does not implement such a recommendation, then the implementing project shall be placed on the priority list ahead of the non-implementing subject project. (Water Supply Projects Only)

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006.*

**15A NCAC 01J .1801 ASSIGNMENT OF CATEGORY TO WASTEWATER SYSTEM APPLICATIONS**

- (a) Applications to the Wastewater Accounts will be assigned a category as follows, during review of the applications:
- (1) All applications for a project that improves a system that is not in compliance with permit requirements, under orders, experiencing documented infiltration and inflow into the sewer system or replaces failing septic tanks, and that have submitted final project plans and specifications for review and approval by the

receiving agency, shall be placed in Category 1.

- (2) All applications for a project that improves a system that is not in compliance with permit requirements, under orders, experiencing documented infiltration and inflow into the sewer system or replaces failing septic tanks, and that have not submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 2.
- (3) All applications for other projects shall be placed in Category 3.

(b) All applications in Category 1 for a specific wastewater account shall be funded in priority order before applications in Category 2 in the same account. All applications in Category 2 for a specific wastewater account shall be funded in priority order before applications in Category 3 in the same account.

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006.*

**15A NCAC 01J .1901 EXISTING CONDITIONS**

The maximum value - 8 points - of this Rule will be the value of the points assigned under Items (1) – (4) of this Rule. The proposed project includes one or more of the following classifications.

- (1) Surface Water Pollution
  - (a) Sanitary Sewer Overflow (SSO) - 8 points
  - (b) Wastewater Treatment Facilities (WWTP) - 7 points
  - (c) Excessive Infiltration and Inflow - 6 points
  - (d) Collection System/Pump Station/Force Main (No SSO) - 3 points
- (2) Stormwater Treatment/Management Facility
  - (a) Addresses/Removes Direct Discharge - 8 points
  - (b) Other Stormwater Quality Project - 5 points
- (3) Groundwater Pollution
  - (a) Documented Failing Septics - 7 points
  - (b) Landfill Leachate Collection/Treatment - 7 points
  - (c) Other Groundwater Pollution Source Problem - 5 points
- (4) Aquatic/Riparian Habitat and Stream Degradation - Streams, Creeks, and Estuary Restoration - 5 points

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006.*

**15A NCAC 01J .1902 WATER QUALITY IMPROVEMENT CRITERIA**

The maximum value - 10 points - of this Rule will be the sum of the points assigned under Items (1) - (4) of this Rule. The project will benefit one or more of the following water quality classifications

- (1) Surface Water Restoration
  - (a) Project benefits a waterbody on the North Carolina 303 (d) list of Impaired water with a Total Maximum Daily Load (TMDL) - 8 points
  - (b) Project benefits a waterbody on the North Carolina 303 (d) list of Impaired water without a Total Maximum Daily Load (TMDL) - 6 points
- (2) Surface Water Protection
  - (a) Class "SA" (Shellfish Waters), Class "WS-I" or "WS-II" (Water Supply Source), Class "ORW" (Outstanding Resource Waters), or "HQP" (High Quality Waters) - 10 points
  - (b) Class "WS-III", "WS-IV", or "WS-V" (Water Supply Source) - 8 points
  - (c) Class "B" or "SB" (Bathing Waters) - 6 points
  - (d) Class "C" or "SC" (Fishing) - 4 points
- (3) Groundwater Protection – Project benefits groundwater – 8 points
- (4) Universal Stormwater Management Plan – The project will be implemented in an area where the Universal Stormwater Management Program (USMP) has been adopted and approved by the Environmental Management Commission – 2 points.

*History Note: Authority G.S. 159G-44; Eff. September 1, 2006.*

**15A NCAC 01J .2001 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE**

- (a) Applications to the Drinking Water Reserve shall be assigned a category as follows:
  - (1) All applications for a project that eliminates by consolidation a public water system demonstrating a lack of technical, financial, or management capacity in accordance with the Safe Drinking Water Act, Sections 1402(b)(1) and 1414(h), and NCAC 15A 18C .0300, shall be placed in Category 1. The Division may generate the application for such a project.
  - (2) All applications for a project that eliminates compliance problems due to existing violations of the NC Drinking Water Act or anticipated violations based on data and state or federal rulemaking shall be placed in Category 2.
  - (3) All applications for a project addressing source or treatment needs by improving the available water supply or treatment capacity to supply

existing users, improving treated water quality, or providing a permanent or emergency interconnection between systems shall be placed in Category 3.

- (4) All other eligible public water system projects shall be placed in Category 4.

(b) All applications in Category 1 for a specific drinking water account shall be funded in priority order before applications in Category 2 for the same account. Similarly all applications in Category 2 for a specific drinking water account shall be funded in priority order before applications in Category 3 for the same account, and all applications in Category 3 for a specific drinking water account shall be funded in priority order before applications in Category 4 for the same account.

(c) Funding shall be limited to the most cost-effective solution for the compliance or public health problem identified in the proposed project.

*History Note: Authority G.S. 159G-44; Eff. September 1, 2006.*

**15A NCAC 01J .2002 PROJECT PLANNING**

The maximum value - 3 points - of this categorical element is the sum of the points awarded to Item (1) and the points assigned to Item (2) of this Rule:

- (1) The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(1) - 1 point.
- (2) The project demonstrates long range planning, through inter-local agreements, leading to systems of regional water supply - 2 points.

*History Note: Authority G.S. 159G-4; Eff. September 1, 2006.*

**15A NCAC 01J .2003 SOURCE WATER PROTECTION**

The maximum value - 5 points – of this Rule may be awarded from Items (1) and (2) for participation in existing source water protection activities or programs that efficiently protect the public health; points may be awarded in Items (1) and (2) of this Rule up to the maximum, as follows:

- (1) Voluntary surface source water protection program, approved by the Division, pursuant to the Safe Drinking Water Act, Section 1454 - 3 points.
- (2) Voluntary wellhead protection program, approved by the Division, pursuant to the Safe Drinking Water Act, Section 1428 - 3 points.

*History Note: Authority G.S. 159G-44; Eff. September 1, 2006.*

**15A NCAC 01J .2101 CRITERIA FOR LOAN ADJUSTMENTS**

Upon receipt of bids, a loan commitment may be adjusted as follows:

- (1) The loan commitment may be decreased by the receiving agency provided the project cost as bid is less than the estimated project cost.
- (2) Loan commitments may be increased by the receiving agency if the project cost as bid is greater than the estimated project cost and adequate funds are available in the account from which the loan was awarded. Increases greater than ten percent of the loan commitment meeting the above criteria shall be approved jointly by the receiving agency and the Local Government Commission.

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006.*

**15A NCAC 01J .2201 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS**

- (a) The interest rate to be charged on loans under this Subchapter shall be set on March 31 of every year at the lesser of four percent per annum or one half the prevailing national market rate as derived from the Bond Buyer's 20-Bond Index. The interest rate shall be the same for all loans awarded from any account except target interest rate loans.
- (b) The debt instrument setting the terms and conditions of repayment of loans under this Subchapter shall be established after the receipt of bids and after any adjustments are made under Rule .2101 of this Subchapter.
- (c) Interest on the debt instrument shall begin to accrue on the original date that a project's contracts are scheduled to be completed. Extensions are not allowed.
- (d) All principal payments shall be made annually on or before May 1 of each year. All interest payments shall be made semiannually on or before May 1 and November 1 of each year. The first payment is due not earlier than six months after the date of actual completion of the project. In no case shall the first payment be later than 18 months from the original scheduled completion date.
- (e) All principal and interest payments shall be made payable to the appropriate account as specified in the debt instrument.

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006.*

**15A NCAC 02D .0543 BEST AVAILABLE RETROFIT TECHNOLOGY**

- (a) For the purposes of this Rule, the definitions at 40 CFR 51.301 shall apply.
- (b) Mandatory Class I Federal areas are identified in 40 CFR Part 81, Subpart D.
- (c) The Director shall have the maximum flexibility allowed under 40 CFR 51.308 or 40 CFR Part 51, Appendix Y.
- (d) This rule applies to BART-eligible sources as determined using 40 CFR Part 51, Appendix Y that cause or contribute to any visibility impairment in a mandatory Class I Federal area as determined by using 40 CFR Part 51, Subpart P.
- (e) Unless exempted under 40 CFR 51.303, the owner or operator of a BART-eligible emission unit subject to this Rule shall perform a best available retrofit technology (BART)

evaluation for that emission unit. Pursuant to 40 CFR 51.308, the evaluation shall include:

- (1) the technology available,
- (2) the cost of compliance,
- (3) the energy and non-air quality environmental impacts of compliance,
- (4) any pollution control equipment in use at source,
- (5) the remaining useful life of the source, and
- (6) the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.

(f) The owner or operator of a BART-subject emission unit shall install, operate, and maintain BART as approved by the Director after considering the six items listed in Paragraph (d) of this Rule and incorporated in the unit's permit issued under 15A NCAC 02Q.

(g) The owner or operators of a BART-eligible source required to install BART under this Rule shall submit permit applications for the installation and operation of BART by September 1, 2006. The Director shall extend the deadline for submitting a permit application if additional time is needed to complete the evaluation required under Paragraph (e) of this Rule.

(h) BART shall be determined using "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" (1980), 40 CFR 51.308(e)(1)(ii), and 40 CFR Part 51, Appendix Y. Electric generating units covered under and complying with 15A NCAC 02D .2400, Clean Air Interstate Rules, are considered to be in compliance with the BART requirements for nitrogen oxides and sulfur dioxide under this Rule.

(i) The owner or operator of a BART-eligible source required to install BART under this Rule shall have installed and begun operation of the BART controls by December 31, 2012.

(j) "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" is incorporated by reference, exclusive of appendix E, and shall include any later amendments or editions. This document, which was published in the Federal Register on February 6, 1980 (45 FR 8210), is EPA publication No. 450/3-80-009b and can be obtained from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 for eighty four dollars (\$84.00). It is also available for inspection at the National Archives and Records Administration (NARA). Information on the availability of

this material at NARA may be found at:

[http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*History Note: Authority G.S.143-215.3(a)(1); 143-215.107(a)(5),(10);  
Eff. September 1, 2006.*

**15A NCAC 02E .0602 DEFINITIONS**

The following definitions shall apply for the purposes of this Section,

- (1) "Water" means any waters of the State located on or below the land surface as well as water

- contained within a water treatment and distribution system.
- (2) "Person" means any individual, corporation, company, association, partnership, unit of local government or other legal entity.
  - (3) "Water delivery system" means any open or closed conveyance system used to move water for potable or non-potable purposes from its point of origin to a point of use, including: municipal water systems; residential, commercial, industrial, and commercial plumbing systems; irrigation systems; water using equipment; and flexible hoses.
  - (4) "Essential water use" means the use of water necessary for fire fighting, health and safety purposes; water needed to sustain human and animal life; and water necessary to satisfy federal, state and local public health, safety or environmental protection requirements.
  - (5) "Non-essential water use" means categories of water use, other than essential water use, that may be curtailed during droughts and water emergencies.
  - (6) "State agencies" includes all agencies of the executive branch of the government of North Carolina, the General Assembly, the General Court of Justice, and the University of North Carolina.
  - (7) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision or authority or agency of local government.
  - (8) "Department" means the North Carolina Department of Environment and Natural Resources (DENR).
  - (9) "Council" and "NCDMAC" mean the North Carolina Drought Management Advisory Council.
  - (10) "Drought Advisory" means an advisory issued by the NCDMAC that delineates the geographic extent and severity of a water deficit significant enough to have social, environmental or economic effects. Drought Advisories shall be designated as Abnormally Dry, Moderate Drought, Severe Drought, Extreme Drought and Exceptional Drought to indicate the severity of conditions from least to most severe, respectively.
  - (11) "Syrringing" means the application of a small volume of water, usually 0.10 inch or less, near midday to correct plant water deficits, reduce plant tissue temperatures and reduce the heat stress on turfgrass plants.

*History Note:* Authority G.S. 143-354(a)(8); S.L. 2002-167;  
Eff. Pending Legislative Review.

**15A NCAC 02E .0603 GENERAL INFORMATION**

- (a) The provisions of this Section apply to the following classes of water users:
    - (1) Publicly owned and privately owned water supply systems;
    - (2) State agencies;
    - (3) Units of local government;
    - (4) Business and industrial water users; and
    - (5) Agricultural and horticultural water users.
  - (b) This Section does not prevent owners and operators of a water delivery system or other persons from developing, implementing and requiring water use measures in response to droughts or emergency water shortages that are more restrictive than the specified response measures in Rules .0612 through .0614.
  - (c) All established and new uses of reclaimed water, consistent with the provisions of 15A NCAC 02H .0200 and any successive rules and amendments that define and the use of reclaimed water, as administered by the Department's Division of Water Quality, shall be exempt from the requirements set forth in this Section.
- History Note:* Authority S.L. 2002-167;  
Eff. Pending Legislative Review.
- 15A NCAC 02E .0604 ANNUAL REPORTING OF WATER USE DATA**
- In order to improve the availability of data for the development of the State water supply plan to be used when managing water resources during drought and water supply emergencies and to provide a basis for evaluating the effectiveness of emergency water conservation measures, the following data reporting requirements have been established:
- (1) Water systems that are required to prepare a Local Water Supply Plan under G.S. 143-355(l) shall, irrespective of the issuance of a drought advisory, annually report to the Department the following information:
    - (a) Water system identification information;
    - (b) Annual average daily water use (total amount of surface and ground water withdrawn as well as water supplied by another system) by the water system, in million gallons per day (MGD);
    - (c) The average daily water use (total amount of surface and ground water withdrawn as well as water supplied by another system) for each month of the prior calendar year, in million gallons per day (MGD);
    - (d) The number of connections for residential, industrial, commercial and institutional metered and non-metered water use, as of December 31<sup>st</sup> of the reporting year;
    - (e) The annual average daily water use in million gallons per day (MGD) categorized by residential, industrial,

- commercial, institutional water uses and sales to other systems to the extent that this information by category is available; and
- (f) Water used by the system, in addition to the amount delivered to customers, to meet water treatment and distribution requirements, in million gallons per day (MGD).
- (2) All persons that are required to register water withdrawals and transfers under G.S. 143-215.22H, who are not subject to Item (1) of this Rule, shall annually report to the Department monthly average water use in million gallons per day (MGD) for each month. The following information shall be reported:
    - (a) Owner and facility identification information;
    - (b) Sources of water withdrawn;
    - (c) Number of days water was withdrawn for each month; and
    - (d) Average daily withdrawal for the actual number of days water was withdrawn each month, in million gallons per day (MGD).
  - (3) Data shall be submitted electronically. Water users that exhibit to the Division of Water Resources an inability to submit data electronically may submit data in writing on a form supplied by the Department.
  - (4) Data shall be submitted to the Department by April 1<sup>st</sup> of each year for the period of January 1<sup>st</sup> to December 31<sup>st</sup> of the prior year.

*History Note:* Authority G.S. 143-355(k); 143-355(l); 143-354(a);  
*Eff. Pending Legislative Review.*

**15A NCAC 02E .0605 WATER USE REDUCTION REPORTING, NEW WATER WITHDRAWAL REPORTING AND REGIONAL COORDINATION DURING DROUGHTS**

In order to promote regional cooperation for the equitable use of water resources during a drought or other water supply emergency, all persons, as specified below, shall comply with the following reporting and coordination procedures:

- (1) Publicly and privately owned community water systems and units of local government shall report to the Division of Water Resources the implementation of mandatory water conservation measures within 72 hours of their initial enactment.
- (2) All persons that intend to make a new water withdrawal, which has not previously been registered under G.S. 143-215.22H, of 100,000 gallons or more in an area designated by the Council as suffering from Extreme or Exceptional Drought shall report to the

Division of Water Resources, by the same means outlined in Item (3) of Rule .0604, the following information at least seven days prior to the withdrawal:

- (a) Contact information for the person making the water withdrawal;
  - (b) Source(s) of water to be withdrawn;
  - (c) Number of days water is anticipated to be withdrawn; and
  - (d) Anticipated average daily withdrawal in million gallons per day (MGD).
- (3) All persons that withdraw water shall monitor drought and water supply conditions and shall participate in regional coordination for the management of water resources, evaluation of the cumulative effects of water withdrawals on regional water resources and the development of alternative water supply sources. Based on an assessment of drought severity and regional water supply conditions, the Department may contact water systems within the affected region to arrange a consultation meeting between water systems and relevant state and local agencies. The Department shall moderate these consultations and provide technical assistance.

*History Note:* Authority G.S. 143-354(a)(8); 143-355(k); S.L. 2002-167;

*Eff. Pending Legislative Review.*

**15A NCAC 02E .0606 WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS**

All classes of water users shall prepare a Water Shortage Response Plan according to the water shortage response planning provisions in Rules .0607 through .0611 for their appropriate class of water use. The purpose of these Water Shortage Response Plans is to plan for an effective course of action to minimize harmful impacts of drought and water supply emergencies on public health and safety, environmental quality, and the economy. Water Shortage Response Plans shall take into account the specific characteristics of the water sources and the water uses for which the plan is prepared.

*History Note:* Authority G.S. 143-354(a)(1); 143-355(l); S.L. 2002-167;

*Eff. Pending Legislative Review.*

**15A NCAC 02E .0607 PUBLICLY AND PRIVATELY OWNED WATER SYSTEM WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS**

(a) Publicly and privately owned water systems that are required to prepare a Local Water Supply Plan under G.S. 143-355(l) shall include the following information in their local Water Shortage Response Plans for review by the Division of Water Resources:

- (1) The designation of a staff position or organizational unit responsible for the

implementation of their Water Shortage Response Plan;

- (2) Notification procedures that will be used to inform employees and water users about the implementation of the plan and required water conservation response measures;
- (3) Tiered levels of response actions to be taken to reduce water use based on the severity of water shortage conditions;
- (4) Specific measurements of available water supply, water demand and system conditions that will be used to determine the severity of water shortage conditions and to initiate water use reduction measures and the movement between various levels;
- (5) Procedures that will be used to regulate compliance with the provisions of the plan;
- (6) Procedures for affected parties to review and comment on the plan prior to final adoption;
- (7) Procedures to receive and review applications for variances from specific requirements of the plan and the criteria that will be considered in the determination to issue a variance;
- (8) An evaluation method to determine the actual water savings accomplished and the effectiveness of the Water Shortage Response Plan when implemented; and
- (9) Procedures for revising and updating Water Shortage Response Plans to improve plan effectiveness and adapt to new circumstances.

(b) Publicly and privately owned water systems that are required to prepare a Local Water Supply Plan shall submit a copy of their Water Shortage Response Plan and any subsequent revisions of the plan to the Division of Water Resources for review every five years with the full Local Water Supply Plan, as required by G.S. 143-355(l).

(c) Publicly and privately owned water systems not required to prepare a Local Water Supply Plan shall:

- (1) Assess their vulnerability to drought and water shortage emergencies; and
- (2) Prepare a written plan for responding to water shortage emergencies and drought using the provisions of Paragraph (a) of this Rule.

(d) Publicly and privately owned water systems that depend on the water storage in a private or public impoundment that they do not own and operate under a contract for the withdrawal of water issued by the owner of an impoundment shall prepare a written plan for responding to water shortages that is consistent with the provisions of the contract and shall comply with all Water Shortage Response Plan provisions established by the owner of the impoundment.

(e) Water Shortage Response Plans shall provide for water users who have made improvements to maximize water use efficiency in their daily operations and may face disproportionate hardships when making further water use reductions. Water Shortage Response Plans shall avoid restricting efficient water users in ways that would undermine incentives for water users to seek continued improvements in water use efficiency and shall honor locally approved certification programs that recognize efficient

water users who meet industry standards for water use efficiency and water conservation.

(f) When the NCDMAC issues a drought advisory designating an area of the state as currently suffering from drought, publicly and privately owned water systems that depend on water from the designated area shall for the duration of the designation:

- (1) Implement the provisions of their Water Shortage Response Plan, as determined by the specific indicators established in the plan for initiating response measures;
- (2) Monitor and document water supply conditions;
- (3) Educate customers and employees on the need to conserve water and how to prepare for potential drought conditions;
- (4) Inspect water delivery system components and ensure that existing equipment is operating as efficiently as possible;
- (5) Stay informed on drought and water shortage emergency conditions and participate in regional coordination for the management of water resources; and
- (6) Evaluate the feasibility of reclaiming and recycling water to meet water needs.

*History Note:* Authority G.S. 143-354(a)(1); 143-355(l); S.L. 2002-167;

*Eff. Pending Legislative Review.*

#### **15A NCAC 02E .0608 STATE AGENCY WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS**

(a) State agencies that supply their own water shall prepare a written plan for responding to water shortages using the provisions of Rule .0607(a).

(b) State agencies that are supplied water by a publicly or privately owned water system shall:

- (1) Review normal operating procedures and water use to identify options to reduce water use and maximize water use efficiency during water supply emergencies, including changes to normal operating procedures;
- (3) Provide information to their water purveyor(s) upon request to support development of the purveyor's Water Shortage Response Plan(s), including the agency's ability to reduce water use and limitations to reducing water use during droughts and water emergencies;
- (4) Develop procedures for informing employees of drought designations, water emergency declarations and response measures; and
- (5) Evaluate the feasibility of reclaiming and recycling water to meet water needs.

*History Note:* Authority G.S. 143-354(a)(1); S.L. 2002-167;  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02E .0609 LOCAL GOVERNMENT WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS**



(a) Units of local government that provide water to the public shall meet the requirements of Rule .0607(a).

(b) Units of local government that do not provide water to the public shall:

- (1) Review normal water use for the types and number of facilities operated to identify options to reduce water use and maximize water use efficiency by local government operations during water shortage emergencies, including possible changes to normal operating procedures;
- (2) Cooperate with local water purveyor(s) on the development and implementation of the purveyor's Water Shortage Response Plan(s);
- (3) Establish a procedure for informing citizens of drought designations, recommended conservation activities and mandatory response measures to reduce water use during droughts and water shortage emergencies;
- (4) Provide a mechanism whereby residents can apply for and receive a variance from specific water use reduction requirements implemented by local governments;
- (5) Consider disproportionate hardships that water shortage response policies and ordinances may cause water users who have already made improvements to maximize water use efficiency in their daily operations; and
- (6) Evaluate the feasibility of reclaiming and recycling water to meet water needs.

*History Note:* Authority G.S. 143-354(a)(1); S.L. 2002-167;  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02E .0610 BUSINESS AND INDUSTRIAL WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS**

(a) Self-supplied business and industrial water users subject to the water withdrawal registration requirements of G.S. 143-215.22H shall prepare a written plan, for responding to water shortages that is consistent with industry water efficiency and drought response guidelines, that incorporate the relevant provisions of Rule .0607(a).

(b) Business and industrial water users that depend on the water storage of a privately or publicly owned impoundment or withdraw water under a contract issued by the owner of an impoundment shall have a written plan for responding to water shortages that is consistent with the provisions of the contract and with any Water Shortage Response Plan provisions established by the owner of the impoundment.

(c) Business and industrial water users that are supplied water by a publicly or privately owned water system shall establish a procedure for responding to water shortages that is complementary to their water purveyor's Water Shortage Response Plan.

*History Note:* Authority G.S. 143-354(a)(1); S.L. 2002-167;  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02E .0612 DEFAULT WATER SHORTAGE RESPONSE PLANNING MEASURES**

Publicly or privately owned water systems that are required to prepare a Local Water Supply Plan under G.S. 143-355(l) that do not have a written Water Shortage Response Plan, as outlined in Rule .0607, shall implement the default water use reduction measures of Rules .0613 and .0614 of this Section when their water system or water source is located in an area designated as suffering from Extreme or Exceptional Drought by the Council.

*History Note:* Authority S.L. 2002-167;  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02E .0613 DEFAULT WATER USE REDUCTION MEASURES DURING NCDMAC EXTREME DROUGHT DESIGNATIONS**

When the NCDMAC designates a region of the state as suffering from Extreme Drought, the following water use reduction standards shall apply to water users in the designated area, as indicated in Rule .0612:

- (1) Water users shall reduce water use by at least 10% below the amount used in the month prior to a NCDMAC Extreme Drought designation in the affected area.
- (2) All water users shall minimize non-essential use of water.
- (3) Outdoor irrigation is prohibited, except for:
  - (a) Watering lawns less than one inch of water per week, between the hours of 8:00 PM and 8:00 AM;
  - (b) Maintaining newly installed landscapes, lawns and erosion control projects that were initiated prior to the issuance of an Extreme Drought advisory, not to exceed the minimum rate necessary on the day of installation and for 60 days following installation, by means designed and operated to maximize water use efficiency and to prevent run-off and excessive watering;
  - (c) Using spray irrigation by wastewater effluent treatment systems from the NCDMAC Extreme Drought designated area(s) according to permit conditions under the provisions of North Carolina Administrative Code 15A NCAC 02H .0200 and any successive rules and amendments, as administered by the Department's Division of Water Quality;
  - (d) Maintaining athletic fields with less than one inch of water per week between the hours of 8:00 PM and 8:00 AM;
  - (e) Maintaining personal food gardens;
  - (f) Maintaining existing landscape plantings at the minimum rate

- necessary, between the hours of 8:00 PM and 8:00 AM, using a hand held container or hose with an automatic shutoff or using drip irrigation;
- (g) Watering golf course tees, fairways and greens by means of an automated irrigation system between the hours of 8:00 PM and 8:00 AM with less than one inch of water per week;
  - (h) Syringing golf course tees and greens exhibiting visible signs of stress between the hours of 12:00 PM and 4:00 PM, at the minimum rate necessary; and
  - (i) Maintaining plant inventories, by means designed and operated to maximize water use efficiency, at retail garden centers, garden centers within mass merchant stores or other businesses with live plants as their stock in trade.
- (4) The use of water for washing or cleaning of mobile equipment including automobiles, trucks, boats and fleet vehicles is prohibited, except for:
- (a) Operating commercial car washes that utilize the industry's best management practices for the efficient use of water and those that recycle, reclaim or reuse a portion of their wash water in their daily operations and have reduced total water consumption by 10% below the amount used in the month prior to a NCDMAC Extreme Drought designation in the affected area;
  - (b) Washing with a hand-held hose with an automatic shutoff device using less than five gallons per vehicle;
  - (c) Cleaning new and used vehicles using less than five gallons per vehicle to prepare for display in a dealer's show room, upon receipt from the manufacturer or prior owner, and following a sale prior to delivery to the purchaser; and
  - (d) Cleaning of construction, emergency, transport or public transportation vehicles if necessary to preserve the proper functioning and safe operation of the vehicle.
- (5) The use of water for washing impervious and paved surfaces is prohibited, except for:
- (a) Prewashing in preparation for painting, recoating or sealing; and
  - (b) Applying at the minimum rate necessary for sanitation and public health purposes.
- (6) The use of water for ornamental fountains, artificial waterfalls, misting machines, reflecting pools, and ornamental ponds is prohibited, except for the minimum amount of make-up water necessary to maintain aquatic life.
  - (7) The use of water for power washing of buildings and other structures is prohibited except when necessary to meet federal, state and local public health and safety requirements.
  - (8) The use of water for flushing sewer lines is prohibited except when necessary to meet public health and safety standards.
  - (9) The use of water from fire hydrants is prohibited, except for:
    - (a) Fighting fire and fire protection purposes;
    - (b) Testing or training if it is necessary to protect public safety and has been approved by the applicable water purveyor; and
    - (c) Flushing of potable water lines to protect the public health.
  - (10) The filling of family, public or private swimming pools, including hot tubs, spas and whirlpool tubs, is prohibited, except:
    - (a) For health and rehabilitative purposes as prescribed by a medical doctor or administered by a medical facility; and
    - (b) For the minimal amount of make-up water necessary to maintain a pool's structural integrity and filtration system.
  - (11) The serving of water in eating and drinking establishments shall be done on customer request only.
  - (12) Water shall be applied at the minimum rate necessary to maintain effective dust and erosion control during the construction of roads and highways initiated prior to the declaration of an Extreme Drought by the NCDMAC.

*History Note: Authority S.L. 2002-167; Eff. Pending Legislative Review.*

**15A NCAC 02E .0614 DEFAULT WATER USE REDUCTION MEASURES DURING NCDMAC EXCEPTIONAL DROUGHT DESIGNATIONS**

When the NCDMAC designates a region of the state as suffering from Exceptional Drought, the following water use reduction standards shall apply to water users in the designated area, as indicated in Rule .0612:

- (1) Water users shall reduce water use by at least 20% below the amount used in the month prior to the most recent NCDMAC Extreme Drought designation in the affected area.

- (2) Non-essential water use shall be minimized by the maximum extent possible.
- (3) Outdoor irrigation is prohibited, except for:
  - (a) Using spray irrigation by wastewater effluent treatment systems in NCDMAC Exceptional Drought designated areas according to permit conditions under the provisions of North Carolina Administrative Code 15A NCAC 02H .0200 and any successive rules and amendments, as administered by the Department's Division of Water Quality;
  - (b) Watering personal food gardens by hand with a container or hand held hose with an automatic shutoff device or using drip irrigation between the hours of 8:00 PM and 8:00 AM;
  - (c) Maintaining existing landscape plantings at the minimum rate necessary, between the hours of 8:00 PM and 8:00 AM, using a hand held container or hose with an automatic shutoff or using drip irrigation;
  - (d) Watering golf course tees, fairways and greens, athletic fields and lawns between the hours of 8:00 PM and 8:00 AM with less than one half inch of water per week;
  - (e) Syringing of golf course tees and greens exhibiting visible signs of stress between the hours of 1:00 PM and 4:00 PM, at the minimum rate necessary;
  - (f) Maintaining newly installed landscapes, lawns and erosion control projects that were initiated prior to the issuance of an Extreme Drought advisory, not to exceed the minimum rate necessary on the day of installation and for 28 days following installation, by means designed and operated to maximize water use efficiency and to prevent run-off and excessive watering; and
  - (g) Maintaining plant inventories, by means designed and operated to maximize water use efficiency, at retail garden centers, garden centers within mass merchant stores, or other businesses with live plants as their stock in trade.
- (4) The use of water for washing or cleaning mobile equipment including automobiles, trucks, boats and fleet vehicles is prohibited, except for:
  - (a) Operating commercial car washes that utilize the industry's best management practices for the efficient use of water and those that recycle, reclaim or reuse a portion of their wash water and have reduced total water consumption by 20% below the amount used in the month prior to the most recent NCDMAC Extreme Drought designation in the affected area;
  - (b) Cleaning of new and used vehicles in preparation for display in a dealer's show room, using less than five gallons per vehicle; and
  - (c) Using the minimum amount of water necessary to clean construction, emergency, transport or public transportation vehicles, if required to preserve the proper functioning and safe operation of the vehicle as required by law.
- (5) The use of water for washing impervious and paved surfaces is prohibited except for using the minimum amount of water necessary for sanitation and public health purposes.
- (6) The use of water for power washing of buildings and other structures is prohibited.
- (7) The use of water for flushing sewer lines is prohibited except when necessary to meet public health and safety standards.
- (8) The use of water from fire hydrants is prohibited, except for:
  - (a) Fighting fire and fire protection purposes; and
  - (b) Flushing of drinking water lines to protect public health and safety.
- (9) The filling of family, public or private swimming pools, including hot tubs, spas and whirlpool tubs, is prohibited except for health and rehabilitative purposes as prescribed by a medical doctor or administered by a medical facility.
- (10) The use of water for ornamental fountains, artificial waterfalls, misting machines, reflecting pools, and ornamental ponds is prohibited, except for the minimum amount of make-up water necessary to maintain aquatic life.
- (11) The serving of water in eating and drinking establishments shall be done on customer request only.
- (12) Water shall be applied at the minimum rate necessary to maintain effective dust and erosion control during the construction of roads and highways initiated prior to the declaration of an Extreme Drought by the NCDMAC.

*History Note: Authority S.L. 2002-167; Eff. Pending Legislative Review.*

**15A NCAC 02E .0615 WATER REUSE DURING DROUGHTS AND WATER EMERGENCIES**

Water users may use reclaimed water under the provisions of North Carolina Administrative Code 15A NCAC 02H .0200 and any successive rules and amendments, as administered by the Department's Division of Water Quality, during droughts and other water emergencies to reduce withdrawals of surface water and ground water and to extend available water supplies.

*History Note: Authority S.L. 2002-167;  
Eff. Pending Legislative Review.*

**15A NCAC 02T .0103 DEFINITIONS**

The terms used in this Subchapter shall be as defined in G.S. 143-212 and 143-213 except as provided in this Rule and in definitions provided in program specific rules in this Subchapter and as follows:

- (1) "Agronomic rate" is defined as the amount of waste and other materials applied to meet the nitrogen needs of the crop, but does not overload the soil with nutrients or other constituents that cause or contribute to a contravention of surface water or groundwater standards, limit crop growth, or adversely impact soil quality. Nitrogen needs of the crop shall be based on realistic yield expectations (RYE) established for a soil series through published Cooperative Extension Service bulletins, Natural Resources Conservation Service publications, county soil surveys, or site specific agronomist reports.
- (2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter or other materials generated at a feedlot.
- (3) "Bedrock" is as defined in 15A NCAC 02L .0102.
- (4) "Buffer" means a natural or vegetated area as defined in 15A NCAC 02B .0202.
- (5) "CFR" means Code of Federal Regulations. All CFRs cited herein may be obtained at Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, Md, 20850-1714 for a cost of thirty-six dollars (\$36.00) each plus four dollars (\$4.00) shipping and handling or at <http://www.gpoaccess.gov/cfr/>. Copies are also available for review at 512 North Salisbury Street, Raleigh, North Carolina 27604.
- (6) "Commission" as defined in G.S. 143-212 or their delegate.
- (7) "Compliance boundary" is as defined in 15A NCAC 02L .0102.
- (8) "Deemed permitted" means that a facility is considered as having a needed permit and being compliant with the permitting requirements of G.S. 143-215.1(a) even though it has not received an individual permit for its construction or operation.

- (9) "Department" as defined in G.S. 143-212.
- (10) "Director" means the Director of the Division or its delegate.
- (11) "Division" means the Division of Water Quality in the Department. All rules cited in this Section under the authority of the Division may be obtained at 512 North Salisbury Street, Raleigh, North Carolina 27604 or at the Division's web page at [www.ncwaterquality.org](http://www.ncwaterquality.org) at no charge.
- (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.
- (13) "Engineer" is an individual who is currently licensed by the North Carolina Board of Examiners For Engineers and Land Surveyors or authorized to practice under G.S. 89C as an engineer.
- (14) "EPA" means the United States Environmental Protection Agency.
- (15) "Ephemeral (stormwater) stream" means a stream as defined in 15A NCAC 02B .0233.
- (16) "Essential treatment unit" means any unit associated with the wastewater treatment process whose loss would likely render the facility incapable of meeting the required performance criteria including aeration units or other main treatment units, clarification equipment, filters, disinfection equipment, pumps and blowers.
- (17) "General Permit" means a permit issued under G.S. 143-215.1(b)(3), 143-215.1(b)(4) or 143-215.10C.
- (18) "Groundwaters" means those waters in the saturated zone of the earth as defined in 15A NCAC 02L .0102.
- (19) "Groundwater standards" means groundwater standards as established in 15A NCAC 02L .0200.
- (20) "Industrial wastewater" means all wastewater other than sewage or animal waste and includes:
  - (a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
  - (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and vehicle/equipment washes, but not wastewater from restaurants;
  - (c) stormwater that is contaminated with an industrial wastewater;
  - (d) any combination of sewage and industrial wastewater;
  - (e) municipal wastewater unless it can be demonstrated to the satisfaction of the

- Division that the wastewater contains no industrial wastewater;
- (f) contaminated groundwater extracted as part of an approved groundwater remediation system approved by the Division in accordance with 15A NCAC 02L .0100.
- (21) "Intermittent stream" means a stream as defined in 15A NCAC 02B .0233.
- (22) "NPDES" means National Pollutant Discharge Elimination System.
- (23) "Perennial stream" means a stream as defined in 15A NCAC 02B .0233.
- (24) "Perennial waterbody" means a waterbody as defined in 15A NCAC 02B .0233.
- (25) "Pollutant" means waste as defined in G.S. 143-213.
- (26) "Potable waters" means water as defined in 15A NCAC 02L .0102.
- (27) "Private well" means any potable or irrigation well not directly controlled by a public authority or a public utility authorized by the North Carolina Public Utilities Commission. This may include a private individual or community well as defined in the public water supply rules contained in 15A NCAC 18C.
- (28) "Professional engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina Board of Examiners For Engineers and Land Surveyors.
- (29) "Public or community sewage system" means a single system of sewage collection, treatment, or disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county, a municipality or a public utility authorized to operate by the North Carolina Utilities Commission.
- (30) "Residuals" means any solid, semisolid, or liquid waste, other than effluent or residues from agricultural products and processing, generated from a wastewater treatment facility, water supply treatment facility or air pollution control facility permitted under the authority of the Commission.
- (31) "Residues from agricultural products and processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations permitted under the authority of the Commission that are non-toxic, non-hazardous and contain no domestic wastewater.
- (32) "Restrictive horizon" is the layer in a soil profile that is capable of reducing the downward water movement to the minimum rate, as evidenced by lowest saturated hydraulic conductivity among all the soil layers. Restrictive horizon is often capable of perching ground water or wastewater effluent and is characterized by accumulation of finer soil particles (such as aluminum, clay, iron, silica, organic matter, or other compounds) or compaction due to heavy equipments.
- (33) "Review boundary" is as defined in 15A NCAC 02L .0102.
- (34) "Seasonal High Water Table" or "SHWT" is the highest level to which the soil is saturated, as may be determined through the identification of redoximorphic features in the soil profile including low chroma mottling. This does not include temporary perched conditions. Alternatively, the SHWT can also be determined from water level measurements or via soil/groundwater modeling.
- (35) "Secretary" as defined in G.S. 143-212 or its delegate.
- (36) "Setback" means the minimum separation in linear feet, measured on a horizontal plane, required between a treatment works, disposal system, or utilization system and physical features such as building, roads, property lines, or water bodies.
- (37) "Sewage" means the liquid and solid human waste, and liquid waste generated by domestic water-using fixtures and appliances, from any residence, place of business, or place of public assembly. Sewage does not include wastewater that is totally or partially industrial wastewater, or any other wastewater not considered to be domestic waste.
- (38) "Soil scientist" means an individual who is currently licensed or authorized to practice soil science under G.S. 89F by the North Carolina Board for Licensing of Soil Scientists.
- (39) "Staff" means the staff of the Division.
- (40) "Surface waters" means all waters as defined in G.S. 143-212 except underground waters.
- (41) "Surface water standards" means surface water standards as established in 15A NCAC 02B .0200.
- (42) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans or specific parts of a certified animal waste management plan.
- (43) "Toxicity test" means a test for toxicity conducted using the procedures contained in 40 CFR 261, Appendix II which is hereby incorporated by reference including any subsequent amendments and editions.
- (44) "Treatment works or disposal system which does not discharge to surface waters" means any treatment works, facility, utilization system, or disposal system which is designed to:

- (a) operate as closed system with no discharge to waters of the state, or
- (b) dispose/utilize of wastes, including residuals, residues, contaminated soils and animal waste, to the surface of the land, or
- (c) dispose of wastes through a subsurface disposal system pursuant to G.S. 143-215.1(b)(4).
- (45) "Waste oil" means any used nonhazardous petroleum product other than crankcase oil. Crankcase oil mixed with other used nonhazardous petroleum products shall be considered as waste oil.
- (46) "Wetlands" are "waters" as defined in G.S. 143-212 and are areas that are inundated or saturated by an accumulation of surface or ground water as defined in 15A NCAC 02B .0202.

*History Note: Authority G.S. 130A-335; 143-213; 143-215.3(a)(1); Eff. September 1, 2006.*

**15A NCAC 02T .0104 ACTIVITIES WHICH REQUIRE A PERMIT**

No person shall do any of the things or carry out any of the activities contained in G.S. 143-215.1(a) until or unless the person shall have applied for and received a permit from the Division (or if appropriate a local program approved by the Division pursuant to this Subchapter) and shall have complied with the conditions prescribed in the permit or is deemed permitted by rules in this Subchapter.

*History Note: Authority G.S. 130A-335; 143-215.1; 143-215.3(a)(1); Eff. September 1, 2006.*

**15A NCAC 02T .0105 GENERAL REQUIREMENTS**

- (a) Jurisdiction. Applications for permits from the Division shall be made in accordance with this Rule. Applications for permits under the jurisdiction of a local program shall be made in accordance with the requirements of the Division approved program.
- (b) Applications. Application for a permit must be made on Division forms completely filled out, where applicable, and fully executed in the manner set forth in Rule .0106 of this Section. A processing fee as described in G.S. 143-215.3D must be submitted with each application in the form of a check or money order made payable to the Department. Applications shall be returned if incomplete. Sewer line extensions shall be applied for separately from treatment, utilization, and disposal systems. The applicant shall provide adequate documentation to the Division to ensure that the proposed system will meet all design and performance criteria as required under this Subchapter and other applicable rules, be operated as a non-discharge system, and protect surface water and groundwater standards. Variances to this Subchapter or adopted design criteria must be specifically requested in the application and, if approved pursuant to

Paragraph (n) of this Rule, incorporated into the permit. The Division may accept certification from a licensed or certified professional (e.g. Professional Engineers, Licensed Soil Scientist, Licensed Geologist, Technical Specialist) that the design meets or exceeds minimum design criteria applicable to the project. Division acceptance of certifications by the applicant or by licensed or certified professionals preparing reports for the application shall not constitute approval of a variance to this Subchapter or applicable minimum design and performance criteria unless specifically requested in the application and approved in the permit.

(c) Application packages for new and expanding facilities shall include the following items:

- (1) The number of executed copies shall include the number necessary for each review office and one additional copy. Additional copies shall be required if needed for federal and state grant and loan projects.
- (2) Reports, engineering plans, specifications, and calculations as required by the applicable rules of this Subchapter. If prepared by licensed or certified professionals these reports shall be submitted in accordance with the respective statutes and rules governing that profession.
- (3) Operational agreements as required by Rule .0115 of this Section.
- (4) For projects that require environmental documentation pursuant to the North Carolina Environmental Policy Act, a final environmental document (Finding of No Significant Impact or Record of Decision).
- (5) A general scaled location map, showing orientation of the facility with reference to at least two geographic references (e.g. numbered roads, named streams/rivers).
- (6) Documentation that other directly related (i.e. needed to properly construct and operate the facilities permitted under this Subchapter) environmental permit or certification applications are being prepared, have been applied for, or have been obtained (e.g. 401 certifications, erosion and sedimentation control plans, stormwater management plans). The Division shall consider the application incomplete or issue the permit contingent on issuance of the dependent permits if issuance of other permits or certifications impact the system permitted under this Subchapter.
- (7) A description of the project including the origin, type and flow of waste to be treated. For industrial processing facilities, a waste analysis extensive enough to allow a complete evaluation of the system's capability to treat the waste and any potential impacts on the waters of the state shall be included.
- (8) Documentation of compliance with Article 21 Part 6 (Floodway Regulations) of Chapter 143 of the General Statutes.

- (9) Documentation as required by other applicable rule(s) in this Subchapter.
- (10) Documentation of the presence or absence of threatened or endangered aquatic species utilizing information provided by the Natural Heritage Program of the Department. This shall only apply to the area whose boundary is encompassed by and for the purpose of installation, operation, and maintenance of facilities permitted herein (wastewater collection, treatment, storage, utilization, or disposal). This documentation shall provide information on the need for permit conditions pursuant to Paragraph (i) of this Rule. The Natural Heritage Program can be contacted at <http://www.ncnhp.org> or write to Natural Heritage Program, 1601 Mail Service Center, Raleigh, NC 27699-1601.
- (d) Application packages for renewals shall include updated site plans (if required as part of original submittal).
- (e) Application and annual Fees.
  - (1) Application Fee. For every application for a new or major modification of a permit under this Section, a nonrefundable application processing fee in the amount provided in G.S. 143-215.3D shall be submitted to the Division by the applicant at the time of application. For a facility with multiple treatment units under a single permit, the application fee shall be set by the total design treatment capacity. Modification fees shall be based on the projected annual fee for the facility.
  - (2) Annual Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every renewable permit according to the schedule in G.S. 143-215.3D(a). Annual fees must be paid for any facility operating on an expired permit that has not been rescinded or revoked by the Division. Permittees shall be billed annually by the Division. A change in the facility which changes the annual fee shall result in the revised annual fee being billed effective with the next anniversary date.
  - (3) Failure to pay an annual fee within 30 days after being billed shall be cause for the Division to revoke the permit.
- (f) Designs for facilities permitted under this Section shall use the practicable waste treatment and disposal alternative with the least adverse impact on the environment in accordance with G.S. 143-215.1(b)(2).
- (g) In order to protect Publicly Owned Treatment Works, the Division shall incorporate pretreatment requirements under 15A NCAC 2H .0900 into the permit.
- (h) Setbacks and required separation distances shall be provided as required by individual rules in this Subchapter. Setbacks to streams (perennial and intermittent), perennial waterbodies, and wetlands shall be determined using the methodology set forth in 15A NCAC 02B .0233(4)(a). Setbacks to wells are for those

wells outside the compliance boundary. Where wells would otherwise be inside the compliance boundary as established in 15A NCAC 02L .0107, the applicant may request the compliance boundary be established closer to the waste disposal area and this shall be granted provided the groundwater standards can be met at the newly established compliance boundary.

- (i) Permits may provide specific conditions to address the protection of threatened or endangered aquatic species as provided in plans developed pursuant in 15A NCAC 02B .0110 if the construction and operation of the facility directly impacts such species.
- (j) The permittee shall keep permits active until the waste treatment systems authorized by the permit are properly closed or subsequently permitted under another permit issued by the appropriate permitting authority for that activity.
- (k) Monitoring of waste and surface waters shall be in accordance with 15A NCAC 02B .0505 except as otherwise provided by specific rules in this Subchapter.
- (l) Reporting shall be in accordance with 15A NCAC 02B .0506 except as otherwise provided by specific rules in this Subchapter.
- (m) Monitoring of groundwater shall be in accordance with Sections 15A NCAC 02L .0100 and 15A NCAC 02C .0100 except as otherwise provided by specific rules in this Subchapter.
- (n) The Director shall approve alternative Design Criteria in cases where the applicant can demonstrate that the alternative design criteria will provide the following:
  - (1) equal or better treatment of the waste;
  - (2) equal or better protection of the waters of the state; and
  - (3) no increased potential for nuisance conditions from noise, odor or vermin.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0106 SUBMISSION OF PERMIT APPLICATIONS**

(a) Permit applications, supporting information, and processing fee for permits issued by the Division shall be filed with the Division. Applications for permits from a Division approved local permitting program shall be submitted directly to the local program director. Division permit processing fees are not required for permits issued by delegated local permitting programs.

(b) Permit applications shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his authorized representative;
- (2) in the case of a partnership or a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either an executive officer,

elected official in the highest level of elected office, or other authorized employee.

(c) Delegation of other authorized employees or any employee in a specific position (i.e. signing officials) shall be provided in letter format to the Division signed by an authorized person pursuant to Paragraph (b) of this Rule. The delegation may be for a specific permit application or more general for certain or all types of water quality permits. The letter shall identify the extent of delegation.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1; Eff. September 1, 2006.*

**15A NCAC 02T .0108 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION**

(a) The Director shall take final action on all applications not later than 90 days following receipt of a complete application and with required information. All permits or renewals of permits and decisions denying permits or renewals shall be in writing.

(b) The Director may:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of Article 21, Chapter 143 of the General Statutes;
- (2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, surface water or groundwater standards and other legally applicable requirements;
- (3) deny a permit application where necessary to effectuate:
  - (A) the purposes of Article 21, Chapter 143;
  - (B) the purposes of G.S. 143-215.67(a);
  - (C) rules on coastal waste treatment, disposal, found in Section 15A NCAC 02H .0400;
  - (D) rules on groundwater quality standards found in Subchapter 02L of this Chapter.
- (4) hold public meetings when necessary to obtain additional information needed to complete the review of the application. The application shall be considered as incomplete until the close of the meeting record.

(c) The Division may require any monitoring and reporting requirements, including groundwater, surface water or wetlands, waste, wastewater, sludge, soil, treatment process, lagoon/storage pond, and plant tissue, necessary to determine the source, quantity and quality of the waste and its effect upon the surface water, ground waters or wetlands. All reports must be submitted on Division supplied forms or forms approved by the Division as providing the same information as required by the Division's forms.

(d) If a permit is denied, the letter of denial shall state the reason(s) for denial and any reasonable measures which the applicant may take to make the application approvable.

(e) All permits requiring an annual fee shall be issued for a time period not to exceed five years.

*History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.1(d); 143-215.3(a)(1); Eff. September 1, 2006.*

**15A NCAC 02T .0110 MODIFICATION AND REVOCATION OF PERMITS**

Any permit issued by the Division pursuant to this Subchapter is subject to revocation, or modification upon 60 days notice by the Director in whole or part for:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) refusal of the permittee to allow authorized employees of the Department upon presentation of credentials:
  - (a) to enter upon permittee's premises on which a system is located in which any records are required to be kept under terms and conditions of the permit;
  - (b) to have access to any documents and records required to be kept under terms and conditions of the permit;
  - (c) to inspect any monitoring equipment or method required in the permit; or
  - (d) to sample any pollutants.
- (4) failure to pay the annual fee for administering and compliance monitoring.

*History Note: Authority G.S. 143-215.1(b)(2); 143-215.3(a)(1); Eff. September 1, 2006.*

**15A NCAC 02T .0111 CONDITIONS FOR ISSUING GENERAL PERMITS**

(a) In accordance with the provisions of G.S. 143-215.1(b), (c) and (d), general permits may be developed by the Division and issued by the Director for categories of activities covered by this Subchapter. General permits may be written for categories of activities that involve the same or substantially similar operations, have similar treated waste characteristics, require the same limitations or operating conditions, and require the same or similar monitoring. After issuance of a general permit by the Director, persons operating facilities described by the general permit may request coverage under it, and the Director or his designee may grant appropriate certification. All individual operations which receive a "Certificate of Coverage" under a general permit are permitted under the specific general permit for which the coverage was issued. A Certificate of Coverage shall mean that approval is given to facilities that meet the requirements of coverage under the general permit. Persons operating facilities covered under general permits developed in accordance with this Rule shall be subject to the same limits, conditions, management practices, enforcement authorities, and rights and privileges as specified in the general permit.



(b) Upon development of a draft general permit, the Director shall publicly notice under G.S. 143-215.4 (b)(1) and (2), at least 30 days prior to final action, an intent to issue the general permit. A one time publication of the notice in a newspaper having general circulation in the geographic areas affected by the proposed permit shall be required. The notice shall provide the name, address and phone number of the Division, a brief description of the intended action, and a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and other means by which interested persons may comment upon the determinations.

(c) No provisions in any general permit issued under this Rule shall be interpreted as allowing the permittee to violate state surface water standards, groundwater standards outside a Compliance Boundary established in accordance with 15A NCAC 02L .0107, or other applicable environmental Rules. Construction of new water supply wells for human consumption shall be prohibited within Compliance Boundaries for facilities covered under general permits issued under this Section. General permits issued pursuant to this Rule shall be considered individual permits for purposes of Compliance Boundaries established under 15A NCAC 02L .0107.

(d) To obtain an individual Certificate of Coverage, a Notice of Intent to be covered by the general permit must be given by the applicant to the Division using forms provided by the Division. Coverage under the general permit shall be granted unless the Director makes a determination under Paragraph (h) of this Rule that an individual permit is required. If all requirements are not met, an individual permit application and full application review procedure shall be required.

(e) General permits shall be effective for a term not to exceed five years at the end of which the Division may renew them. The Division shall satisfy public notice requirements specified in Paragraph (b) of this Rule prior to renewal of general permits. If the Division does not renew a general permit, all operations covered under that general permit shall be notified to submit applications for individual permits.

(f) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Subchapter shall be in violation of G.S. 143-215.1.

(g) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any operation covered by this Rule.

(h) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit include:

- (1) the operation is a significant contributor of pollutants to the waters of the state;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the wastewater such that the operation no

longer qualifies for coverage under a general permit;

- (3) noncompliance with the general permit;
- (4) noncompliance with the Commission rules in this Chapter;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the operation;
- (6) a determination by the Division that there has been or is the potential to have a direct discharge of wastewater, sludge or residuals to waters of the state;
- (7) the system has been allowed to deteriorate or leak such that it poses an immediate threat to the environment.

(i) General permits or individual Certificate of Coverages may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of rules of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a)(1); 143-215.10C;

*Eff. September 1, 2006.*

#### **15A NCAC 02T .0113 PERMITTING BY REGULATION**

(a) The following disposal systems as well as those in Permitting By Regulation rules in this Subchapter (i.e., Rules .0203, .0303, .0403, .0903, .1003, .1103, .1203, .1303, .1403, and .1503) are deemed to be permitted pursuant to G.S. 143-215.1(b) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following disposal systems provided the system does not result in any violations of surface water or groundwater standards, there is no direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Swimming pool and spa filter backwash and drainage, filter backwash from aesthetic fountains, filter backwash from commercial or residential water features such as garden ponds or fish ponds that is discharged to the land surface.
- (2) Backwash from raw water intake screening devices that is discharged to the land surface.
- (3) Condensate from residential or commercial air conditioning units that is discharged to the land surface.
- (4) Discharges to the land surface from individual non-commercial car washing operations.
- (5) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions or new reclaimed water distribution lines.
- (6) Street wash water that is discharged to the land surface.
- (7) Discharges to the land surface from fire fighting activities.

- (8) Discharges to the land surface associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill.
  - (9) Discharges to the land surface associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following criteria:
    - (A) the volume produced by the decontamination activity is too large to be contained onsite;
    - (B) the Division is informed prior to commencement of the decontamination activity; and
    - (C) the wastewater is not radiologically contaminated or classified as hazardous waste.
  - (10) Drilling muds, cuttings and well water from the development of wells or from other construction activities including directional boring.
  - (11) Purge water from groundwater monitoring wells.
  - (12) Composting facilities for dead animals, if the construction and operation of the facilities is approved by the North Carolina Department of Agriculture and Consumer Services; the facilities are constructed on an impervious, weight-bearing foundation, operated under a roof; and the facilities are approved by the State Veterinarian pursuant to G.S. 106-403.
  - (13) Overflow from elevated potable water storage facilities.
  - (14) Mobile carwashes if:
    - (A) all detergents used are biodegradable;
    - (B) no steam cleaning, engine or parts cleaning is being conducted;
    - (C) notification is made prior to operation by the owner to the municipality or if not in a municipality then the county
  - (D) where the cleaning service is being provided; and all non-recyclable washwater is collected and discharged into a sanitary sewer or wastewater treatment facility upon approval of the facility's owner.
  - (15) Mine tailings where no chemicals are used in the mining process.
  - (16) Mine dewatering where no chemicals are used in the mining process.
  - (17) Wastewater created from the washing of produce, with no further processing on-site, on farms where the wastewater is irrigated onto fields so as not to create runoff or cause a discharge.
- (b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation shall be considered a violation of a condition of a permit. Further, nothing in this Rule shall be deemed to apply to or permit disposal systems for which a state/NPDES permit is otherwise required.
- (c) Any violation of this Rule or discharge to surface waters from the disposal systems listed in Paragraph (a) of this Rule or the activities listed in other Permitted By Regulation rules in this Subchapter shall be reported in accordance with 15A NCAC 02B .0506.
- (d) Disposal systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in this Subchapter, until such time as the Director determines that they should not be deemed permitted in accordance with the criteria established in this Rule.
- (e) The Director may determine that a disposal system should not be deemed to be permitted in accordance with this Rule or other Permitted By Regulation rules in this Subchapter and require the disposal system to obtain an individual permit or a certificate of coverage under a general permit. This determination shall be made based on existing or projected environmental impacts, compliance with the provisions of this Rule or other Permitted By Regulation rules in this Subchapter, and the compliance history of the facility owner.
- History Note: Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.1(b)(4)(e); 143-215.3(a),(d); Eff. September 1, 2006.*

**15A NCAC 02T .0114 WASTEWATER DESIGN FLOW RATES**

(a) This Rule shall be used to determine wastewater flow rates for all systems covered by this Subchapter unless alternate criteria are provided by a program specific rule and for flow used for the purposes of 15A NCAC 02H .0105. These are minimum design daily flow rates for normal use and occupancy situations. Higher flow rates may be required where usage and occupancy are atypical, including, those in Paragraph (e) of this Rule. Wastewater flow calculations must take hours of operation and anticipated maximum occupancies/usage into account when calculating peak flows for design.

(b) In determining the volume of sewage from dwelling units, the flow rate shall be 120 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 240 gallons per day and each additional bedroom above two bedrooms shall increase the volume by 120 gallons per day. Each bedroom or any other room or addition that can reasonably be expected to function as a bedroom shall be considered a bedroom for design purposes. When the occupancy of a dwelling unit exceeds two persons per bedroom, the volume of sewage shall be determined by the maximum occupancy at a rate of 60 gallons per person per day.

(c) The following table shall be used to determine the minimum allowable design daily flow of wastewater facilities. Design flow rates for establishments not identified below shall be determined using available flow data, water-using fixtures, occupancy or operation patterns, and other measured data.

Type of Establishments	Daily Flow For Design
Barber and beauty shops	
Barber Shops	50 gal/chair
Beauty Shops	125 gal/booth or bowl
Businesses, offices and factories	
General business and office facilities	25 gal/employee/shift
Factories, excluding industrial waste	25 gal/employee/shift
Factories or businesses with showers or food preparation	35 gal/employee/shift
Warehouse	100 gal/loading bay
Warehouse – self storage (not including caretaker residence)	1 gal/unit
Churches	
Churches without kitchens, day care or camps	3 gal/seat
Churches with kitchen	5 gal/seat
Churches providing day care or camps	25 gal/person (child & employee)
Fire, rescue and emergency response facilities	
Fire or rescue stations without on site staff	25 gal/person
Fire or rescue stations with on-site staff	50 gal/person/shift
Food and drink facilities	
Banquet, dining hall	30 gal/seat
Bars, cocktail lounges	20 gal/seat
Caterers	50 gal/100 sq ft floor space
Restaurant, full Service	40 gal/seat
Restaurant, single service articles	20 gal/seat
Restaurant, drive-in	50 gal/car space
Restaurant, carry out only	50 gal/100 sq ft floor space
Institutions, dining halls	5 gal/meal
Deli	40 gal/100 sq ft floor space
Bakery	10 gal/100 sq ft floor space
Meat department, butcher shop or fish market	75 gal/100 sq ft floor space
Specialty food stand or kiosk	50 gal/100 sq ft floor space
Hotels and Motels	
Hotels, motels and bed & breakfast facilities, without in-room cooking facilities	120 gal/room
Hotels and motels, with in-room cooking facilities	175 gal/room
Resort hotels	200 gal/room
Cottages, cabins	200 gal/unit
Self service laundry facilities	500 gal/machine
Medical, dental, veterinary facilities	
Medical or dental offices	250 gal/practitioner/shift
Veterinary offices (not including boarding)	250 gal/practitioner/shift
Veterinary hospitals, kennels, animal boarding facilities	20 gal/pen, cage, kennel or stall
Hospitals, medical	300 gal/bed
Hospitals, mental	150 gal/bed
Convalescent, nursing, rest homes without laundry facilities	60 gal/bed
Convalescent, nursing, rest homes with laundry facilities	120 gal/bed
Residential care facilities	60 gal/person
Parks, recreation, camp grounds, R-V parks and other outdoor activity facilities	
Campgrounds with comfort station, without water or sewer hookups	75 gal/campsite
Campgrounds with water and sewer hookups	100 gal/campsite
Campground dump station facility	50 gal/space
Construction, hunting or work camps with flush toilets	60 gal/person
Construction, hunting or work camps with chemical or portable toilets	40 gal/person
Parks with restroom facilities	250 gal/plumbing fixture

Summer camps without food preparation or laundry facilities	30 gal/person
Summer camps with food preparation and laundry facilities	60 gal/person
Swimming pools, bathhouses and spas	10 gal/person
Public access restrooms	325 gal/plumbing fixture
Schools, preschools and day care	
Day care and preschool facilities	25 gal/person (child & employee)
Schools with cafeteria, gym and showers	15 gal/student
Schools with cafeteria	12 gal/student
Schools without cafeteria, gym or showers	10 gal/student
Boarding schools	60 gal/person (student & employee)
Service stations, car wash facilities	
Service stations, gas stations	250 gal/plumbing fixture
Car wash facilities (if recycling water see Rule .0235)	1200 gal/bay
Sports centers	
Bowling center	50 gal/lane
Fitness, exercise, karate or dance center	50 gal/100 sq ft
Tennis, racquet ball	50 gal/court
Gymnasium	50 gal/100 sq ft
Golf course with only minimal food service	250 gal/plumbing fixture
Country clubs	60 gal/member or patron
Mini golf, putt-putt	250 gal/plumbing fixture
Go-kart, motocross	250 gal/plumbing fixture
Batting cages, driving ranges	250 gal/plumbing fixture
Marinas without bathhouse	10 gal/slip
Marinas with bathhouse	30 gal/slip
Video game arcades, pool halls	250 gal/plumbing fixture
Stadiums, auditoriums, theaters, community centers	5 gal/seat
Stores, shopping centers, malls and flea markets	
Auto, boat, recreational vehicle dealerships/showrooms with restrooms	125 gal/plumbing fixture
Convenience stores, with food preparation	60 gal/100 sq ft
Convenience stores, without food preparation	250 gal/plumbing fixture
Flea markets	30 gal/stall
Shopping centers and malls with food service	130 gal/1000 sq ft
Stores and shopping centers without food service	100 gal/1000 sq ft
Transportation terminals – air, bus, train, ferry, port and dock	5 gal/passenger

(d) Design daily flow rates for proposed non-residential developments where the types of use and occupancy are not known shall be designed for a minimum of 880 gallons per acre or the applicant shall specify an anticipated flow based upon anticipated or potential uses.

(e) Conditions applicable to the use of the above design daily flow rates:

- (1) For restaurants, convenience stores, service stations and public access restroom facilities, higher design daily flow rates shall be required based on higher expected usage where use is increased because of its proximity to highways, malls, beaches, or other similar high use areas.
- (2) Residential property on barrier islands and similar communities located south or east of the Atlantic Intracoastal Waterway used as vacation rental as defined in G.S. 42A-4 shall use 120 gallons per day per habitable room. Habitable room shall mean a room or enclosed floor space used or intended to be used for living or sleeping, excluding kitchens and

dining areas, bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, closets, and storage spaces.

(f) An adjusted daily sewage flow design rate shall be granted for permitted but not yet tributary connections and future connections tributary to the system upon showing that a sewage system is adequate to meet actual daily wastewater flows from a facility included in Paragraph (b) or (c) of this Rule without causing flow violations at the receiving wastewater treatment plant or capacity related sanitary sewer overflows within the collection system as follows:

- (1) Documented, representative data from that facility or a comparable facility shall be submitted by an authorized signing official in accordance with Rule .0106 of this Section to the Division as follows for all flow reduction request:
  - (A) Dates of flow meter calibrations during the time frame evaluated and indication if any adjustments were necessary.

- (B) A breakdown of the type of connections (e.g. two bedroom units, three bedroom units) and number of customers for each month of submitted data as applicable. Identification of any non-residential connections including subdivision clubhouses/pools, restaurants, schools, churches and businesses. For each non-residential connection, information as identified in Paragraph (c) of this Rule (e.g. 200 seat church, 40 seat restaurant, 35 person pool bathhouse).
  - (C) Owner of the collection system.
  - (D) Age of the collection system.
  - (E) Analysis of inflow and infiltration within the collection system or receiving treatment plant, as applicable.
  - (F) Where a dedicated wastewater treatment plant serves the specific area and is representative of the residential wastewater usage, at least the 12 most recent consecutive monthly average wastewater flow readings and the daily total wastewater flow readings for the highest average wastewater flow month per customers as reported to the Division.
  - (G) Where daily data from a wastewater treatment plant cannot be utilized or is not representative of the project area: at least 12 months worth of monthly average wastewater flows from the receiving treatment plant shall be evaluated to determine the peak sewage month. Daily wastewater flows shall then be taken from a flow meter installed at the most downstream point of the collection area for the peak month selected that is representative of the project area. Justification for the selected placement of the flow meter shall also be provided.
  - (H) An estimated minimum design daily sewage flow rate shall be taken by calculating the numerical average of the top three daily readings for the highest average flow month. The calculations shall also account for seasonal variations, excessive inflow and infiltration, age and suspected meter reading/recording errors.
- (2) The Division shall evaluate all data submitted but shall also consider other factors in granting, with or without adjustment, or denying a flow reduction request including: applicable weather conditions during the data period (i.e. rainy or drought), other historical monitoring data for the particular facility or other similar facilities available to the Division, the general accuracy of monitoring reports and flow meter readings, and facility usage (i.e., resort area).
- (3) Flow increases shall be required if the calculations in Subparagraph (f)(1) of this Rule yield design flows higher than that specified in Paragraphs (b) or (c) of this Rule.
  - (4) The applicant/owner shall retain the letter of any approved adjusted daily design flow rate for the life of the facility and shall transfer such letter to any new system owner.
- History Note: Authority G.S. 143-215.1; 143-215.3(a)(1); Eff. September 1, 2006.*
- 15A NCAC 02T .0115 OPERATIONAL AGREEMENTS**
- (a) Prior to issuance or reissuance of a permit pursuant to this Subchapter for a wastewater facility or sewer extension as specified in G.S. 143-215.1(d1), a private applicant shall provide evidence with the permit application:
- (1) To show that the applicant has been designated as a public utility by the North Carolina Utilities Commission and is authorized to provide service to the specific project area. This may be a Certificate of Public Convenience and Necessity or letter from the Public Staff; or
  - (2) Enter into and submit an executed Operational Agreement pursuant to G.S. 143-215.1(d1) with the Division.
- (b) Where the applicant is not a Homeowner's or Property Owner's Association, an executed Operational Agreement must be submitted with the permit application. A copy of the Articles of Incorporation, Declarations and By-laws shall be submitted to the Division with the engineer's certification as required by 15A NCAC 02T .0116 and prior to operation of the permitted facilities.
- (c) For permit applications where the applicant is a legally formed Homeowners' or Property Owner's Association, an executed Operational Agreement and a copy of the Articles of Incorporation, Declarations and By-laws shall be submitted to the Division with the permit application.
- (d) An Operational Agreement is required prior to donation to a public utility or municipality unless the applicant is the respective municipality or public utility. The Operational Agreement shall become void upon transferring the permit to the public utility or municipality via a change of ownership request to the Division and permit issuance into the new owner name.
- History Note: Authority G.S. 143-215.1(d1); Eff. September 1, 2006.*
- 15A NCAC 02T .0116 CERTIFICATION OF COMPLETION**

(a) Prior to the operation of any sewer system, treatment works, utilization system, or disposal system for which an individual permit has been issued in accordance with this Subchapter and the application prepared by licensed professional, a certification must be received by the Division from a professional certifying that the sewer system, treatment works, utilization system, or disposal system has been installed in accordance with the rules, any minimum design criteria except as noted, and approved plans and specifications. The professional certification must be on official forms completely filled out, where applicable, and submitted to the Division. For facilities with phased construction or where there is a need to operate certain equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation certification. The Division may not acknowledge receipt of engineering certifications. The Permittee and the professional shall track the submittal of certifications.

(b) For sewer extensions involving developer donated projects where the developer is the original Permittee, a change of ownership request shall be submitted to the Division on Division forms upon certifying completion of the project.

(c) All deeds, easements and encroachment agreements necessary for installation and operation and maintenance of the system shall be obtained prior to operation of the system.

*History Note: Authority G.S. 143-215.1;  
Eff. September 1, 2006.*

#### **15A NCAC 02T .0117 TREATMENT FACILITY OPERATION AND MAINTENANCE**

(a) For facilities permitted under this Subchapter, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 08F .0200 and 15A NCAC 08G .0200. Copies of this Rule are available from the Division, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604 at no charge.

(b) In order to insure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or a back-up operator when appropriate must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 08F .0200 and 15A NCAC 08G .0200. Copies of this Rule are available from the Division, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604 at no charge.

*History Note: Authority G.S. 143-215.3;  
Eff. September 1, 2006.*

#### **15A NCAC 02T .0118 DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES**

In order to insure that treatment, utilization, or disposal systems do not exceed their hydraulic treatment capacities, no permits for sewer line extensions shall be issued to wastewater treatment systems owned or operated by municipalities, counties, sanitary

districts or public utilities unless they meet the following requirements:

(1) Prior to exceeding 80 percent of the wastewater treatment system's permitted hydraulic capacity (based on the average flow of the last calendar year), the permittee must submit an approvable engineering evaluation of their future wastewater treatment, utilization, and disposal needs. This evaluation must outline specific plans for meeting future wastewater treatment, utilization, or disposal needs by either expansion of the existing system, elimination or reduction of extraneous flows, or water conservation and must include the source(s) of funding for the improvements. If expansion is not proposed or is proposed for a later date, a detailed justification must be made to the satisfaction of the Director that wastewater treatment needs will be met based on past growth records and future growth projections and, as appropriate, shall include conservation plans or other specific measures to achieve waste flow reductions.

(2) Prior to exceeding 90 percent of the wastewater treatment, utilization, or disposal systems permitted hydraulic capacity, (based on the last calendar year), the permittee must obtain all permits needed for the expansion of the wastewater treatment, utilization, or disposal system and, if construction is needed, submit approvable final plans and specifications for expansion including a construction schedule. If expansion is not proposed or is proposed for a later date, a detailed justification must be made to the satisfaction of the Director that wastewater treatment needs will be met based on past growth records and future growth projections and, as appropriate, shall include conservation plans or other specific measures to achieve waste flow reductions.

(3) The Director shall allow permits to be issued to facilities that are exceeding the 80 percent or 90 percent loading rates if the additional flow is not projected to result in the facility exceeding its permitted hydraulic capacity, the facility is in compliance with all other permit limitations and requirements, and it is demonstrated to the satisfaction of the Director that adequate progress is being made in developing the needed engineering evaluations or plans and specifications. In determining the adequacy of the progress, the Director shall consider the projected flows, the complexity and scope of the work to be completed and any projected environmental impacts.

*History Note: Authority G.S. 143-215.3;*

*Eff. September 1, 2006.*

**15A NCAC 02T .0120 HISTORICAL CONSIDERATION IN PERMIT APPROVAL**

(a) The Division shall consider an applicant's compliance history in accordance with G.S. 143-215.1(b)(4)b.2. and with the requirements contained within this Rule for environmental permits and certifications issued under Article 21. Paragraph (b) of this Rule is a partial set of criteria for routine consideration under G.S. 143-215.1(b)(4)b.2. The Director may also consider other compliance information in determining compliance history.

(b) When any of the following apply, permits for new and expanding facilities shall not be granted, unless the Division determines that the permit is specifically and solely needed for the construction of facilities to resolve non-compliance with any environmental statute or rule:

- (1) The applicant or any parent, subsidiary, or other affiliate of the applicant or parent has been convicted of environmental crimes under G.S. 143-215.6B or under Federal law that would otherwise be prosecuted under G.S. 143-215.6B where all appeals have been abandoned or exhausted.
- (2) The applicant or any affiliation has previously abandoned a wastewater treatment facility without properly closing the facility in accordance with the permit or this Subchapter.
- (3) The applicant or any affiliation has not paid a civil penalty where all appeals have been abandoned or exhausted.
- (4) The applicant or any affiliation is currently not compliant with any compliance schedule in a permit, settlement agreement or order.
- (5) The applicant or any affiliation has not paid an annual fee in accordance with Rule .0105(e)(2).

(c) Any variance to this Rule shall be approved by the Director and shall be based on the current compliance status of the permittee's facilities and the magnitude of previous violations. Variance approval shall not be delegated to subordinate staff.

*History Note: Authority G.S. 143-215.1(b); 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0201 SCOPE**

This Section applies to all pump and haul activities of wastewater under the authority of the Division. This Section does not apply to the transport of animal waste from animal waste management systems permitted under Section .1300 of this Subchapter and Section .1400 of this Subchapter. In addition, this Section does not apply to the transport of wastewater residuals or biosolids permitted under Section .1100 of this Subchapter or Section .1200 of this Subchapter.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0203 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) Wastewater from single-beverage kiosks and similar operations not regulated under the authority of the Division of Environmental Health if the following criteria are met:
  - (A) The facility notifies the appropriate Division regional office in writing advising of the type of operation, type and quantity of wastewater generated, and the receiving wastewater treatment facility. A letter from the facility that is accepting the wastewater (type and quantity) specifically agreeing to accept wastewater from the applicant shall be included.
  - (B) The wastewater does not contain any human waste.
  - (C) The waste is collected and discharged into a sewer or treatment system designed and permitted to accept the type of wastewater being pumped and hauled.
- (2) Industrial wastewater if the following criteria are met:
  - (A) The facility notifies the appropriate Division regional office in writing advising of the type of operation, type and quantity of wastewater generated, location, and the receiving wastewater treatment facility. A letter from the facility accepting the wastewater (type and quantity) specifically agreeing to accept wastewater from the applicant shall be included.
  - (B) The wastewater does not contain any human waste.
  - (C) The waste is collected and discharged into a sewer or treatment system designed and permitted to accept the type of wastewater being pumped and hauled.
  - (D) The pump and haul activity is not to alleviate a failing wastewater system.
  - (E) The Division regional office concurs in writing that the activity meets the criteria in this Rule.
- (3) Pump and hauling of waste from sewer cleaning activities.

(b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);*

Eff. September 1, 2006.

### 15A NCAC 02T .0301 SCOPE

The rules in this Section set forth the requirements and procedures for application and issuance of permits for sewers as required by G.S. 143-215.1(a) and permitting delegation of local sewer programs allowable by G.S. 143-215.1(f). The rules in this Section apply to all sewer extensions including gravity sewers, pump stations, force mains, vacuum sewers, pressure sewers (including Septic Tank Effluent Pump (STEP) systems) or alternative sewer systems that discharge to another sewer system and requirements for local delegated sewer extension permitting programs.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

### 15A NCAC 02T .0302 DEFINITIONS

(a) The following definitions are used in this Section:

- (1) "Alternative sewer system" means any sewer system (collection system) other than a gravity system or standard pump station and force main. These include pressure sewer systems, septic tank/effluent pump (STEP) sewer systems, vacuum sewer system, and small diameter variable grade gravity sewers.
- (2) "Building" means any structure occupied or intended for supporting or sheltering any occupancy.
- (3) "Building drain" means that part of the lowest piping of a drainage system that receives the discharge from soil, waste and other drainage pipes that extends 10 feet beyond the walls of the building and conveys the drainage to the building sewer.
- (4) "Building sewer" means that part of the drainage system that extends from the end of the building drain and conveys the discharge from a single building to a public gravity sewer, private gravity sewer, individual sewage disposal system or other point of disposal.
- (5) "Fast-track" means a permitting process whereby a professional engineer certifies a sewer design and associated construction documents conform to all applicable sewer related rules and design criteria, thereby forgoing an upfront technical review by the Division.
- (6) "Pressure sewer system" means an interdependent system of grinder pump stations, typically for residences, serving individual wastewater connections for single buildings that share a common and typically a small diameter pressure pipe (1.5 inches through 6 inches). Duplex or greater pump stations connected to a common pressure pipe that can operate both independently and simultaneously with other pump stations while

maintaining operation of the system within the operating constraints are not considered a pressure sewer system.

- (7) "Private sewer" means any part of a sewer system which collects wastewater from one building and crosses another property or travels along a street right of way or from more than one building and is not considered a public sewer.
- (8) "Public sewer" means a sewer located in a dedicated public street, roadway, or dedicated public right-of-way or easement which is owned or operated by any municipality, county, water or sewer district, or any other political subdivision of the state authorized to construct or operate a sewer system.
- (9) "Sewer system" means pipelines or conduits, pumping stations, including lift stations and grinder stations, alternative systems, and appliances appurtenant thereto, used for conducting wastewater to a point of ultimate treatment and disposal. A sewer system may also be referred to as a collection system.
- (10) "Small diameter, variable grade gravity sewer system" means a system of wastewater collection utilizing an interceptor tank to remove solids and grease from the waste stream, thereby allowing smaller diameter pipes and shallower grades to be used. Flow is transferred to the central gravity system in the public right-of-way by gravity or effluent pumps. With venting and design, inflective grades (up-gradients) may also be accommodated.
- (11) "Septic tank/effluent pump (STEP) system" means the same type of system as a "pressure sewer system" except that the individual grinder pump is replaced with a septic tank with an effluent pump either in the second chamber of the septic tank or in a separate pump tank that follows the septic tank.
- (12) "Vacuum sewer system" means a mechanized system of wastewater collection utilizing differential air pressure to move the wastewater. Centralized stations provide the vacuum with valve pits providing the collection point from the source and also the inlet air required to move the wastewater. In conjunction with the vacuum pumps, a standard (non vacuum) pump station and force main is used to transport the wastewater from the vacuum tanks to a gravity sewer or ultimate point of treatment and disposal.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

### 15A NCAC 02T .0303 PERMITTING BY REGULATION



(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) A building sewer documented by the local building inspector to be in compliance with the North Carolina State Plumbing Code, which serves a single building with the sole purpose of conveying wastewater from that building into a gravity sewer that extends onto or is adjacent to the building's property.
- (2) A gravity sewer serving a single building with less than 600 gallons per day of flow as calculated using rates in 15A NCAC 02T .0114 that crosses another property or parallels a right-of-way provided that:
  - (A) an easement for crossing another property is obtained, a map is created and both are recorded at the Register of Deeds office in the county of residence for both property owners and runs with the land, or, in the case of a building sewer traveling along a right-of-way, documented permission from the dedicated right-of-way owner to use such right-of-way;
  - (B) the building inspector certifies the sewer to the point of connection to the existing sewer is in accordance with state or local plumbing code; and
  - (C) no other connections are made to the sewer without prior approval from the Division.
- (3) New pump stations or sewage ejectors and force mains if all of the following criteria are met:
  - (A) the pump station serves a single building,
  - (B) the force main does not traverse other property or parallel a street right-of-way,
  - (C) the force main ties into a non-pressurized pipe/manhole/wetwell (i.e. is not part of an alternative sewer system),
  - (D) the system is approved by the local building inspector as being in complete compliance with the North Carolina Plumbing Code to the point of connection to the existing sewer, and
  - (E) no other connections are made to the sewer without prior approval from the Division.
- (4) The following sewer operations provided that the work conforms to all rules, setbacks and design standards; record drawings of the completed project are kept for the life of the

project; and new sources of wastewater flow, immediate or future, are not planned to be connected to the sewer other than previously permitted but not yet tributary:

- (A) rehabilitation or replacement of sewers in kind (i.e., size) with the same horizontal and vertical alignment;
- (B) rehabilitation or replacement of public 6-inch sewers with 8-inch sewers provided that the rehabilitation or replacement is to correct deficiencies and bring the sewer up to current minimum standards;
- (C) line relocations of the same pipe size and within the same right-of-way or easement;
- (D) parallel line installations of the same size and within the right-of-way or easement where the existing line will be abandoned;
- (E) point repairs; and
- (F) in place pump station repairs/upgrades and maintaining permitted capacity to within five percent of the original permitted capacity for pump replacement.

(b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0304 APPLICATION SUBMITTAL**

- (a) Application for permits pursuant to this Section shall be made on forms provided by the Division.
- (b) Applications shall not be submitted unless the Permittee has assured downstream sewer capacity.
- (c) For pressure sewers, vacuum sewers, STEP systems and other alternative sewer systems discharging into a sewer system, the Permittee, by certifying the permit application and receiving an issued permit, agrees to be responsible for all individual pumps, tanks, service laterals and main lines as permitted. The line from a building to the septic or pump tank is excluded from this responsibility. This does not prohibit the Permittee from entering into a service agreement with another entity. However, the Permittee shall be responsible for correcting any environmental or public health problems with the system.
- (d) For sewer extensions involving gravity sewers, pump stations and force mains or any combination thereof that do not require an Environmental Assessment pursuant to 15A NCAC 01C .0408 (except for low pressure sewers, vacuum sewers and STEP systems discharging to a sewer system), are not funded through the Division's Construction, Grants and Loans Section, and where plans, calculations and specifications and other supporting documents have been sealed by a professional

engineer, application may be made according to the fast-track permitting process.

(e) Projects involving an Environmental Assessment per 15A NCAC 01C .0408 or are funded through the Division's Construction, Grants and Loans Section must be submitted for a full technical review on application forms provided by the Division. An application for sewers involving an Environmental Assessment shall not be considered complete until either a Finding of No Significant Impact or Record of Decision is issued.

(f) Where the plans were not prepared by a professional engineer, applications shall be submitted for full technical review on application forms specified by the Division.

(g) Low pressure sewer systems, vacuum sewer systems and other alternative sewer systems shall be submitted for a full technical review using the official application form for those systems.

(h) A letter of agreement from the owner or an official, meeting the criteria in Rule .0106 of this Subchapter, of the receiving collection system or treatment works accepting the wastewater is required, if the application is not submitted by the owner of the receiving collection system or treatment works. This letter shall be specific to the project whether or not capacity has been purchased through an intergovernmental agreement or contract. This letter shall also signify that the owner of the receiving collection system or treatment works has adequate capacity to transport and treat the proposed new wastewater. This shall not negate the need for downstream sewer capacity calculations.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); 143-215.67;

*Eff. September 1, 2006.*

#### **15A NCAC 02T .0305 DESIGN CRITERIA**

(a) Construction of sewers and sewer extensions are prohibited in the following areas unless the specified determinations are made:

- (1) in a natural area designated on the State Registry of Natural Heritage Areas by a protection agreement between the owner and the Secretary, unless the Commission agrees that no prudent, feasible or technologically possible alternative exists; or,
- (2) in a natural area dedicated as a North Carolina Nature Preserve by mutual agreement between the owner and State of North Carolina

Storm sewers and other utilities not listed below (vertical)	24 inches
Water mains (vertical-water over sewer including in benched trenches) or (horizontal)	18 inches 10 feet
Reclaimed water lines (vertical – reclaimed over sewer) or (horizontal)	18 inches 2 feet
Any private or public water supply source, including any wells, WS-I waters or Class I or Class II impounded reservoirs used as a source of drinking water	100 feet
Waters classified WS (except WS-I or WS-V), B, SA, ORW, HQW, or SB from normal high water (or tide elevation) and wetlands	50 feet
Any other stream, lake, impoundment, or ground water lowering and surface drainage ditches	10 feet
Any building foundation	5 feet
Any basement	10 feet
Top slope of embankment or cuts of 2 feet or more vertical height	10 feet

(Governor and Council of State), unless the Commission recommends and the Governor and Council of State agree that no prudent, feasible or technologically possible alternative exists;

(b) Engineering design documents. The following documents shall be prepared prior to submitting a permit application to the Division. If submittal of such documents is not requested in the permitting process (i.e., fast-track), they shall be available upon request by the Division. If required by G.S. 89C, a professional engineer shall prepare these documents:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) A plan and profile of sewers, showing their proximity to other utilities and natural features, such as water supply lines, water lines, wells, storm drains, surface waters, roads and other trafficked areas.
- (2) Design calculations including pipe and pump sizing, velocity, pump cycle times and level control settings, pump station buoyancy, wet well storage, surge protection, detention time in the wet well and force main, ability to flush low points in force mains with a pump cycle, and downstream sewer capacity analysis.
- (3) Specifications relative to the sewer system describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project.

(c) All deeds, easements and encroachment agreements necessary for installation and operation and maintenance of the system shall be obtained prior to operation of the system.

(d) There shall be no by-pass or overflow lines designed in any new sewer system except for valved piping and appurtenances intended for emergency pumping operation(s).

(e) A minimum of two feet protection from a 100-year flood shall be provided unless there is a water-tight seal on all station hatches and manholes with control panels and vents extending two feet above the 100-year flood elevation.

(f) The following minimum separations shall be provided for the sewer system except as allowed by Paragraph (g) of this Rule:

Drainage systems and interceptor drains

Any swimming pool

Final earth grade (vertical)

5 feet

10 feet

36 inches

(g) Alternatives where separations in Paragraph (f) of this Rule cannot be achieved. Nothing in this Paragraph shall supersede the allowable alternatives provided in the Commission for Health Services Public Water Supply Rules (15A NCAC 18C), Commission for Health Services Sanitation Rules (15A NCAC 18A) or the Groundwater Protection Rules (15A NCAC 02L and 15A NCAC 02C) that pertain to the separation of sewer systems to water mains or public or private wells:

- (1) For storm sewers, engineering solutions such as ductile iron pipe or structural bridging to prevent crushing the underlying pipe.
- (2) For public or private wells, piping materials, testing methods and acceptability standards meeting water main standards shall be used where these minimum separations cannot be maintained. All appurtenances shall be outside the 100 foot radius. The minimum separation shall however not be less than 25 feet from a private well or 50 ft from a public well.
- (3) For public water main horizontal or vertical separations, alternatives as described in 15A NCAC 18C .0906(b) and (c).
- (4) For less than 36-inches cover from final earth grade, ductile iron pipe shall be specified. Ductile iron pipe or other pipe with proper bedding to develop design supporting strength shall be provided where sewers are subject to traffic bearing loads.
- (5) For all other separations, materials, testing methods and acceptability standards meeting water main standards (15A NCAC 18C) shall be specified.

(h) The following criteria shall be met for all pumping stations and force mains:

(1) Pump Station Reliability:

- (A) Pump stations, except when exempted by Subparagraph (j)(2) of this Rule, shall be designed with multiple pumps such that peak flow can be pumped with the largest pump out of service.
- (B) A standby power source or pump is required at all pump stations except for those pump stations subject to Subparagraph (j)(2) of this Rule. Controls shall be provided to automatically activate the standby source and signal an alarm condition.
- (C) As an alternative to Part (B) for pump stations with an average daily design flow less than 15,000 gallons per day as calculated using Rule .0114 of this Subchapter, a portable power source or pumping capability may be utilized. It shall be demonstrated to

the Division that the portable source is owned or contracted by the permittee and is compatible with the station. If the portable power source or pump is dedicated to multiple pump stations, an evaluation of all the pump stations' storage capacities and the rotation schedule of the portable power source or pump, including travel timeframes, shall be provided in the case of a multiple station power outage.

(D) As an alternative to Part (B) for pump or vacuum stations connecting a single building to an alternative sewer system, wet well storage requirements shall be documented to provide 24-hours worth of wastewater storage or, exceed the greatest power outage over the last three years or the documented response time to replace a failed pump, whichever is greater. Documentation shall be required pursuant to the permit application.

(E) All pump stations designed for two pumps or more shall have a telemetry system to provide remote notification of a problem condition to include power failure and high water alarm.

(F) high water audio and visual alarm.

(2) Pump stations shall have a permanent weatherproof sign stating the pump station identifier, 24-hour emergency number and instructions to call in case of emergency. Simplex pump or vacuum stations serving a single-family residence shall have a placard or sticker placed inside the control panel with a 24-hour emergency contact number.

(3) Screened vents for all wet wells.

(4) The public shall be restricted access to the site and equipment.

(5) Air relief valves shall be provided at all high points along force mains where the vertical distance exceeds ten feet.

(i) The following criteria shall be met for gravity sewers:

- (1) for public gravity sewers, a minimum eight inch diameter pipe and for private gravity sewers, a minimum six inch diameter pipe;
- (2) the maximum separation between manholes shall be 425 feet unless written documentation is submitted with the application that the owner/authority has the capability to perform routine cleaning and maintenance on the sewer at the specified manhole separation; and
- (3) drop manholes shall be provided where invert separations exceed 2.5 feet.

(j) The following criteria shall be met for low pressure sewers, vacuum sewers, STEP and other alternative sewers discharging into another sewer system:

- (1) Hydraulic modeling of the system shall be submitted using the statistical (projected) number of pumps running at one time. If computer modeling is provided by a pump manufacturer, it shall be indicated and shall be considered part of the design calculations pursuant to Subparagraph (b)(2) of this Rule.
- (2) Simplex pump stations shall only be allowable for single-family residences. All other buildings connected to the system shall at a minimum have duplex pumps.
- (3) Septic tanks shall adhere to the standards established in 15A NCAC 18A .1900.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0306 LOCAL PROGRAMS FOR SEWER SYSTEMS**

(a) Jurisdiction. Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may apply to the Commission for approval of local programs for permitting construction, modification, and operation of public and private sewer systems in their utility service areas (i.e., delegation) pursuant to G.S. 143-215.1(f). Permits issued by approved local programs serve in place of permits issued by the Division except for projects involving an Environmental Assessment, which shall continue to be permitted by the Division. The Division may chose to cede permitting authority to the approved local program after review of Environmental Assessment projects or if other permits are required.

(b) Applications. Application for approval of a local program must provide adequate information to assure compliance with the requirements of G.S. 143-215.1(f) and the following requirements:

- (1) Applications for local sewer system programs shall be submitted to the Director.
- (2) The program application shall include three copies of the intended permit application forms, permit shell(s), minimum design criteria (specifications), sewer ordinances, flow chart of permitting, staffing, inspection and certification procedures, intended permit application fees, downstream capacity assurance methods and other relevant documents to be used in administering the local program. The applicant shall specify in a cover letter what permits the local authority desires to issue. The options are any of the following: gravity sewers, pump stations, force mains, and/or pressure sewers. The applicant shall also specify whether such permits will be issued to public (to be self owned) or private systems (not donated to delegated authority).

(3) Certification that the local authorities for processing permit applications, setting permit requirements, enforcement, and penalties are compatible with those for permits issued by the Division.

(4) If the treatment and disposal system receiving the waste is under the jurisdiction of another local unit of government, then the program application must contain a written statement from that local unit of government that the proposed program complies with all its requirements and that the applicant has entered into a satisfactory contract which assures continued compliance.

(5) Any future amendments to the requirements of this Section shall be incorporated into the local sewer system program within 60 days of the effective date of the amendments.

(6) A Professional Engineer shall be on the staff of the local sewer system program or retained as a consultant to review unusual situations or designs and to answer questions that arise in the review of proposed projects.

(7) Each project permitted by the local sewer system program shall be inspected for compliance with the requirements of the local program at least once during construction.

(c) Approval of Local Programs. The staff of the Division shall acknowledge receipt of an application for a local sewer system program in writing, review the application, notify the applicant of additional information that may be required, and make a recommendation to the Commission on the acceptability of the proposed local program.

(d) Conditions of Local Program Approval (Delegation). Once approved by the Commission, the delegated authority shall adhere to the following:

- (1) Adequacy of Receiving Facilities. Local sewer system programs shall not issue a permit for a sewer project which would increase the flow or change the characteristics of waste to a treatment works or sewer system unless the local program has received a written determination from the Division that, pursuant to G.S. 143-215.67(a), the treatment works or sewer system is adequate to receive the waste. The Division staff may, when appropriate, provide one written determination that covers all local permits for domestic sewage sewer projects with total increased flow to a particular treatment works less than a specified amount and which are issued within a specified period of time. In no case shall the local sewer system program issue a permit for additional wastewater if the receiving wastewater treatment is in noncompliance with its Division issued permit unless the additional flow is allowed as part of a special order pursuant to G.S. 143-215.2. In no case shall the delegated authority issue a permit for

additional wastewater without documenting capacity assurance along the tributary wastewater path to the wastewater treatment plant.

- (2) All permitting actions shall be summarized and submitted to the Division and the appropriate Division Regional Office on a quarterly basis on Division forms. The report shall also provide a listing and summary of all enforcement actions taken or pending during the quarter. The quarters begin on January 1, April 1, July 1 and October 1. The report shall be submitted within 30 days after the end of each quarter.
- (3) A copy of all program documents such as specifications, permit applications, permit shells, shell certification forms, and ordinance pertaining to permitting shall be submitted to the Division on an annual basis along with a summary of any other program changes. Program changes to note include staffing, processing fees, and ordinance revisions. After initial submittal of such documents and if no further changes occur in subsequent years, a letter stating such may be submitted in lieu of the requested documentation. The Division may request changes to local program documents if the Commission adopts more stringent standards.
- (4) Modification of a Local Program. Modifications to local programs, including the expansion of permitting authority shall not be required to be approved by the Commission, but by the Director.

(e) Appeal of Local Decisions. Appeal of individual permit denials or issuance with conditions the permit applicant finds unacceptable shall be made according to the approved local ordinance. The Commission shall not consider individual permit denials or issuance with conditions to which a Permittee objects. This Paragraph does not alter the enforcement authority of the Commission as specified in G.S. 143-215.1(f).

(f) The Division may audit the delegated program for compliance with this Rule and G.S. 143-215.1(f) at any time with a scheduled appointment with the delegated authority.

(g) The Division shall maintain a list of all local units of government with approved local sewer system programs and make copies of the list available to the public upon request and payment of any reasonable costs for reproduction. The list may be obtained from the Division.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

#### 15A NCAC 02T .0402 DEFINITIONS

The following definitions are used in this Section:

- (1) "Collection system" means a public or private sewer system, consisting of sewer lines, force mains, pump stations or any combination thereof that conveys wastewater to a

designated wastewater treatment facility or separately-owned sewer system. For purposes of permitting, the collection system is considered to be any existing or newly installed system extension up to the wastewater treatment facility property or point of connection with a separately-owned sewer system.

- (2) "High-priority sewer" means any aerial sewer, sewer contacting surface waters, siphon, sewer positioned parallel to streambanks that is subject to erosion that undermines or deteriorates the sewer, or sewer designated as high priority in a Division issued permit where the sewer does not meet minimum design requirements.

*History Note:* Authority G.S. 143-215.1(a); 143-215.3(a);  
143-215.9B;  
Eff. September 1, 2006.

#### 15A NCAC 02T .0403 PERMITTING BY REGULATION

(a) Collection systems having an actual, permitted or Division approved average daily flow less than 200,000 gallons per day are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all specific criteria required in this Rule:

- (1) The sewer system is effectively maintained and operated at all times to prevent discharge to land or surface waters, and to prevent any contravention of groundwater standards or surface water standards.
- (2) A map of the sewer system has been developed and is actively maintained.
- (3) An operation and maintenance plan including pump station inspection frequency, preventative maintenance schedule, spare parts inventory and overflow response has been developed and implemented.
- (4) Pump stations that are not connected to a telemetry system (i.e., remote alarm system) are inspected by the permittee or its representative every day (i.e., 365 days per year). Pump stations that are connected to a telemetry system are inspected at least once per week.
- (5) High-priority sewers are inspected by the permittee or its representative at least once every six-months and inspections are documented.
- (6) A general observation by the permittee or its representative of the entire sewer system is conducted at least once per year.
- (7) Overflows and bypasses are reported to the appropriate Division regional office in accordance with 15A NCAC 02B .0506(a), and public notice is provided as required by G.S. 143-215.1C.

(8) A Grease Control Program is in place as follows:

(A) For publicly owned collection systems, the Grease Control Program shall include at least bi-annual distribution of educational materials for both commercial and residential users and the legal means to require grease interceptors for new construction and retrofit, if necessary, of grease interceptors at existing establishments. The plan shall also include legal means for inspections of the grease interceptors, enforcement for violators and the legal means to control grease entering the system from other public and private satellite sewer systems.

(B) For privately owned collection systems, the Grease Control Program shall include at least bi-annual distribution of grease education materials to users of the collection system by the permittee or its representative.

(C) Grease education materials shall be distributed more often than required in Parts (A) and (B) of this Subparagraph if necessary to prevent grease-related sanitary sewer overflows.

(9) Right-of-ways and easements are maintained in the full easement width for personnel and equipment accessibility.

(10) Documentation shall be kept for Subparagraphs (a)(1) through (a)(9) of this Rule for a minimum of three years with exception of the map, which shall be maintained for the life of the system.

(b) Private collection systems on a single property serving an industrial facility where the domestic wastewater contribution is less than 200,000 gallons per day shall be deemed permitted.

(c) The Director may determine that a collection system should not be deemed to be permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note: Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B;  
Eff. September 1, 2006.*

#### **15A NCAC 02T .0405 IMPLEMENTATION**

(a) Permit applications for the initial issuance of a collection system permit shall be completed and submitted to the Division within 60 days of the collection system owner's certified mail receipt of the Division's request for application submittal. Permit renewal requests shall be submitted to the Director at least 180 days prior to expiration, unless the permit has been revoked in accordance with 15A NCAC 02T .0110. All

applications must be submitted in duplicate, completed on official forms, and fully executed.

(b) Collection systems subject to an individual permit shall comply with the standards in Rule .0403 of this Section until such time as their individual permit is issued.

*History Note: Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B;  
Eff. September 1, 2006.*

#### **15A NCAC 02T .0504 APPLICATION SUBMITTAL**

(a) The requirements in this Rule apply to all new and expanding facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division by the applicant in a report that includes the following. If required by G.S. 89F, a soil scientist shall prepare this evaluation:

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

(1) Field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:

- (A) thickness of the horizon;
- (B) texture;
- (C) color and other diagnostic features;
- (D) structure;
- (E) internal drainage;
- (F) depth, thickness, and type of restrictive horizon(s); and
- (G) presence or absence and depth of evidence of any seasonal high water table (SHWT).

Applicants shall dig pits when necessary for evaluation of the soils at the site.

(2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each soil mapping unit. Maximum irrigation precipitation rates shall be provided for each soil mapping unit.

(3) A field-delineated soil map delineating soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow. The legends shall also include dominant soil series name and family or higher taxonomic class for each soil mapping unit.

(4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include the following parameters:

- (A) acidity,

- (B) base saturation (by calculation),
- (C) calcium,
- (D) cation exchange capacity,
- (E) copper,
- (F) exchangeable sodium percentage (by calculation),
- (G) magnesium,
- (H) manganese,
- (I) percent humic matter,
- (J) pH,
- (K) phosphorus,
- (L) potassium,
- (M) sodium, and
- (N) zinc.

(c) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(d) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of facility components including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (1) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment, storage and disposal areas, and soil mapping units shown on all disposal sites;
- (2) the location of all wells (including usage and construction details if available), streams

(ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;

- (3) setbacks as required by Rule .0506 of this Section; and

- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(e) A hydrogeologic description prepared by a Licensed Geologist, Licensed Soil Scientist, or Professional Engineer if required by Chapters 89E, 89F, or 89C respectively of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division by the applicant for systems treating industrial waste and any system with a design flow over 25,000 gallons per day. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:

[Note: The North Carolina Board for Licensing of Geologists, via letter dated April 6, 2006, North Carolina Board for Licensing of Soil Scientists, via letter dated December 1, 2005, and North Carolina Board of Examiners for Engineers and Surveyors, via letter dated December 1, 2005, have determined that preparation of hydrogeologic description documents pursuant to this Paragraph constitutes practicing geology under G.S. 89E, soil science under G.S. 89F, or engineering under G.S. 89C.]

- (1) a description of the regional and local geology and hydrogeology;
- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features;
- (8) a discussion of the groundwater flow regime of the site prior to operation of the proposed facility and post operation of the proposed facility focusing on the relationship of the system to groundwater receptors, groundwater

- discharge features, and groundwater flow media; and
- (9) if the SHWT is within six feet of the surface, a mounding analysis to predict the level of the SHWT after wastewater application.
- (f) Property Ownership Documentation shall be provided to the Division by the applicant consisting of:
- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
  - (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
  - (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Lease agreements shall adhere to the requirements of 15A NCAC 02L .0107.
- (g) Public utilities shall submit to the Division a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission stating that a franchise application has been received.
- (h) A complete chemical analysis of the typical wastewater to be discharged shall be provided to the Division by the applicant for industrial waste, including Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.
- (i) A project evaluation and a receiver site agronomic management plan (if applicable) and recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division by the applicant.
- (j) A residuals management plan as required by Rule .0508 of this Section shall be provided to the Division by the applicant. A written commitment is not required at the time of application; however, it must be provided to the Division prior to operation of the permitted system.
- (k) A water balance shall be provided to the Division by the applicant that determines required effluent storage based upon the most limiting factor of the hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or nutrient management based on either agronomic rates for the specified cover crop or crop management.
- History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.
- 15A NCAC 02T .0505 DESIGN CRITERIA**
- (a) The requirements in this Rule apply to all new and expanding facilities, as applicable.
- (b) Minimum degree of treatment for new and expanding systems are as follows:
- (1) For new municipal, domestic and commercial facilities, the minimum degree of treatment shall meet a monthly average of five-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 30 mg/L; Total Suspended Solids (TSS) ≤ 30 mg/L; Ammonia (NH<sub>3</sub>) ≤ 15 mg/L; and Fecal Coliforms ≤ 200 colonies/100 ml.
  - (2) For expanding municipal, domestic, and commercial facilities except systems subject to Subparagraphs (b)(3) or (b)(4) of this Rule, facilities shall meet the limitation provided in Subparagraph (b)(1) of this Rule.
  - (3) For expanding municipal facilities, except those permitted as new under Subparagraph (b)(1) of this Rule, with lagoon treatment systems, the minimum degree of treatment shall meet a monthly average of five-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 60 mg/L; Total Suspended Solids (TSS) ≤ 90 mg/L; Fecal Coliforms ≤ 200 colonies/100 ml. No expanding facilities shall be permitted under this provision for any project whose application is received by the Division after December 31, 2011.
  - (4) For expanding municipal facilities whose application is received by the Division after December 31, 2011, except those permitted as new under Subparagraph (b)(1) of this Rule, with lagoon treatment systems, the minimum degree of treatment shall meet a monthly average of five-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 30 mg/L; Total Suspended Solids (TSS) ≤ 90 mg/L; Fecal Coliforms ≤ 200 colonies/100 ml.
  - (5) Treatment for other operations shall be based on producing the quality effluent used in documenting protection of surface water or groundwater standards.
- (c) All wastes shall be applied at agronomic rates unless predictive calculations are provided that document State groundwater standards will be protected.
- (d) All treatment/storage lagoons/ponds shall have at least two feet of freeboard.
- (e) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling.
- (f) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.
- (g) The bottoms of earthen impoundments, trenches or other similar excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less



than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  centimeters per second. Liner thickness shall be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Liner requirements may be reduced if it can be demonstrated by the applicant through predictive calculations or modeling methods that construction and use of these treatment and disposal units will not result in contravention of surface water or groundwater standards.

(h) Impoundments, trenches or other excavations made for the purpose of storing or treating waste shall not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of surface water or groundwater standards, as demonstrated by predictive calculations or modeling.

(i) Flow equalization of at least 25 percent of the facilities permitted hydraulic capacity must be provided for all seasonal or resort facilities and all other facilities with fluctuations in influent flow which may adversely affect the performance of the system.

(j) By-pass and overflow lines shall be prohibited.

(k) Multiple pumps shall be provided if pumps are used.

(l) Power reliability shall be provided consisting of:

- (1) automatically activated standby power supply onsite, capable of powering all essential treatment units under design conditions; or
- (2) approval by the Director that the facility:
  - (A) serves a private water distribution system which has automatic shut-off

at power failure and no elevated water storage tanks,

(B) has sufficient storage capacity that no potential for overflow exists, and

(C) can tolerate septic wastewater due to prolonged detention.

(m) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.

(n) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0504 of this Section.

(o) A minimum of 30 days of residual storage shall be provided.

(p) Disposal areas shall be designed to maintain a one-foot vertical separation between the seasonal high water table and the ground surface.

(q) The public shall be prohibited access to the wetted irrigation area and treatment facilities.

(r) Influent pump stations shall meet the sewer minimum design criteria as provided in Section .0300 of this Subchapter.

(s) Septic tanks shall adhere to the standards established in 15A NCAC 18A .1900.

(t) The irrigation system shall be provided with a flow meter to allow accurate determination of the volume of treated wastewater applied to each field.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .0506 SETBACKS**

(a) The setbacks for Irrigation sites shall be as follows:

	Spray (feet)	Drip (feet)
Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site	400	100
Any habitable residence or place of public assembly owned by the permittee to be maintained as part of the project site	200	15
Any private or public water supply source	100	100
Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)	100	100
Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	100	100
Surface water diversions (ephemeral streams, waterways, ditches)	25	25
Any well with exception of monitoring wells	100	100
Any property line	150	50
Top of slope of embankments or cuts of two feet or more in vertical height	15	15
Any water line from a disposal system	10	10
Subsurface groundwater lowering drainage systems	100	100
Any swimming pool	100	100
Public right of way	50	50
Nitrification field	20	20
Any building foundation or basement	15	15

(b) The setbacks for Treatment and storage units shall be as follows:

	(feet)
Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site	100
Any private or public water supply source	100
Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)	50

Any well with exception of monitoring wells

100

Any property line

50

(c) Achieving the reclaimed water effluent standards contained in 15A NCAC 02T .0906 shall permit the system to use the setbacks located in 15A NCAC 02T .0900 for property lines and the compliance boundary shall be at the irrigation area boundary.

(d) Setback waivers shall be written, notarized, signed by all parties involved and recorded with the County Register of Deeds. Waivers involving the compliance boundary shall be in accordance with 15A NCAC 02L .0107.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.*

**15A NCAC 02T .0507 OPERATION AND  
MAINTENANCE PLAN**

An operation and maintenance plan shall be maintained for all systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) describe anticipated maintenance of the system;
- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (4) include spill control provisions including:
  - (a) response to upsets and bypasses including control, containment, and remediation; and
  - (b) contact information for plant personnel, emergency responders, and regulatory agencies.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.*

**15A NCAC 02T .0508 RESIDUALS MANAGEMENT  
PLAN**

A Residuals Management Plan shall be maintained for all systems that generate residuals. The plan must include the following:

- (1) a detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed;
- (2) an evaluation of the residuals storage requirements for the treatment facility based upon the maximum anticipated residuals production rate and ability to remove residuals;
- (3) a permit for residuals utilization, a written commitment to the Permittee of a Department approved residuals disposal/utilization program accepting the residuals which demonstrates that the approved program has adequate capacity to accept the residuals, or that an application for approval has been submitted; and
- (4) if oil, grease, grit, or screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be

collected, handled, processed, stored and disposed.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.*

**15A NCAC 02T .0601 SCOPE**

The rules in this Section apply to all surface irrigation of wastewater systems specifically designed for one building single-family residences. Surface irrigation systems serving single-family residences are considered to be ground absorption systems in accordance with 15A NCAC 02L .0107.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.*

**15A NCAC 02T .0604 APPLICATION SUBMITTAL**

(a) The requirements in this Rule apply to all new and expanding facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division by the applicant in a report that includes the following. If required by G.S. 89F, a soil scientist shall prepare this evaluation:

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

- (1) Field description of soil profile, based on examinations of excavation pits and auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s); and
  - (G) presence or absence and depth of evidence of any seasonal high water table.

Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.

- (2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most

restrictive horizon for each soil mapping unit. Maximum irrigation precipitation rates shall be provided for each soil mapping unit.

- (3) A soil map delineating soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
- (4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include the following parameters:
  - (A) acidity,
  - (B) base saturation (by calculation),
  - (C) calcium,
  - (D) cation exchange capacity,
  - (E) copper,
  - (F) exchangeable sodium percentage (by calculation),
  - (G) magnesium,
  - (H) manganese,
  - (I) percent humic matter,
  - (J) pH,
  - (K) phosphorus,
  - (L) potassium,
  - (M) sodium, and
  - (N) zinc.

(c) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(d) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of facility components including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (1) a scaled map of the site, with topographic contour intervals not exceeding two feet and showing all facility-related structures and fences within the treatment, storage and disposal areas, and soil mapping units shown on all disposal sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0606 of this Subchapter; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(e) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Lease agreements shall adhere to the requirements of 15A NCAC 02L .0107.

(f) An Operation and Maintenance Plan addressing routine inspections, maintenance schedules, troubleshooting and a layman's explanation about the wastewater treatment and irrigation disposal systems shall be submitted to the Division by the applicant.

(g) A letter from the local County Health Department denying the site for all subsurface systems shall be submitted to the Division by the applicant.

(h) A notarized Operation and Maintenance Agreement shall be submitted to the Division by the applicant.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .0605 DESIGN CRITERIA**

(a) The requirements in this Rule apply to new and expanding facilities.

(b) Minimum degree of treatment prior to storage shall meet a monthly average of five-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 30 mg/L; Total Suspended Solids (TSS) ≤ 30 mg/L; Ammonia (NH<sub>3</sub>) ≤ 15 mg/L; and Fecal Coliforms ≤ 200 colonies/100 ml.

(c) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such

placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling.

- (d) Excavation into bedrock shall be lined with a 10 millimeter synthetic liner.
- (e) Earthen treatment and storage facilities shall be prohibited.
- (f) By-pass and overflow lines shall be prohibited.
- (g) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.
- (h) Preparation of an operational management plan, and, if appropriate, a crop management plan shall be provided.
- (i) Fencing shall be provided to prevent access to the irrigation site (minimum 2-strand wire) and treatment units shall be secured with locks on all tankage and control panels.
- (j) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0604 of this Section.
- (k) Septic tanks shall adhere to 15A NCAC 18A .1900.
- (l) Tablet chlorination disinfection shall be provided.

(m) A minimum of five days of storage based on average daily flow between the pump off float and inlet invert pipe shall be provided.

- (n) Pump/dosing tanks shall have audible and visual alarms external to any structure.
- (o) Rain / moisture sensor shall be provided to prevent irrigation during precipitation events or wet conditions that would cause runoff.
- (p) A minimum of 18 inches of vertical separation between the apparent seasonal high water table and the ground surface shall be provided.
- (q) A minimum of one foot of vertical separation between any perched seasonal high water table and the ground surface shall be provided.
- (r) Loading rates shall not exceed 50 inches per year.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0606 SETBACKS**

(a) The setbacks for Irrigation sites shall be as follows:

	Spray (feet)	Drip (feet)
Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site	400	100
Any habitable residence or place of public assembly owned by the permittee to be maintained as part of the project site	200	15
Any private or public water supply source	100	100
Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)	100	100
Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	100	100
Surface water diversions (ephemeral streams, waterways, ditches)	25	25
Any well with exception of monitoring wells	100	100
Any property line	150	50
Top of slope of embankments or cuts of two feet or more in vertical height	15	15
Any water line from a disposal system	10	10
Subsurface groundwater lowering drainage systems	100	100
Any swimming pool	100	100
Public right of way	50	50
Nitrification field	20	20
Any building foundation or basement	15	15

(b) Treatment and storage facilities associated with systems permitted under this Section shall adhere to the setback requirements in Section .0500 of this Subchapter except as provided in this Rule.

(c) Setback waivers shall be written, notarized, signed by both parties and recorded with the County Register of Deeds. Waivers involving the compliance boundary shall be in accordance with 15A NCAC 02L .0107.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0607 CONNECTION TO REGIONAL SYSTEM**

If a public or community sewage system is or becomes available, the subject wastewater treatment facilities shall be closed and all wastewater discharged into the public or community sewage system.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0701 SCOPE**

This Section applies to all high-rate infiltration facilities. High-rate infiltration facilities include all facilities that dispose of wastewater effluent onto the land at an application rate that meets or exceeds the rates provided in Rule .0702 of this Section.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0702 DEFINITIONS**

As used in this Section, "High-rate infiltration" shall mean:

- (1) In coastal areas as defined in Section 15A NCAC 02H .0400, an application rate that exceeds 1.75 inches of wastewater effluent per week (0.156 gallons per day per square foot of land).
- (2) In non-coastal areas, an application rate that exceeds 1.50 gallons of wastewater effluent per day per square foot of land (16.8 inches per week).

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0704 APPLICATION SUBMITTAL**

(a) The requirements in this Rule apply to all new and expanding facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division by the applicant in a report that includes the following. If required by G.S. 89F, a soil scientist shall prepare this evaluation:

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

- (1) Field description of soil profile, based on examinations of excavation pits and auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s); and
  - (G) presence or absence and depth of evidence of any seasonal high water table (SHWT).

Applicants shall dig pits when necessary for proper evaluation of the soils at the site.
- (2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each soil mapping unit. Maximum irrigation precipitation rates shall be provided for each soil mapping unit.
- (3) A soil map delineating soil mapping units within each land application site and showing all physical features, location of

pits and auger borings, legends, scale, and a north arrow.

- (4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include the following parameters:

- (A) acidity,
- (B) base saturation (by calculation),
- (C) calcium,
- (D) cation exchange capacity,
- (E) copper,
- (F) exchangeable sodium percentage (by calculation),
- (G) magnesium,
- (H) manganese,
- (I) percent humic matter,
- (J) pH,
- (K) phosphorus,
- (L) potassium,
- (M) sodium, and
- (N) zinc.

(c) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation/infiltration design.

(d) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of facility components including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under

the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (1) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment, storage and disposal areas, and soil mapping units shown on all disposal sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0706 of this Section; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(e) A hydrogeologic description prepared by a Licensed Geologist, Licensed Soil Scientist, or Professional Engineer if required by Chapters 89E, 89F, or 89C respectively of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division for systems treating industrial waste and any system with a design flow of over 25,000 gallons per day. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:

[Note: The North Carolina Board for Licensing of Geologists, via letter dated April 6, 2006, North Carolina Board for Licensing of Soil Scientists, via letter dated December 1, 2005, and North Carolina Board of Examiners for Engineers and Surveyors, via letter dated December 1, 2005, have determined that preparation of hydrogeologic description documents pursuant to this Paragraph constitutes practicing geology under G.S. 89E, soil science under G.S. 89F, or engineering under G.S. 89C.]

- (1) a description of the regional and local geology and hydrogeology;
- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;

- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features;
- (8) a discussion of the groundwater flow regime of the site prior to operation of the proposed facility and post operation of the proposed facility focusing on the relationship of the system to groundwater receptors, groundwater discharge features, and groundwater flow media; and
- (9) a mounding analysis to predict the level of the SHWT after wastewater application.

(f) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Lease agreements shall adhere to the requirements of 15A NCAC 02L .0107(f).

(g) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission stating that a franchise application has been received.

(h) A complete chemical analysis of the typical wastewater to be discharged shall be provided to the Division for industrial waste, including Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.

(i) A project evaluation and a receiver site agronomic management plan (if applicable) containing recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division.

(j) A residuals management plan as required by Rule .0708 of this Section is to be provided to the Division. A written commitment is not required at the time of application; however, it must be provided prior to operation of the permitted system.

(k) A water balance shall be provided to the Division that determines required effluent storage based upon the most

limiting factor of the hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or nutrient management based on either agronomic rates for a specified cover crop or crop management requirements.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

#### 15A NCAC 02T .0705 DESIGN CRITERIA

(a) The requirements in this Rule apply to all new and expanding facilities, as applicable.

(b) Degree of treatment shall be based on a monthly average 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 10 mg/L; Total Suspended Solids (TSS) ≤ 15 mg/L; Ammonia Nitrogen (NH<sup>3</sup>-N) ≤ 4 mg/L; Fecal Coliforms ≤ 14 per 100 mL; and Nitrate Nitrogen (NO<sup>3</sup>-N) ≤ 10 mg/L for domestic and commercial operations. Treatment for other operations shall be based on producing the quality effluent used in documenting protection of surface water or groundwater standards. More stringent effluent limits may be applied in accordance with calculations submitted by the applicant to document protection of surface water or groundwater standards.

(c) All treatment/storage lagoons/ponds shall have at least two feet of freeboard.

(d) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling.

(e) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

(f) The bottoms of earthen impoundments, trenches or other similar excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  centimeters per second. Liner thickness shall be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Liner requirements may be reduced if it can be demonstrated to the Division by predictive calculations or modeling methods that construction and use of

these treatment and disposal units will not result in contravention of surface water or groundwater standards.

(g) Impoundments, trenches or other excavations made for the purpose of storing or treating waste shall not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of surface water or groundwater standards, as demonstrated by predictive calculations or modeling.

(h) Flow equalization of at least 25 percent of the facilities permitted hydraulic capacity must be provided for all seasonal or resort facilities and all other facilities with fluctuations in influent flow which may adversely affect the performance of the system.

(i) By-pass and overflow lines shall be prohibited.

(j) Multiple pumps shall be provided if pumps are used.

(k) Power reliability shall be provided consisting of:

(1) automatically activated standby power supply onsite, capable of powering all essential treatment units under design conditions; or

(2) approval by the Director that the facility:

(A) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks,

(B) has sufficient storage capacity that no potential for overflow exists, and

(C) can tolerate septic wastewater due to prolonged detention.

(l) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.

(m) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0704 of this Section.

(n) A minimum of 30 days of residuals storage shall be provided.

(o) Disposal areas shall be designed to maintain a one-foot vertical separation between the seasonal high water table and the ground surface.

(p) The public shall be prohibited access to the wetted disposal area and treatment facilities.

(q) Influent pump stations shall meet the sewer minimum design criteria as provided in Section .0300 of this Subchapter.

(r) Septic tanks shall adhere to 15A NCAC 18A .1900.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

#### 15A NCAC 02T .0706 SETBACKS

(a) The setbacks for Infiltration Units shall be as follows:

	(feet)
Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site	400
Any habitable residence or place of public assembly owned by the permittee to be maintained as part of the project site	200
Any private or public water supply source	100

Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)	200
Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	200
Subsurface groundwater lowering drainage systems	200
Surface water diversions (ephemeral streams, waterways, ditches)	50
Any well with exception of monitoring wells	100
Any property line	200
Top of slope of embankments or cuts of two feet or more in vertical height	100
Any water line from a disposal system	10
Any swimming pool	100
Public right of way	50
Nitrification field	20
Any building foundation or basement	15
Impounded public water supplies	500
Public shallow groundwater supply (less than 50 feet deep)	500

(b) Setbacks in Paragraph (a) of this Rule to surface waters, groundwater lowering ditches, and subsurface groundwater lowering drainage systems shall be 100 feet if the treatment units are designed to meet a Total Nitrogen of 7 mg/l and Total Phosphorus of 3 mg/l effluent limit.

(c) Setbacks in Paragraph (a) of this Rule to surface waters, groundwater lowering ditches, and subsurface groundwater lowering drainage systems shall be 50 feet if the treatment units are designed to meet a Total Nitrogen of 4 mg/l and Total Phosphorus of 2 mg/l effluent limit. This setback provision does not apply to SA waters.

(d) Treatment and storage facilities associated with systems permitted under this Section shall adhere to the setback requirements in Section .0500 of this Subchapter except as provided in this Rule.

(e) Setback waivers shall be written, notarized, signed by all parties involved and recorded with the County Register of Deeds. Waivers involving the compliance boundary shall be in accordance with 15A NCAC 02L .0107.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

#### **15A NCAC 02T .0707 OPERATION AND MAINTENANCE PLAN**

An operation and maintenance plan shall be maintained for all systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) describe anticipated maintenance of the system;
- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (4) include spill control provisions including:
  - (A) response to upsets and bypasses including control, containment, and remediation; and
  - (B) contact information for plant personnel, emergency responders, and regulatory agencies.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

#### **15A NCAC 02T .0708 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all systems that generate residuals. The plan must include the following:

- (1) a detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed of;
- (2) an evaluation of the residuals storage requirements for the treatment facility based upon the maximum anticipated residuals production rate and ability to remove residuals;
- (3) a permit for residuals utilization, a written commitment to the Permittee of a Department approved residuals disposal/utilization program accepting the residuals which demonstrates that the approved program has adequate capacity to accept the residuals, or that an application for approval has been submitted; and
- (4) if oil, grease, grit, or screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

#### **15A NCAC 02T .0804 APPLICATION SUBMITTAL**

Submittal requirements shall be the same as systems permitted under 15A NCAC 02T .0504 except those that are not applicable to authorization to construct type permits (e.g., soils report, hydrogeological investigations, or receiver site management plan).



*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0805 DESIGN CRITERIA**

Design requirements shall be the same as systems permitted under 15A NCAC 02T .0505 except those that are not applicable to authorization to construct type permits (e.g. degree of treatment and irrigation system design requirements) or specifically addressed by Section 15A NCAC 02H .0100.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0806 SETBACKS**

Setbacks shall be the same as those listed in 15A NCAC 02T .0506 except infiltration basins, which shall meet the setbacks listed in 15A NCAC 02T .0706 for infiltration units.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0901 SCOPE**

The rules in this Section apply to reclaimed water systems; the utilization of tertiary treated wastewater effluent, meeting the standards in Rule .0906 of this Section, used in a beneficial manner and for the purpose of conservation of the states water resources by reducing the use of a water resource (potable water, surface water, groundwater). The disposal of treated wastewater effluent that does not serve in place of the use of a water resource shall be covered by Section .0500 of this Subchapter. Requirements for closed-loop recycle systems are provided in Section .1000 of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0903 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) Overflow from elevated reclaimed water storage facilities where no viable alternative exists and all possible measures are taken to reduce the risk of overflow.
- (2) Any de minimus runoff from reclaimed water used during fire fighting or extinguishing, dust control, soil compaction for construction purposes, street sweeping, overspray on yard inlets, overspray on golf cart paths, or vehicle washing provided the use is approved in a permit issued by the Division.
- (3) Rehabilitation, repair, or replacement of reclaimed water lines in kind (i.e., size) with the same horizontal and vertical alignment.

(b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0904 APPLICATION SUBMITTAL – CONJUNCTIVE SYSTEMS**

(a) The requirements in this Rule apply to all new and expanding conjunctive facilities, as applicable.

(b) A soil evaluation of the utilization site where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner shall be provided to the Division by the applicant. Recommendations shall include loading rates of liquids, solids, and other constituents. For systems that utilize reclaimed water through irrigation, the evaluation shall also include recommended maximum irrigation precipitation rates. If required by G.S. 89F, a soil scientist shall prepare this evaluation.

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

(c) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(d) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided for treatment and storage facilities and where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner showing the location, orientation and relationship of facility components including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under

the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (1) a scaled map of the site showing all facility-related structures and fences within the treatment, storage, and utilization areas;
- (2) for land application sites and other ground absorption uses, the site map shall include topography; and
- (3) to the extent needed to determine compliance with setbacks, the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features on all waste treatment, storage, and utilization site(s) and any other feature included in the Rule .0912.

(e) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (e.g., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. The lease agreements shall adhere to the requirements of 15A NCAC 02L .0107. Where a lease is not required, a compliance boundary for the site shall not be established.

(f) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission to the Division stating that a franchise application has been received.

(g) A complete chemical analysis of the typical reclaimed water to be utilized shall be provided to the Division for industrial waste. The analysis may include Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.

(h) A project evaluation and a receiver site agronomic management plan (if applicable) and recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0905 APPLICATION SUBMITTAL – NON-CONJUNCTIVE SYSTEMS**

(a) The requirements in this Rule apply to all new and expanding non-conjunctive facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division. This evaluation shall be presented in a report that includes the following. If required by G.S. 89F, a soil scientist shall prepare this evaluation:

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

- (1) Field description of soil profile, based on examinations of excavation pits and auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s); and
  - (G) presence or absence and depth of evidence of any seasonal high water table (SHWT).

Applicants shall dig pits when necessary for proper evaluation of the soils at the site.

- (2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each soil mapping unit. Maximum irrigation precipitation rates shall be provided for each soil mapping unit.
- (3) A soil map delineating soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
- (4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include the following parameters:
  - (A) acidity,
  - (B) base saturation (by calculation),
  - (C) calcium,
  - (D) cation exchange capacity,
  - (E) copper,
  - (F) exchangeable sodium percentage (by calculation),
  - (G) magnesium,
  - (H) manganese,
  - (I) percent humic matter,
  - (J) pH,
  - (K) phosphorus,
  - (L) potassium,
  - (M) sodium, and
  - (N) zinc.

(c) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including, hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(d) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner depicting the location, orientation and relationship of facility components including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (1) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment, storage and utilization areas, soil mapping units shown on all utilization sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and utilization site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0912 of this Section; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and utilization site(s).

(e) A hydrogeologic description prepared by a Licensed Geologist, License Soil Scientist, or Professional Engineer if required by Chapters 89E, 89F, or 89C respectively of the

subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division for systems treating industrial waste and any system with a design flow of over 25,000 gallons per day. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:

[Note: The North Carolina Board for Licensing of Geologists, via letter dated April 6, 2006, North Carolina Board for Licensing of Soil Scientists, via letter dated December 1, 2005, and North Carolina Board of Examiners for Engineers and Surveyors, via letter dated December 1, 2005, have determined that preparation of hydrogeologic description documents pursuant to this Paragraph constitutes practicing geology under G.S. 89E, soil science under G.S. 89F, or engineering under G.S. 89C.]

- (1) a description of the regional and local geology and hydrogeology based on research of available literature for the area;
- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features;
- (8) a discussion of the groundwater flow regime of the site prior to operation of the proposed facility and post operation of the proposed facility focusing on the relationship of the system to groundwater receptors, groundwater discharge features, and groundwater flow media; and
- (9) if the SHWT is within 6 feet of the surface, a mounding analysis to predict the level of the SHWT after wastewater application.

(f) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or

- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Lease agreements shall adhere to the requirements of 15A NCAC 02L .0107. Where a lease is not required, a compliance boundary for the site will shall not be established by the Division.

(g) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission stating that a franchise application has been received.

(h) A complete chemical analysis of the typical reclaimed water to be utilized shall be provided to the Division for industrial waste. The analysis may include Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.

(i) A project evaluation and a receiver site agronomic management plan (if applicable) and recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division.

(j) A residuals management plan as required by Rule .0914 of this Section shall be provided to the Division. A written commitment is not required at the time of application; however, it must be provided prior to operation of the permitted system.

(k) A water balance shall be provided to the Division that determines required storage based upon the most limiting factor of the hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or nutrient management based on either agronomic rates for a specified cover crop or crop management requirements.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0907 DESIGN CRITERIA FOR WASTEWATER TREATMENT FACILITIES – NON-CONJUNCTIVE SYSTEMS**

- (a) The requirements in this Rule apply to all new and expanding conjunctive facilities, as applicable.
- (b) Continuous on-line monitoring and recording for turbidity or particle count and flow shall be provided prior to storage, distribution or irrigation.
- (c) Effluent from the treatment facility shall not be discharged to the storage, distribution or irrigation system if either the turbidity exceeds 10 NTU or if the permitted fecal coliform levels cannot be met. The facility must have the ability to utilize alternate wastewater management options when the effluent quality is not sufficient.
- (d) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the storage, distribution or irrigation system shall be provided.

(e) There shall be a certified operator of a grade equivalent or greater than the facility classification on call 24 hours/day.

(f) No storage facilities are required as long as it can be demonstrated that other permitted means of disposal are available if the reclaimed water cannot be completely utilized.

(g) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0904 of this Section.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0908 DESIGN CRITERIA FOR WASTEWATER TREATMENT FACILITIES – NON-CONJUNCTIVE SYSTEMS**

(a) The requirements in this Rule apply to all new and expanding non-conjunctive facilities, as applicable.

(b) Aerated flow equalization facilities shall be provided with a capacity based upon either a representative diurnal hydrograph or at least 25 percent of the daily system design flow.

(c) Dual facilities shall be provided for all essential treatment units.

(d) Continuous on-line monitoring and recording for turbidity or particle count and flow shall be provided prior to storage, distribution, or irrigation.

(e) Effluent from the treatment facility shall be discharged to a five-day side-stream detention pond if either the turbidity exceeds 10 NTU or if the permitted fecal coliform levels cannot be met. The facility must have the ability to return the effluent in the five-day side-stream detention pond back to the head of the treatment facility.

(f) There must be no public access to the wastewater treatment facility or the five-day side-stream detention pond. The five day side-stream detention pond shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that required of the natural material liner. Liner requirements of the five day side-stream detention pond or separation distances between the bottom of the five day side-stream detention pond and the groundwater table may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director, that construction and use of the five day side-stream detention pond will not result in contravention of assigned groundwater standards at the compliance boundary.

(g) The storage basin shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that required of the natural material liner. Liner requirements of the storage basin or separation distances between the bottom of storage basin and the groundwater table may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director, that construction and use of the storage basin will not result in

contravention of assigned groundwater standards at the compliance boundary.

- (h) Automatically activated standby power supply onsite, capable of powering all essential treatment units under design conditions shall be provided.
- (i) There shall be a certified operator of a grade equivalent or greater than the facility classification on call 24 hours/day.
- (j) By-pass and overflow lines shall be prohibited.
- (k) Multiple pumps shall be provided if pumps are used.
- (l) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.
- (m) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0905 of this Section.
- (n) A minimum of 30 days of residual storage shall be provided.
- (o) Disposal areas shall be designed to maintain a one-foot vertical separation between the seasonal high water table and the ground surface.
- (p) Influent pump stations shall meet the sewer minimum design criteria as provided in Section .0300 of this Subchapter.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0909 DESIGN CRITERIA FOR DISTRIBUTION LINES**

- (a) The requirements in this Rule apply to all new distribution lines.
- (b) All reclaimed water valves, storage facilities and outlets shall be tagged or labeled to warn the public or employees that the water is not intended for drinking.
- (c) All reclaimed water piping, valves, outlets and other appurtenances shall be color-coded, taped, or otherwise marked to identify the source of the water as being reclaimed water as follows:

- (1) All reclaimed water piping and appurtenances shall be either colored purple (Pantone 522) and embossed or integrally stamped or marked "CAUTION: RECLAIMED WATER - DO NOT DRINK" or be installed with a purple (Pantone 522) identification tape or polyethylene vinyl wrap. The warning shall be stamped on opposite sides of the pipe and repeated every 3 feet or less.
- (2) Identification tape shall be at least 3 inches wide and have white or black lettering on purple (Pantone 522) field stating "CAUTION: RECLAIMED WATER - DO NOT DRINK". Identification tape shall be installed on top of reclaimed water pipelines, fastened at least every 10 feet to each pipe length and run continuously the entire length of the pipe.
- (3) Existing underground distribution systems retrofitted for the purpose of utilizing reclaimed water shall be taped or otherwise identified as in Subparagraphs (1) or (2) of this Paragraph. This identification need not extend the entire length of the distribution system but shall be incorporated within 10 feet of crossing

any potable water supply line or sanitary sewer line.

- (d) All reclaimed water valves and outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel only.
- (e) Hose bibs shall be located in locked, below grade vaults that shall be labeled as being of nonpotable quality. As an alternative to the use of locked vaults with standard hose bib services, hose bibs which can only be operated by a tool may be placed above ground and labeled as nonpotable water.
- (f) Cross-Connection Control

- (1) There shall be no direct cross-connections between the reclaimed water and potable water systems.
- (2) Where both reclaimed water and potable water are supplied to a reclaimed water use area, a reduced pressure principle backflow prevention device or an approved air gap separation pursuant to 15A NCAC 18C shall be installed at the potable water service connection to the use area. The installation of the reduced pressure principal backflow prevention device shall allow proper testing.
- (3) Where potable water is used to supplement a reclaimed water system, there shall be an air gap separation, approved and regularly inspected by the potable water supplier, between the potable water and reclaimed water systems.

(g) Irrigation system piping shall be considered part of the distribution system for the purposes of this Rule.

(h) Reclaimed water distribution lines shall be located 10 feet horizontally from and 18 inches below any water line where practicable. Where these separation distances can not be met, the piping and integrity testing procedures shall meet water main standards in accordance with 15A NCAC 18C.

(i) Reclaimed water distribution lines shall not be less than 100 feet from a well unless the piping and integrity testing procedures meet water main standards in accordance with 15A NCAC 18C, but no case shall they be less than 25 feet from a private well or 50 feet from a public well.

(j) Reclaimed water distribution lines shall meet the separation distances to sewer lines in accordance with Rule .0305 of this Subchapter.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0910 RECLAIMED WATER UTILIZATION**

(a) Reclaimed water for land application to areas intended to be accessible to the public such as residential lawns, golf courses, cemeteries, parks, school grounds, industrial or commercial site grounds, landscape areas, highway medians, roadways and other similar areas shall meet the following criteria:

- (1) Notification shall be provided by the permittee or its representative to inform the public of the use of reclaimed water (Non Potable Water)

- and that the reclaimed water is not intended for drinking.
- (2) The generator of the reclaimed water shall develop and maintain a program of record keeping for distribution of reclaimed water.
  - (3) The generator of the reclaimed water shall develop and maintain a program of education and approval for all use of reclaimed wastewater on property not owned by the generator.
  - (4) The generator of the reclaimed water shall develop and maintain a program of routine review and inspection of all use of reclaimed water not on property owned by the generator.
  - (5) The compliance boundary and the review boundary for groundwater shall be established at the irrigation area boundaries. No deed restrictions or easements shall be required to be filed on adjacent properties. Land application of effluents must be on property controlled by the generator unless a contractual agreement is provided in accordance with 15A NCAC 02L .0107 except in cases where a compliance boundary is not established.

(b) Reclaimed water used for purposes such as industrial process water or cooling water, aesthetic purposes such as decorative ponds or fountains, fire fighting or extinguishing, dust control, soil compaction for construction purposes, street sweeping (not street washing), and individual vehicle washing for personal purposes shall meet the criteria below:

- (1) Notification shall be provided by the permittee or its representative to inform the public or employees of the use of reclaimed water (Non Potable Water) and that the reclaimed water is not intended for drinking.
- (2) Use of reclaimed water in decorative ponds or fountains shall require regular inspection by the Permittee to ensure permanent signs/notification and to ensure no discharge occurs from the fountains/ponds.
- (3) Use of reclaimed water for vehicle washing shall be conducted in a manner to ensure minimal surface runoff and the Permittee shall provide educational information to the users of reclaimed water for vehicle washing.

- (4) The generator of the reclaimed water shall develop and maintain a program of education and approval for all reclaimed water users.
- (5) The generator of the reclaimed water shall develop and maintain a program of record keeping for distribution of reclaimed water.
- (6) The generator of the reclaimed water shall develop and maintain a program of routine review and inspection of reclaimed water users.

(c) Reclaimed water used for urinal and toilet flushing or fire protection in sprinkler systems located in commercial or industrial facilities shall be approved by the Director if the applicant can demonstrate to the Division that public health and the environment will be protected.

(d) Reclaimed water shall not be used for irrigation of direct food chain crops.

(e) Reclaimed water shall not be used for swimming pools, hot-tubs, spas or similar uses.

(f) Reclaimed water shall not be used for direct reuse as a raw potable water supply.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0911 BULK DISTRIBUTION OF RECLAIMED WATER**

(a) Tank trucks and other equipment used to distribute reclaimed water shall be identified with advisory signs.

(b) Tank trucks used to transport reclaimed water shall not be used to transport potable water that is used for drinking or other potable purposes.

(c) Tank trucks used to transport reclaimed water shall not be filled through on-board piping or removable hoses that may subsequently be used to fill tanks with water from a potable water supply.

(d) The generator of the reclaimed water shall develop and maintain a program of education and approval for all reclaimed water users.

(e) The generator of the reclaimed water shall develop and maintain a program of record keeping for bulk distribution of reclaimed water.

(f) The generator of the reclaimed water shall develop and maintain a program of routine review and inspection of reclaimed water users.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .0912 SETBACKS**

(a) Treatment and storage facilities associated with systems permitted under this Section shall adhere to the setback requirements in Section .0500 of this Subchapter except as provided in this Rule.

(b) The setbacks for Irrigation and utilization areas shall be as follows:

	feet
Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) not classified SA	25
Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) classified SA	100
Any well with exception to monitoring wells	100

(c) No setback between the application area and property lines shall be required.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0913 OPERATION AND MAINTENANCE PLAN**

An Operation and Maintenance Plan shall be maintained by the permittee for all reclaimed water systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) provide a map of all distribution lines and record drawings of all irrigation systems under the permittee's control;
- (3) describe anticipated maintenance of the system;
- (4) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (5) include spill control provisions including:
  - (a) response to upsets and bypasses including control, containment, and remediation; and
  - (b) contact information for plant personnel, emergency responders, and regulatory agencies.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .0914 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all reclaimed water systems that generate residuals. The plan must include the following:

- (1) a detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed;
- (2) an evaluation of the residuals storage requirements for the treatment facility based upon the maximum anticipated residuals production rate and ability to remove residuals;
- (3) a permit for residuals utilization, a written commitment to the Permittee of a Division approved residuals disposal/utilization program accepting the residuals which demonstrates that the program has adequate capacity to accept the residuals, or that an application for approval has been submitted; and
- (4) if oil, grease, grit, or screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1001 SCOPE**

This Section applies to closed-loop recycle systems in which nondomestic wastewater is repeatedly recycled back through the process in which the waste was generated. The following systems are not regulated by this Section:

- (1) the reuse or return of wastewater from a permitted animal waste lagoon facility for waste flushing cover by Section .1300 of this Subchapter;
- (2) the recycling of wastewater from groundwater remediation systems through an Injection Well or Infiltration Gallery specifically covered by Section .1600 of this Subchapter; and
- (3) the reuse of wastewater through treatment and distribution as reclaimed water specifically covered by Section .0900 of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1003 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) Return of wastewater contained and under roof within an industrial or commercial process where there is no anticipated release of wastewater provided the facility develops and maintains a spill control plan in the event of a release and no earthen basins are used.
- (2) Recycling of rinse water at concrete mixing facilities for concrete mix removal from equipment provided the wastewater is contained within concrete structures, there is sufficient storage capacity to contain the runoff from a 24-hour, 25-year storm event plus one foot freeboard and the facility develops and maintains a spill control plan in the event of a wastewater release. The facility must notify the appropriate Division regional office in writing noting the owner, location, and that the design complies with the above criteria.
- (3) Recycling of wash and rinse water at vehicle wash facilities provided the wastewater is contained within concrete, steel or synthetic structures (i.e. not including earthen basins), all vehicle washing is conducted under roof and there are no precipitation inputs (direct or indirect), and the facility develops and

maintains a spill control plan in the event of a wastewater release.

- (4) The reuse or return of wastewater within the treatment works of a permitted wastewater treatment system.

(b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

#### **15A NCAC 02T .1004 APPLICATION SUBMITTAL**

(a) A general description including how the wastewater is generated, how the wastewater will be recycled, and contingencies in case of system failure shall be provided to the Division.

(b) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product;
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, and buoyancy calculations; and
- (4) a water balance calculation documenting all inputs and losses, including residuals, demonstrating the system will not discharge to waters.

(c) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division depicting the location, orientation and relationship of facility components including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (1) a scaled map of the site, with topographic contour intervals not exceeding two feet and showing all facility-related structures and fences within the treatment, storage and disposal areas;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .1006 of this Section; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(d) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Lease agreements shall adhere to the requirements of 15A NCAC 02L .0107(f).

(e) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission to the Division stating that a franchise application has been received.

(f) For industrial waste, a complete chemical analysis of the typical wastewater to be discharged shall be provided to the Division. The analysis may include Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Ammonia, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids. Nitrates, Total Nitrogen, Calcium, Sodium, Magnesium, Total Volatile Organics, Total Coliforms and Total Dissolved Solids.

(g) A detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed of shall be submitted to the Division.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

#### **15A NCAC 02T .1005 DESIGN CRITERIA**

(a) Design criteria related to closed-loop recycle systems in general.

- (1) There shall be no public access to the wastewater treatment equipment, wastewater



storage structures or to the wastewater within a closed-loop recycle facility.

- (2) Where potable water is used to supplement a closed-loop recycle water system, there shall be an air gap separation between the potable water and closed-loop recycle water systems.

(b) Design criteria related to treatment and storage units utilized in closed-loop recycle systems.

- (1) The facility shall have the ability to stop production of effluent, return the effluent back to the treatment facility, store the effluent, or discharge the effluent to another permitted wastewater treatment facility when recycling can not be conducted.
- (2) Essential treatment units shall be provided in duplicate where proper operation of the treatment unit is essential to the operation of the closed-loop recycle system and the operation can not safely or efficiently be immediately stopped or altered to operate without the closed-loop recycle system.
- (3) An automatically activated standby power source, system shutdown, or other means shall be employed to prevent improperly treated wastewater from entering a treated waste water storage structure or from being recycled where loss of power would create an unsafe condition.
- (4) Where they are suitable for reuse, residues recovered during the treatment process may be recycled through the processes that generated the wastewater rather than disposed of as a waste.
- (5) A water tight seal on all treatment/storage units or a minimum of two feet protection from the 100-year flood shall be provided.
- (6) Storage units in a closed-loop recycle system shall be designed to contain the accumulation

of water from a 25-year, 24-hour storm event with 1 foot freeboard, unless the system is protected from rainfall and runoff.

- (7) The bottoms of earthen impoundments, trenches or other similar excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  centimeters per second. Liner thickness shall be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Liner requirements may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director that construction and use of these treatment and disposal units will not result in contravention of surface water or groundwater standards.
- (8) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1006 SETBACKS**

(a) The setbacks for Treatment/storage units shall be as follows:

	(feet)
Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site	100
Any private or public water supply source	100
Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)	50
Any well with the exception of a Division approved groundwater monitoring well	100
Any property line	50

(b) Setback waivers shall be written, notarized, signed by all parties involved and recorded with the County Register of Deeds. Waivers involving the compliance boundary shall be in accordance with 15A NCAC 02L .0107.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1007 OPERATIONS AND MAINTENANCE PLAN**

An Operations and Maintenance Plan shall be maintained for all systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;

- (2) describe anticipated maintenance of the system;
- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (4) include spill control provisions including:
  - (a) response to upsets and bypasses including control, containment, and remediation; and
  - (b) contact information for plant personnel, emergency responders, and regulatory agencies.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1008 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all systems that generate residuals. The plan must include the following:

- (1) a detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed of;
- (2) an evaluation of the residuals storage requirements for the treatment facility based upon the maximum anticipated residuals production rate and ability to remove residuals;
- (3) a written commitment to the Permittee of a Division approved, or that an application for approval has been submitted, residuals disposal/utilization site for the acceptance of the residuals and which demonstrates that the site has adequate capacity to accept the residuals; and
- (4) if oil, grease, grit, or screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1101 SCOPE**

This Section applies to the treatment, storage, transportation, use, and disposal of residuals. Not regulated under this Section is the treatment, storage, transportation, use, or disposal of:

- (1) oil, grease, grit and screenings from wastewater treatment facilities;
- (2) septage from wastewater treatment facilities;
- (3) ash that is regulated in accordance with Section .1200;
- (4) residuals that are regulated in accordance with Section .1300 and Section .1400 of this Subchapter;
- (5) residuals that are prepared for land application, used, or disposed of in a solid waste

management facility permitted by the Division of Waste Management;

- (6) residuals that are disposed of in an incinerator permitted by the Division of Air Quality;
- (7) residuals that are transported out of state for treatment, storage, use, or disposal; and
- (8) residuals that meet the definition of a hazardous waste in accordance with 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b) or that have a concentration of polychlorinated biphenyls equal to or greater than 50 milligrams per kilogram of total solids (i.e., dry weight basis).

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1102 DEFINITIONS**

As used in this Section:

- (1) "Aerobic digestion" shall mean the biochemical decomposition of organic matter in residuals into carbon dioxide and water by microorganisms in the presence of air.
- (2) "Agricultural land" shall mean land on which a food crop, feed crop, or fiber crop is grown.
- (3) "Anaerobic digestion" shall mean the biochemical decomposition of organic matter in residuals into methane gas and carbon dioxide by microorganisms in the absence of air.
- (4) "Bag and other container" shall mean a bag, bucket, bin, box, carton, vehicle, trailer, tanker, or an open or closed receptacle with a load capacity of 1.102 short tons or one metric ton or less.
- (5) "Base flood" shall mean a flood that has a one percent change of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).
- (6) "Biological residuals" shall mean residuals that have been generated during the treatment of domestic wastewater, the treatment of animal processing wastewater, or the biological treatment of industrial wastewater.
- (7) "Biological treatment" shall mean treatment in a system that utilizes biological processes that shall include lagoons, activated sludge systems, extended aeration systems, and fixed film systems.
- (8) "Bulk residuals" shall mean residuals that are transported and not sold or given away in a bag or other container for application to the land.
- (9) "Cover" shall mean soil or other material used to cover residuals placed in a surface disposal unit.
- (10) "Cumulative pollutant loading rate" shall mean the maximum amount of a pollutant that can be applied to a unit area of land.

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| <p>(11) "Dedicated program" shall mean a program involving the application of bulk residuals in which any of the permitted land meets the definition of a dedicated land application site.</p> <p>(12) "Dedicated land application site" shall mean land:</p> <ul style="list-style-type: none"> <li>(a) to which bulk residuals are applied at greater than agronomic rates,</li> <li>(b) to which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system, or</li> <li>(c) where the primary use of the land is for the disposal of bulk residuals, and agricultural crop production is of secondary importance.</li> </ul> <p>(13) "Density of microorganisms" shall mean the number of microorganisms per unit mass of total solids (i.e., dry weight basis) in the residuals.</p> <p>(14) "Dry weight basis" shall mean the weight calculated after the residuals have been dried at 105 degrees Celsius until they reach a constant mass.</p> <p>(15) "Feed crop" shall mean a crop produced for consumption by animals.</p> <p>(16) "Fiber crop" shall mean a crop grown for fiber production. This shall include flax and cotton.</p> <p>(17) "Food crop" shall mean a crop produced for consumption by humans. This shall include fruits, vegetables, and tobacco.</p> <p>(18) "Grit" shall mean sand, gravel, cinders, or other materials with a high specific gravity generated during preliminary treatment of wastewater in a wastewater treatment facility.</p> <p>(19) "Incorporation" shall mean the mixing of residuals with top soil to a minimum depth of four inches by methods such as discing, plowing, and rototilling.</p> <p>(20) "Injection" shall mean the subsurface application of liquid residuals to a depth of four to 12 inches.</p> <p>(21) "Land application" shall mean the spraying or spreading of residuals onto the land surface; the injection of residuals below the land surface; or the incorporation of residuals into the soil so that the residuals can condition the soil or fertilize crops or vegetation grown in the soil.</p> <p>(22) "Lower explosive limit for methane gas" shall mean the lowest percentage of methane gas in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.</p> <p>(23) "Monthly average" shall mean the arithmetic mean of all measurements taken during the month.</p> <p>(24) "Pathogens" shall mean disease-causing organisms including disease-causing bacteria, protozoa, viruses, and viable helminth ova.</p> | <p>(25) "Place residuals" shall mean to dispose of residuals in a surface disposal unit.</p> <p>(26) "Person who prepares residuals" shall mean either the person who generates residuals during the treatment of waste in a wastewater treatment facility or the person who derives a material from residuals.</p> <p>(27) "Pollutant limit" shall mean a numerical value that describes the amount of a pollutant allowed per unit amount of residuals or the amount of a pollutant that can be applied to a unit area of land.</p> <p>(28) "Public contact site" shall mean land with a high potential for contact by the public as defined in 40 CFR 503.11(l). This shall include public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.</p> <p>(29) "Runoff" shall mean rainwater, leachate, or other liquid that drains overland and runs off of the land surface.</p> <p>(30) "Screenings" shall mean rags or other relatively large materials generated during preliminary treatment of wastewater in a wastewater treatment facility.</p> <p>(31) "Seismic impact zone" shall mean an area that has a 10 percent or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.</p> <p>(32) "Specific oxygen uptake rate (SOUR)" shall mean the mass of oxygen consumed per unit time per unit mass of total solids (i.e., dry weight basis) in the residuals.</p> <p>(33) "Surface disposal unit" shall mean the land on which only residuals are placed for final disposal, not including land on which residuals is either treated or stored. This shall include monofills, lagoons, and trenches.</p> <p>(34) "Surface disposal unit boundary" shall mean the outermost perimeter of a surface disposal unit.</p> <p>(35) "Total solids" shall mean the materials that remain as residue after the residuals have been dried at between 103 and 105 degrees Celsius until they reach a constant mass.</p> <p>(36) "Water treatment residuals" shall mean residuals that have been generated during the treatment of potable or process water.</p> <p>(37) "Unstabilized residuals" shall mean residuals that have not been treated in either an aerobic or an anaerobic treatment process.</p> <p>(38) "Unstable area" shall mean land subject to natural or human-induced forces that may damage the structural components of a surface disposal unit. This shall include land on which the soils are subject to mass movement.</p> <p>(39) "Vector attraction" shall mean the characteristic of residuals that attracts rodents,</p> |
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- flies, mosquitoes, or other organisms capable of transporting infectious agents.
- (40) "Volatile solids" shall mean the amount of the total solids in the residuals lost when they are combusted at 550 degrees Celsius in the presence of excess air.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

**15A NCAC 02T .1103 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) Preparation for land application, use, or disposal of residuals in a solid waste facility permitted by the Division of Waste Management that is approved to receive the residuals.
- (2) Land application of residuals that have been prepared for land application in a solid waste facility permitted by the Division of Waste Management approved to receive the residuals as long as the requirements of this Section are met.
- (3) Land application sites onto which residuals that are sold or given away in a bag or other container, are applied provided the following criteria is met:
  - (A) the residuals meet the pollutant limits in Rule .1105(a) and Rule .1105(c) of this Section,
  - (B) the residuals meet the pathogen requirements in Rule .1106(a)(1) of this Section,
  - (C) the residuals meet the vector attraction reduction requirements in Rule .1107(a) of this Section, and
  - (D) the land application activities are carried out according to the instructions provided in the informational sheet or bag or other container label as required in Rule .1109(a) of this Section.
- (4) Land application sites onto which bulk biological residuals are applied, provided that the residuals and activities meeting the following criteria:
  - (A) the residuals meet the pollutant limits in Rule .1105(a) and Rule .1105(c) of this Section,
  - (B) the residuals meet the pathogen requirements in Rule .1106(b) of this Section,
  - (C) the residuals meet the vector attraction reduction requirements in Rule .1107(a) of this Section, and

- (D) the land application activities meet all applicable conditions of Rule .1108(b)(1) and Rule .1109(b) of this Section.
- (5) Land application sites onto which residuals generated from the treatment of potable or fresh water or that are generated from the treatment of non-biological industrial wastewater with no domestic or municipal wastewater contributions are applied, provided that the residuals and activities meet the following criteria:
  - (A) the residuals meet the pollutant limits in Rule .1105(a) and Rule .1105(c) of this Section,
  - (B) the residuals meet the pathogen requirements in Rule .1106(b) of this Section, and
  - (C) the land application activities meet all applicable conditions of Rule .1108(b)(1) and Rule .1109 of this Section.
- (6) Transportation of residuals from the residuals generating source facility to other Division or Division of Waste Management facilities approved to treat, store, use, or dispose the residuals.

(b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

**15A NCAC 02T .1104 APPLICATION SUBMITTAL**

(a) For new and expanding residuals treatment and storage facilities:

- (1) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of facility components including:  
 [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]
  - (A) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all

- facility-related structures and fences within the treatment and storage areas;
  - (B) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all treatment and storage facilities and delineation of the review and compliance boundaries;
  - (C) setbacks as required by Rule .1108 of this Section; and
  - (D) site property boundaries within 500 feet of all treatment and storage facilities.
- (2) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:  
 [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]
  - (A) engineering plans for the facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
  - (B) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
  - (C) engineering calculations including hydraulic and pollutant loading for each unit, unit sizing criteria, hydraulic profile of the facilities, total dynamic head and system curve analysis for each pump, and buoyancy calculations.
- (b) For new and modified sources of residuals:
  - (1) Site maps shall be provided to the Division by the applicant depicting the location of the source.
  - (2) A complete analysis of the residuals shall be provided to the Division by the applicant. The analysis may include all pollutants identified in Rule .1105 of this Section, nutrients and micronutrients, hazardous waste characterization tests, and proof of compliance with Rule .1106 and Rule .1107 of this Section if applicable.
- (3) A sampling/monitoring plan that describes how compliance with Rule .1105, Rule .1106, and Rule .1107 of this Section if applicable shall be provided to the Division by the applicant.
- (c) For new and expanding non-dedicated land application sites:
  - (1) Buffer maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of land application site features including:
    - (A) a scaled map of the land application site, showing all related structures and fences within the land application area;
    - (B) the location of all wells, streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of the land application area and delineation of the review and compliance boundaries;
    - (C) setbacks as required by Rule .1108 of this Section; and
    - (D) property boundaries within 500 feet of the land application site.
  - (2) Soils Report. A soil evaluation of the land application site shall be provided to the Division by the applicant. This evaluation shall be presented in a report that includes the following. If required by G.S. 89F, a soil scientist shall prepare this evaluation:  
 [Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]
    - (A) Confirmation of a county soils map, soil evaluation, and verification of the presence or absence of a seasonal high water table within three feet of land surface or establishment of a soil map through field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons: thickness of the horizon; texture; color and other diagnostic features; structure; internal drainage; depth, thickness, and type of restrictive horizon(s); and presence or absence and depth of evidence of any seasonal high water table (SHWT).
    - (B) A representative soils analysis for standard soil fertility and all pollutants listed in Rule .1105(b) of this Section. The Standard Soil

Fertility Analysis shall include the following parameters: acidity; base saturation (by calculation); calcium; cation exchange capacity; copper; exchangeable sodium percentage (by calculation); magnesium; manganese; percent humic matter; pH; phosphorus; potassium; sodium, and zinc.

- (3) A project evaluation and a land application site management plan (if applicable) with recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the residuals shall be provided to the Division.
- (4) Unless the land application site is owned by the Permittee, property ownership documentation consisting of a notarized landowner agreement shall be provided to the Division.

(d) For new and expanding dedicated land application sites:

- (1) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of land application site features including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (A) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the land application area;
- (B) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of the land application site and delineation of the review and compliance boundaries;
- (C) setbacks as required by Rule .1108 of this Section; and
- (D) property boundaries within 500 feet of the land application site.

- (2) Engineering design documents (for land applications sites onto which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only). If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (A) engineering plans for the facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
- (B) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (C) engineering calculations including hydraulic and pollutant loading, sizing criteria, hydraulic profile, total dynamic head and system curve analysis for each pump, and irrigation design.

- (3) Soils Report. A soil evaluation of the land application site shall be provided. This evaluation shall be presented to the Division by the applicant in a report that includes the following. If required by G.S. 89F, a soil scientist shall prepare this evaluation:

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

- (A) Field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons: thickness of the horizon; texture; color and other diagnostic features; structure; internal drainage; depth, thickness, and type of restrictive horizon(s); and presence or absence and depth of evidence of any seasonal high water table (SHWT). Applicants shall dig pits if necessary for proper evaluation of the soils at the site.

- (B) Recommendations concerning loading rates of liquids, solids, other residuals constituents and amendments (i.e., for land application sites onto which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only). Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each soil mapping unit. Maximum irrigation precipitation rates shall be provided for each soil mapping unit.
  - (C) A soil map delineating soil mapping units within the land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
  - (D) A representative soils analysis for standard soil fertility and all pollutants listed in Rule .1105(b) of this Section. The Standard Soil Fertility Analysis shall include the following parameters: acidity, base saturation (by calculation), calcium, cation exchange capacity, copper, exchangeable sodium percentage (by calculation), magnesium, manganese, percent humic matter, pH, phosphorus, potassium, sodium, and zinc.
- (4) A hydrogeologic description prepared by a Licensed Geologist, License Soil Scientist, or Professional Engineer if required by Chapters 89E, 89F, or 89C respectively of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division by the applicant. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:  
 [Note: The North Carolina Board for Licensing of Geologists, via letter dated April 6, 2006, North Carolina Board for Licensing of Soil Scientists, via letter dated December 1, 2005, and North Carolina Board of Examiners for Engineers and Surveyors, via letter dated December 1, 2005, have determined that preparation of hydrogeologic description documents pursuant to this Paragraph constitutes practicing geology under G.S. 89E, soil science under G.S. 89F, or engineering under G.S. 89C.]
- (A) a description of the regional and local geology and hydrogeology;
  - (B) a description, based on field observations of the land application site, of the land application site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
  - (C) changes in lithology underlying the land application site;
  - (D) depth to bedrock and occurrence of any rock outcrops;
  - (E) the hydraulic conductivity and transmissivity of the affected aquifer(s);
  - (F) depth to the seasonal high water table;
  - (G) a discussion of the relationship between the affected aquifers of the land application site to local and regional geologic and hydrogeologic features;
  - (H) a discussion of the groundwater flow regime of the land application site prior to operation of the proposed site and post operation of the proposed site focusing on the relationship of the site to groundwater receptors, groundwater discharge features, and groundwater flow media; and
  - (I) if residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only and if the SHWT is within six feet of the surface, a mounding analysis to predict the level of the SHWT after residuals land application.
- (5) For land application sites onto which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only, a water balance shall be provided to the Division by the applicant that determines required residuals storage based upon the most limiting factor of the hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or nutrient management based on

- either agronomic rates for the specified cover crop or crop management requirements.
- (6) A project evaluation and a receiver site management plan (if applicable) with recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the residuals shall be provided to the Division by the applicant.
  - (7) Property Ownership Documentation shall be provided to the Division by the applicant consisting of:
    - (A) legal documentation of ownership (i.e., contract, deed or article of incorporation);
    - (B) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
    - (C) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Lease agreements shall adhere to the requirements of 15A NCAC 02L .0107.
- (e) For new and expanding surface disposal units:
- (1) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of the surface disposal unit features including:
 

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

    - (A) a scaled map of the surface disposal unit, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all surface disposal unit-related structures and fences within the surface disposal unit;
    - (B) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of the surface disposal unit and delineation of the review and compliance boundaries;
  - (C) setbacks as required by Rule .1108 of this Section; and
  - (D) site property boundaries within 500 feet of the surface disposal unit.
- (2) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:
- [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]
- (A) engineering plans for the surface disposal unit and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
  - (B) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
  - (C) engineering calculations including hydraulic and pollutant loading, sizing criteria, hydraulic profile, and total dynamic head and system curve analysis for each pump.
- (3) Soils Report. A soil evaluation of the surface disposal unit site shall be provided to the Division by the applicant in a report that includes the following. If required by G.S. 89F, a soil scientist shall prepare this evaluation:
- [Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]
- (A) Field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons: thickness of the horizon; texture; color and other diagnostic features; structure; internal drainage; depth, thickness, and type of restrictive horizon(s); and presence or absence and depth of evidence of any seasonal



- high water table (SHWT). Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.
- (B) A soil map delineating major soil mapping units within the surface disposal unit site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
- (4) A hydrogeologic description prepared by a Licensed Geologist, License Soil Scientist, or Professional Engineer if required by Chapters 89E, 89F, or 89C respectively of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division by the applicant. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:  
[Note: The North Carolina Board for Licensing of Geologists, via letter dated April 6, 2006, North Carolina Board for Licensing of Soil Scientists, via letter dated December 1, 2005, and North Carolina Board of Examiners for Engineers and Surveyors, via letter dated December 1, 2005, have determined that preparation of hydrogeologic description documents pursuant to this Paragraph constitutes practicing geology under G.S. 89E, soil science under G.S. 89F, or engineering under G.S. 89C.]
- (A) a description of the regional and local geology and hydrogeology;
- (B) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (C) changes in lithology underlying the site;
- (D) depth to bedrock and occurrence of any rock outcrops;
- (E) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (F) depth to the seasonal high water table;
- (G) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features; and
- (H) a discussion of the groundwater flow regime of the site prior to operation of the proposed unit and post operation of the proposed unit focusing on the relationship of the unit to groundwater receptors, groundwater discharge features, and groundwater flow media.
- (5) Property Ownership Documentation shall be provided to the Division by the applicant consisting of:
- (A) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (B) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (C) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Lease agreements shall adhere to the requirements of 15A NCAC 02L .0107.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1105 POLLUTANT LIMITS**

(a) Bulk residuals or residuals that are sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the residuals exceeds the ceiling concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Pollutant</u>	<u>Ceiling Concentration</u> <u>(milligrams per kilogram)</u>
Arsenic	75
Cadmium	85
Copper	4,300
Lead	840

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**APPROVED RULES**

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Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7,500

(b) Bulk residuals shall not be applied to the land if the land application causes the exceedance of the cumulative pollutant loading rate for any pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (kilograms per hectare)</u>
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2,800

- (1) A person shall determine compliance with the cumulative pollutant loading rates using one of the following methods:
  - (A) by calculating the existing cumulative level of pollutants using actual analytical data from all historical land application events of residuals not otherwise exempted by this Paragraph or
  - (B) for land on which land application events of residuals has not occurred or for which the data required in Rule .1105(b) is incomplete, by determining background concentrations through representative soil sampling.
- (2) When applied to the land, bulk residuals shall be exempt from complying with this Paragraph as long as they meet all of the following criteria:
  - (A) the monthly average concentrations stipulated in Rule .1105(c) of this Section.
  - (B) the pathogen reduction requirements stipulated in Rule .1106(b) of this Section, and
  - (C) the vector attraction reduction requirements stipulated in Rule .1107 of this Section.

(c) Bulk residuals shall not be applied to a lawn, home garden, or public contact use site nor shall residuals be sold or given away in a bag or other container for application to the land if the concentration of any pollutant in the residuals exceeds the concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)</u>
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2,800

(d) Bulk residuals shall not be placed in a surface disposal unit if the concentration of any pollutant in the residuals exceeds the concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Distance from Surface Disposal Unit Boundary to Closest Property Line (meters)</u>	<u>Ceiling Concentration (milligrams per kilogram)</u>		
	Arsenic	Chromium	Nickel
0 to less than 25	30	200	210
25 to less than 50	34	220	240
50 to less than 75	39	260	270
75 to less than 100	46	300	320

100 to less than 125  
125 and greater

53  
62

360  
450

390  
420

*History Note: Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.*

**15A NCAC 02T .1106 PATHOGEN REDUCTION REQUIREMENTS**

(a) The following pathogen requirements shall be met when biological residuals are applied to the land or placed in a surface disposal unit:

- (1) The Class A pathogen requirements shall be met when bulk biological residuals are applied to a lawn, home garden, or public contact use site or sold or given away in a bag or other container for application to the land.
- (2) Biological residuals placed in a surface disposal unit shall be exempt from meeting the Class A or Class B pathogen requirements if the vector attraction reduction method in Rule .1107(b)(2) of this Section is met.
- (3) Programs involving the land application of biological residuals generated by wastewater treatment facilities treating industrial wastewater only that are operational at the time of this Rule's effective date shall comply with the requirements stipulated in this Rule no later than five years from the effective date of this Rule unless the Permittee is adhering to an established schedule in an individual permit, settlement agreement, special order pursuant to G.S. 143-215.2, or other similar document that establishes a later deadline.

(b) For biological residuals to be classified as Class A with respect to pathogens, the following shall be met:

- (1) The requirements in this Paragraph are met either prior to meeting or at the same time as vector attraction reduction requirements in Rule .1107 of this Section are met, unless the vector attraction reduction methods stipulated in Rule .1107(a)(6), Rule .1107(a)(7), and Rule .1107(a)(8) of this Section are met.
- (2) The biological residuals are monitored at the time that the biological residuals are used or disposed or are prepared for sale or giving away in a bag or other container for application to the land for the density of fecal coliform or Salmonella sp. bacteria to demonstrate the following:
  - (A) the density of fecal coliform is less than 1,000 Most Probable Number per gram of total solids (i.e., dry weight basis), or
  - (B) the density of Salmonella sp. bacteria is less than three Most Probable Number per four grams of total solids (i.e., dry weight basis).
- (3) The biological residuals meet one of the following alternatives:
  - (A) Time/Temperature. The temperature of the biological residuals shall be maintained at a specific value for a period of consecutive time in accordance with the following:

Total Solids (percent)	Temperature (t) (degrees Celsius)	Time	Equation to Determine Minimum Holding Time (D) (days)
≥ 7	≥ 50	≥ 20 minutes	$\frac{131,700,000}{10^{0.1400t}}$
≥ 7	≥ 50	≥ 15 seconds <sup>1</sup>	$\frac{131,700,000}{10^{0.1400t}}$
< 7	≥ 50	≥ 15 seconds <30 minutes	$\frac{131,700,000}{10^{0.1400t}}$
<7	≥ 50	≥ 30 minutes	$\frac{50,070,000}{10^{0.1400t}}$

1 – when residuals are heated by warmed gases or an immiscible liquid

- (B) Alkaline Treatment. The pH of the biological residuals shall be raised to above 12 and remains above 12 for 72 consecutive hours. The temperature of the biological residuals shall be above 52 degrees

Celsius for 12 hours or longer during the period that the pH of the biological residuals is above 12. At the end of the 72-hour period during which the pH is above 12, the biological residuals shall be air dried

- to achieve a total solids greater than 50 percent.
- (C) Prior Testing for Enteric Viruses/Viable Helminth Ova. The biological residuals shall be analyzed prior to pathogen reduction treatment to determine whether the biological residuals contain enteric viruses or viable helminth ova. The density of enteric viruses prior to pathogen reduction treatment shall be less than one Plaque-forming Unit per four grams of total solids (i.e., dry weight basis) or the density of viable helminth ova shall be less than one per four grams of total solids (i.e., dry weight basis). When the density of enteric viruses or viable helminth ova are equal to or greater than these values, the biological residuals shall be considered to be Class A following pathogen reduction treatment if the resultant densities are less than these values and the operating parameters for the pathogen reduction treatment are documented to the satisfaction of the Division. After this demonstration, the biological residuals shall be considered to be Class A as long as the operating parameters for the pathogen reduction treatment are met and documented to the satisfaction of the Division.
- (D) No Prior Testing for Enteric Viruses/Viable Helminth Ova. The density of enteric viruses in the biological residuals shall be less than one Plaque-forming Unit per four grams of total solids (i.e., dry weight basis) or the density of viable helminth ova in the biological residuals shall be less than one per four grams of total solids (i.e., dry weight basis) at the time that the biological residuals are used or disposed or is prepared for sale or giving away in a bag or other contained for application to the land.
- (E) Process to Further Reduce Pathogens - Composting. The biological residuals shall be composted using either the within-vessel method or the static aerated pile method, during which the temperature of the biological residuals is maintained at 55 degrees Celsius or higher for three consecutive days or longer. Alternatively, the biological residuals shall be composted using the windrow method, during which the temperature of the biological residuals is maintained at 55 degrees Celsius or higher for 15 consecutive days or longer. The windrow shall be turned five times during the period when the biological residuals are maintained at 55 degrees Celsius or higher. Natural decay of the biological residuals under uncontrolled conditions are not sufficient to meet this process.
- (F) Process to Further Reduce Pathogens - Heat Drying. The biological residuals shall be dried by direct or indirect contact with hot gases to reduce the moisture content of the biological residuals to 10 percent or lower. During the process, either the temperature of the biological residuals particles exceeds 80 degrees Celsius or the wet bulb temperature of the gas in contact with the biological residuals as they leave the dryer exceeds 80 degrees Celsius.
- (G) Process to Further Reduce Pathogens - Heat Treatment. The biological residuals shall be heated to a temperature of 180 degrees Celsius or higher for 30 minutes. This process is only available to biological residuals that are in a liquid state.
- (H) Process to Further Reduce Pathogens - Thermophilic Aerobic Digestion. The biological residuals shall be agitated with air or oxygen to maintain aerobic conditions, and the mean cell residence time of the biological residuals shall be 10 days at between 55 and 60 degrees Celsius. This process is only available to biological residuals that are in a liquid state.
- (I) Process to Further Reduce Pathogens - Beta Ray Irradiation. The biological residuals shall be irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (i.e., approximately 20 degrees Celsius).
- (J) Process to Further Reduce Pathogens - Gamma Ray Irradiation. The biological residuals shall be irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (i.e., approximately 20 degrees Celsius).

- (K) Process to Further Reduce Pathogens - Pasteurization. The temperature of the biological residuals shall be maintained at 70 degrees Celsius or higher for 30 minutes or longer.

(c) For biological residuals to be classified as Class B with respect to pathogens one of the following shall be met:

- (1) Fecal Coliform Density Demonstration. Seven samples of the biological residuals are collected at the time the residuals are used or disposed, and the geometric mean of the density of fecal coliform in the samples collected is less than either 2,000,000 Most Probable Number per gram of total solids (i.e., dry weight) or 2,000,000 Colony Forming Units per gram of total solids (i.e., dry weight basis).
- (2) Process to Significantly Reduce Pathogens. The biological residuals processed in a process to significantly reduce pathogens. The processes to significantly reduce pathogens are as follows:
  - (A) Aerobic Digestion. Biological residuals are agitated with air or oxygen to maintain aerobic conditions for a specific mean cell time at a specific temperature. Values for the mean cell residence time and temperature are between 40 days at 20 degrees Celsius and 60 days at 15 degrees Celsius.
  - (B) Air Drying. Biological residuals are dried on sand beds or on paved or unpaved basins for a minimum of three months. During two of the three months, the ambient average daily temperature is above zero degrees Celsius.
  - (C) Anaerobic Digestion. Biological residuals are treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature are between 15 days at 35 to 55 degrees Celsius and 60 days at 20 degrees Celsius.
  - (D) Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the biological residuals is raised to 40 degrees Celsius or higher and remains at 40 degrees Celsius or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55 degrees Celsius. Natural decay of the biological residuals under uncontrolled conditions is not sufficient to meet this process

- (E) Lime Stabilization. Sufficient lime is added to the biological residuals to raise the pH to 12 after two hours of contact.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1107 VECTOR ATTRACTION REDUCTION REQUIREMENTS**

(a) Biological residuals shall not be applied to the land unless the requirements of one of the vector attraction reduction alternatives have been met. Programs involving the land application of biological residuals generated by wastewater treatment facilities treating industrial wastewater only that are operational at the time of this Rule's effective date shall comply with the requirements stipulated in this Rule no later than five years from the effective date of this Rule unless the Permittee is adhering to an established schedule in an individual permit, settlement agreement, special order pursuant to G.S. 143-215.2, or other similar document that establishes a later deadline. The vector attraction reduction alternatives shall be as follows:

- (1) 38-Percent Volatile Solids Reduction. The mass of the volatile solids in the biological residuals shall be reduced by a minimum of 38 percent between the time that the biological residuals enter the digestion process and the time it is land applied.
- (2) 40-Day Bench Scale Test. A portion of previously anaerobically-digested biological residuals shall be further anaerobically-digested in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. The volatile solids in the biological residuals shall be reduced by less than 17 percent as measured from the beginning to the end of the test.
- (3) 30-Day Bench Scale Test. A portion of previously aerobically-digested biological residuals shall be further aerobically-digested in the laboratory in a bench-scale unit for 30 additional days at a temperature of 20 degrees Celsius. The previously aerobically-digested biological residuals shall either have a concentration of two percent total solids or less or shall be diluted with effluent down to two percent total solids at the start of the test. The volatile solids in the biological residuals shall be reduced by less than 15 percent as measured from the beginning to the end of the test.
- (4) Specific Oxygen Uptake Rate Test. The specific oxygen uptake rate (SOUR) for biological residuals treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (i.e., dry weight basis) corrected to a temperature of 20 degrees Celsius.

- (5) 14-Day Aerobic Processes. The biological residuals shall be treated in an aerobic process for 14 days or longer. During that time the temperature of the biological residuals shall be higher than 40 degrees Celsius, and the average temperature of the biological residuals shall be higher than 45 degrees Celsius.
- (6) Alkaline Stabilization. The pH of the biological residuals shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.
- (7) Drying of Stabilized Residuals. The biological residuals shall be dried to 75 percent total solids if the biological residuals contain no unstabilized solids from a primary wastewater treatment process. Mixing of the biological residuals with other materials shall not be used to meet this alternative.
- (8) Drying of Unstabilized Residuals. The biological residuals shall be dried to 90 percent total solids if the biological residuals contain unstabilized solids from a primary wastewater treatment process. Mixing of the biological residuals with other materials shall not be used to meet this alternative.
- (9) Injection.
- (A) Biological residuals shall be injected below the surface of the land in accordance with 40 CFR 503.33(b)(9)(ii).
- (B) If Class A with respect to pathogens, the biological residuals shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.
- (10) Incorporation.
- (A) If Class B with respect to pathogens, the biological residuals shall be incorporated into the soil within six hours after application to the land.
- (B) If Class A with respect to pathogens, the biological residuals shall be applied to the land within eight hours after being discharged from the pathogen treatment process.
- (b) Biological residuals shall not be placed in a surface disposal unit unless one of the following vector attraction reduction alternatives have been met:
- (1) Any alternative stipulated in Paragraph (a) of this Rule.
- (2) Daily Cover. Biological residuals shall be covered with soil or other material at the end of each operating day.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1108 SETBACKS**

- (a) For residuals treatment and storage facilities, the following minimum setbacks (i.e., in feet) shall be adhered to:

Habitable residences or places of public assembly under separate ownership or not to be maintained as part of the project site	100
Private or public water supply sources	100
Surface waters (streams – intermittent and perennial, lakes, perennial waterbodies, and wetlands)	50
Wells with exception to monitoring wells	100
Property lines	50

- (b) For land onto which bulk residuals are applied or stockpiled, the following minimum setbacks (i.e., in feet) shall be adhered to:

(1) If the bulk residuals meet the requirements of Rules .1105(c), .1106(b), and .1107 of this Section:			
	Liquid Residuals	Cake Residuals	
Private or public water supply sources	100	100	
Surface waters (streams - intermittent and perennial, perennial waterbodies, and wetlands)	100	25	
Surface water diversions (ephemeral streams, waterways, ditches)	25	0	
Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	25	0	
Wells with exception to monitoring wells	100	100	
Bedrock outcrops	25	0	
(2) If the bulk residuals do not meet the requirements of Rules .1105(c), .1106(b), and .1107 of this Section:			
	Surface Application by Vehicle	Surface Application by Irrigation	Injection / Incorporation
Habitable residences or places of public assembly under separate ownership or not to be maintained as part of the project site	400	400	200

Habitable residences or places of public assembly owned by the permittee, the owner of the land, or the lessee/operator of the land to be maintained as part of the project site	0	200	0
Property lines	50	150	50
Public rights of way	50	50	50
Private or public water supply sources	100	100	100
Surface waters (streams - intermittent and perennial, perennial waterbodies, and wetlands)	100	100	50
Surface water diversions (ephemeral streams, waterways, ditches)	25	100	25
Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	25	100	25
Subsurface groundwater lowering drainage systems	0	100	0
Wells with exception to monitoring wells	100	100	100
Bedrock outcrops	25	25	25
Top of slope of embankments or cuts of two feet or more in vertical height	15	15	15
Building foundations or basements	0	15	0
Water lines	0	10	0
Swimming pools	100	100	100
Nitrification fields	0	20	0

(c) For the construction and operation of surface disposal units, the following minimum setbacks (i.e., in feet) shall be adhered to:

Habitable residences or places of public assembly under separate ownership or not to be maintained as part of the project site	400
Property lines	50
Public rights of way	50
Private or public water supply sources	100
Surface waters (streams - intermittent and perennial, perennial waterbodies, and wetlands)	100
Surface water diversions (ephemeral streams, waterways, ditches)	25
Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	100
Subsurface groundwater lowering drainage systems	100
Wells with exception to monitoring wells	100
Water lines	10
Swimming pools	100

*History Note: Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.*

**15A NCAC 02T .1109 OPERATION AND  
MANAGEMENT PRACTICES**

(a) For residuals that are sold or given away in a bag or other container for application to the land, either a label shall be affixed to the bag or other container or an information sheet shall be provided to the person who receives the residuals. The label/information sheet shall contain the following information:

- (1) the name and address of the person who prepared the residuals and
- (2) a statement that land application of the residuals shall be prohibited except with the instructions on the label/sheet.
- (3) that residuals shall be applied at agronomic rates and recommended rates for intended uses.

(b) For land onto which bulk residuals are applied, the following shall apply:

- (1) Bulk residuals shall not be applied to the land under the following conditions:
  - (A) if the requirements specified by 40 CFR 503.14(a) as stated on January 1, 1996 and incorporated by reference cannot be met;
  - (B) if the application causes prolonged nuisance conditions;
  - (C) if the land fails to assimilate the bulk residuals or the application causes the contravention of surface water or groundwater standards;
  - (D) if the land is flooded, frozen, or snow-covered or is otherwise in a condition such that runoff of the residuals would occur;
  - (E) within the 100-year flood elevation unless the bulk residuals are injected

- or incorporated within a 24-hour period following the residuals land application event;
  - (F) during precipitation events or within 24 hours following a rainfall event of 0.5 inches or greater in a 24-hour period;
  - (G) if the slope of the land is greater than 10 percent when bulk liquid residuals are surface applied, and if the slope of the land is greater than 18 percent when bulk liquid residuals are injected or incorporated;
  - (H) if the land does not have an established vegetative cover crop unless the bulk residuals are incorporated within a 24-hour period following the residuals land application event or injected;
  - (I) if the vertical separation of the seasonal high water table and the depth of residuals application is less than one foot;
  - (J) if the vertical separation of the depth to bedrock and the depth of residuals application is less than one foot; or
  - (K) application exceeds agronomic rates except for dedicated sites where the applicant has specifically requested higher rates in an applications pursuant to Rule .1104(d) of this Section.
- (2) For land onto which bulk residuals that do not meet the requirements of Rule .1106(b) of this Section are applied, the following public access restrictions shall be adhered to:
- (A) public access to public contact sites shall be restricted for one calendar year after any residuals land application event;
  - (B) public access to land that is not a public contact site shall be restricted for 30 days after any residuals land application event; and
  - (C) public access to land associated with a dedicated land application site shall be restricted continuously while the land is permitted for active use and for one calendar year after the final residuals land application event.
- (3) For land onto which bulk residuals that do not meet the requirements of Rule .1106(b) of this Section are applied, the following harvesting and grazing restrictions shall be adhered to:
- (A) animals shall not be allowed to graze on land for 30 calendar days after any residuals land application event;
  - (B) food crops, feed crops, and fiber crops shall not be harvested for 30 calendar days after any residuals land application event;
  - (C) food crops with harvested parts that touch the residuals/soil mixture and are totally above the land surface shall not be harvested for 14 months after any residuals land application event;
  - (D) food crops with harvested parts below the surface of the land shall not be harvested for 20 months after any residuals land application event when the residuals remain on the land surface for four months or longer prior to incorporation into the soil;
  - (E) food crops with harvested parts below the surface of the land shall not be harvested for 38 months after any residuals land application event when the residuals remain on the land surface for less than four months prior to incorporation into the soil; and
  - (F) turf grown on land where residuals are applied shall not be harvested for one calendar year after any residuals land application event.
- (c) For surface disposal units, the following conditions shall be met:
- (1) For new and expanding surface disposal units, the following conditions shall be met.
    - (A) Surface disposal units shall not be located in a seismic impact zone unless designed to withstand the maximum recorded horizontal ground level acceleration.
    - (B) Surface disposal units shall not be located less than 60 meters from a fault that has displacement in Holocene time.
    - (C) Surface disposal units shall not be located within an unstable area.
    - (D) Surface disposal units shall not be located within the 100-year floodplain.
    - (E) Surface disposal units shall not restrict base flood flow.
    - (F) The vertical separation of the seasonal high water table and the bottom of surface disposal units shall not be less than three feet.
    - (G) Surface disposal units shall be provided with a liner system with a maximum hydraulic conductivity of  $10^{-7}$  centimeters per second. If cake residuals are to be placed in the unit, a leachate collection system shall be required. If liquid residuals are to be placed in the unit, a decanting system



- and freeboard marker shall be required.
- (2) The following conditions shall be met while surface disposal units are permitted for active use and for three calendar years after closure:
- (A) The requirements specified by 40 CFR 503.24(a) as stated on January 1, 1996 and incorporated by reference shall be met.
  - (B) Surface disposal units shall not cause prolonged nuisance conditions.
  - (C) Surface disposal units shall not cause the contravention of surface water or groundwater standards.
  - (D) Runoff from a 24-hour 25-year storm event, decant water, and leachate (i.e., as applicable) shall be collected from surface disposal units.
  - (E) If biological residuals are placed in the surface disposal unit, the concentration of methane gas shall not exceed 25 percent of the lower explosive limit for methane gas in any structure within the surface disposal unit boundary.
  - (F) If biological residuals are placed in the surface disposal unit, the concentration of methane gas shall not exceed the lower explosive limit for methane gas at any property line of the surface disposal unit.
  - (G) Public access to surface disposal units shall be restricted continuously.
  - (H) Animals shall not be allowed to graze on surface disposal units.
- (I) Food crops, feed crops, and fiber crops shall not be harvested from surface disposal units.
- (3) Following active use, surface disposal units shall be closed. Permits for surface disposal units shall be maintained for a minimum of three years following successful closure. Requests for approval of closure plans shall be submitted to the Division at least 180 days prior to the date that a surface disposal unit is to be closed and shall include the following information:
- (A) how the surface disposal unit will be closed;
  - (B) a discussion of how the leachate collection system will be operated and maintained, if applicable;
  - (C) a description of the system used to monitor the air for methane gas in the air in any structures within the surface disposal unit boundary and at the property line of the surface disposal unit, if applicable;
  - (D) a discussion of how public access to the surface disposal unit will be restricted; and
  - (E) proof that the deed for the surface disposal unit property has been amended to provide permanent written notification to subsequent owners of the property that the property was used for the purposes of operating a surface disposal unit.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1111 MONITORING AND REPORTING**

- (a) Representative samples of residuals that are prepared for application to the land or placed in a surface disposal unit shall be collected and analyzed.
- (b) The analytical methods listed in 40 CFR 503.8(b) as stated on January 1, 1996 shall be incorporated into this Section by reference.
- (c) Residuals applied to the land or placed in a surface disposal unit shall be monitored for pollutants as listed in Rule .1105(a) and Rule .1105(d) of this Section as well as Rule .1106 and Rule .1107 as applicable at the frequency as stipulated in the following:

Metric Tons per 365 day period (Dry Weight Basis)	Monitoring Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

- (d) A report of all monitoring and reporting requirements as specified in the permit shall be submitted to the Division by the permittee annually on or before March 1st of each calendar year.
- (e) All records shall be retained for a minimum of five years.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1201 SCOPE**

(a) This Section applies to the treatment, storage, transportation, use, and disposal of coal combustion products (CCPs) that are defined as wastewater treatment residuals. Not regulated under this Section is the treatment, storage, transportation, use, or disposal of:

- (1) CCPs that are not generated from a wastewater treatment facility; and
- (2) CCPs that are transported out of state for treatment, storage, use, or disposal.

(b) CCPs may be distributed for the following uses including:

- (1) Fuel for combustion in boilers, furnaces, etc. for energy recovery.
- (2) Material for manufacturing of concrete products, asphalt products, brick products, lightweight aggregate, roofing materials, insulation products, plastics, paints, bowling balls, cosmetics, and other manufactured products in which the CCPs are encapsulated in the manufactured product.
- (3) Daily, intermediate, and final cover as well as any other use at a landfill as approved by the Division of Waste Management.
- (4) Material for traction control during snow and ice events.
- (5) Substitute for blasting grit, roofing granules, and filter cloth precoat for residuals dewatering.
- (6) Flowable fill for backfill of trenches for potable water mains as approved by the Division of Environmental Health, sanitary sewers, storm drainage structures, and other similar uses where flowable fill is used in lieu of compacted soil.
- (7) Raw product for the stabilization of residuals.
- (8) Soil nutrient additive, amendment, or other agricultural purpose.
- (9) Overlay for roads, residential driveways, farm roads, and high-traffic farm areas.
- (10) Bedding for pipes, railroad beds, and underground storage tanks.
- (11) Structural fill.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

#### 15A NCAC 02T .1202 DEFINITIONS

As used in this Section:

- (1) "Coal combustion products" or "CCPs" shall mean fly ash, bottom ash, boiler slag, flue gas emission control products, mill rejects, and cenospheres resulting from the combustion solely of coal, oil, or natural gas; the combustion of any mixtures of coal, oil, or natural gas; or the combustion of any mixture of coal and up to a 50 percent mixture of other fuels as provided for in 58 FR 42466.
- (2) "Dry weight basis" shall mean the weight calculated after the CCPs have been dried at

105 degrees Celsius until they reach a constant mass.

- (3) "Flowable fill" shall mean a controlled, low strength, cementitious material that is used primarily as a backfill in lieu of compacted soil and typically exhibits a compressive strength of greater than 30 pounds per square inch.
- (4) "Land application" shall mean the spraying or spreading of CCPs onto the land surface; the injection of CCPs below the land surface; or the incorporation of CCPs into the soil so that the CCPs can condition the soil or fertilize crops or vegetation grown in the soil.
- (5) "Monthly average" shall mean the arithmetic mean of all measurements taken during the month.
- (6) "Pollutant limit" shall mean a numerical value that describes the amount of a pollutant allowed per unit amount of CCPs.
- (7) "Source of CCPs" shall mean the point of origin of the CCPs such as a coal fired power plant's wastewater treatment system.
- (8) "Structural fill" shall mean an engineered fill constructed using CCPs that is properly placed in accordance with this Section and compacted. This shall include fill used for embankments, greenscapes, foundations, construction foundations, and for bases/sub-bases under a structure or a footprint of a paved road, parking lot, sidewalk, walkway, or similar structure.
- (9) "Toxicity Characteristic Leaching Procedure" shall mean EPA Test Method Number 1311 as described in EPA publication SW-846, entitled Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

#### 15A NCAC 02T .1203 PERMITTING BY REGULATION

(a) The following activities are deemed permitted in accordance with Rule .0113 of this Subchapter provided the activity does not result in any violations of water quality standards (i.e., ground or surface), there is no direct discharge to surface waters, the generator of the CCPs provides the information required by Rule .1207(a) of this Section to the recipient of the CCPs, and all other specified criteria required for the specific activity is met:

- (1) Use of CCPs as fuel for combustion in boilers, furnaces, etc. for energy recovery.
- (2) Use of CCPs as material for manufacturing concrete products, asphalt products, brick products, lightweight aggregate roofing materials, insulation products, plastics, paints, bowling balls, cosmetics and other manufactured products in which the CCPs are encapsulated in the manufactured product.

- (3) Use or disposal of CCPs in a solid waste facility permitted by the Division of Waste Management that is approved to receive the CCPs.
  - (4) Use of CCPs as material for traction control during snow and ice events, provided that the CCPs do not exceed the leachate concentrations of concern in Rule .1205(a) of this Section.
  - (5) Use of CCPs as a substitute for blasting grit, roofing granules, and filter cloth precoat for residuals dewatering, provided that the CCPs do not exceed the leachate concentrations of concern in Rule .1205(a) of this Section.
  - (6) Use of CCPs in flowable fill for backfill of trenches for potable water mains as approved by the Division of Environmental Health, sanitary sewers, storm drainage structures, and other trenching uses provided that the CCPs do not exceed the leachate concentrations of concern in Rule .1206(a) of this Section.
  - (7) Use of CCPs as a raw product for the stabilization of residuals.
  - (8) Land application sites onto which CCPs are land applied, provided that the following criteria are met:
    - (A) the CCPs meet the pollutant limits in Rule .1205 of this Section, and
    - (B) the land application activities meet all applicable conditions of Rule .1108(b)(1) and Rule.1109(b)(1) of this Subchapter.
  - (9) Use of CCPs as a base or subbase under a structure or footprint of a paved road, parking lot, sidewalk, or similar structure as long as the total depth of CCPs does not exceed one foot.
- (b) Unless otherwise specified in Rule .1203(a) of this Section, CCPs that are used for the activities deemed permitted in this Rule are not subject to the pollutant limits in Rule .1205 of this Section.
- (c) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .1204 APPLICATION REQUIREMENTS**

- (a) The requirements in this Rule apply to activities not deemed permitted under Rule .1203 of this Section.
- (b) For new and modified sources of CCPs:
  - (1) Site plans or maps shall be provided to the Division by the applicant depicting the location of the source.
  - (2) An analysis of the CCPs shall be provided to the Division by the applicant. The analysis shall include all pollutants identified in Rule

- .1205 of this Section. If the CCPs are to be used in a land application, the analyses shall also include nutrients and micronutrients.
- (3) A sampling/monitoring plan that describes how Rule .1205 of this Section shall be complied with shall be provided to the Division by the applicant.
- (c) For uses of CCPs not already approved by the applicant's/Permittee's individual permit, information shall be provided to the Division by the applicant that describes and explains site-specific engineering or institutional controls proposed to prevent adverse impacts to public health and the environment.
- (d) For new and expanding structural fill sites or sites where CCPs are used for bedding if the bedding is applied at a depth greater than two feet underneath the structure:
  - (1) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation, and relationship of the CCPs use site's features including:
 

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

    - (A) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all site-related structures and fences within the site;
    - (B) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of the CCPs use boundary and delineation of the review and compliance boundaries;
    - (C) setbacks as required by Rule .1206 of this Section; and
    - (D) site property boundaries within 500 feet of the CCPs use boundary.
  - (2) Information shall be provided to the Division that describes and explains site-specific engineering or institutional controls proposed to prevent adverse impacts to public health and the environment.
  - (3) Property Ownership Documentation of the site where the CCPs are to be used shall be

provided to the Division. This documentation shall consist of:

- (A) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (B) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (C) easements specifically indicating the intended use of the property, as well as a plat or survey map. Easements shall adhere to the requirements of 15A NCAC 02L .0107.

(e) The submittal process for information listed in Paragraph (c) of this Rule shall not be required if a permit from the Division has been issued that specifically addresses the use of CCPs from the source of CCPs, at new and expanding structural fill sites or sites where CCPs are used for bedding.

(f) A compliance boundary shall be established for all structural fill sites not subject to Rule .1203 of this Section and the permittee shall comply with the provisions of 15A NCAC 02L .0107.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1205 POLLUTANT LIMITS**

(a) Except as provided for in Rule .1203 of this Section, CCPs shall not be distributed for use or used if the concentration of any pollutant during the performance of a Toxicity Characteristic Leaching Procedure of the CCPs exceeds the leachate concentration of concern for that pollutant as stipulated in the following:

Pollutant	Leachate Concentration of Concern (milligrams per liter)
Arsenic	5.0
Barium	100.0
Cadmium	1.0
Chromium	5.0
Lead	5.0
Mercury	0.2
Selenium	1.0
Silver	5.0

(b) Except as provided for in Rule .1203 of this Section, CCPs shall not be distributed for use or used if the concentration of any pollutant in the CCPs exceeds the ceiling concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

Pollutant	Ceiling Concentration (milligrams per kilogram)
Arsenic	75
Cadmium	85
Copper	4,300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7,500

(c) Except as provided for in Rule .1203 of this Section, CCPs shall not be distributed for use or used if the concentration of any pollutant in the CCPs exceeds the concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

Pollutant	Monthly Average Concentration (milligrams per kilogram)
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Molybdenum	75
Nickel	420
Selenium	100
Zinc	2,800

(d) CCPs may be distributed for use or used if the limits specified in Paragraphs (a), (b), or (c) of this Rule are not met provided that the following criteria are met:

- (1) The potential release of pollutants from the CCPs to the environment is minimized to the extent practicable, and

- (2) The applicant shall demonstrate to the Division the ability to meet the applicable surface water quality or groundwater quality standards at the compliance boundary at the site of use is demonstrated.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1206 SETBACKS**

For areas for the storage of CCPs and sites where CCPs are used for structural fill and bedding, where the bedding is applied at a depth greater than two feet underneath the structure, the following minimum setbacks (i.e., in feet) shall be adhered to:

Private or public water supply sources	100
Surface waters (streams - intermittent and perennial, lakes, perennial waterbodies, and wetlands)	50
Wells with exception to monitoring wells	100
Seasonal high water table	2

All distances are horizontal distances except for the distance from a seasonal high water table which is measured as a vertical distance.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1207 OPERATION AND MANAGEMENT PRACTICES**

(a) For CCP to be distributed for use, the following shall be provided by the permittee to the person who receives the CCPs:

- (1) the name and address of the person who distributed the CCPs;
- (2) materials safety data, pursuant to 29 CFR 1910.1200, for the CCPs;
- (3) guidance regarding how to comply with Paragraphs (b), (c), and (d) of this Rule;
- (4) guidance regarding requirements stipulated by this Section that are specific to the intended use and must be followed by the recipient of the CCPs; and
- (5) a statement that use of the CCPs shall be prohibited unless in compliance with the guidance provided.

(b) CCPs shall be transported in a manner that does not cause nuisances and hazards to public health or safety or otherwise cause an adverse impact.

(c) The person distributing CCPs shall take preparatory measures to store CCPs prior to distribution for use, as well as prior to use, to prevent unpermitted runoff to surface waters.

(d) The person distributing CCPs shall take actions necessary to prevent wind erosion and surface runoff from conveying CCPs onto adjacent property or into any surface waters prior to distribution for use as well as after use.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1208 OPERATION AND MAINTENANCE PLAN**

An Operation and Maintenance Plan shall be maintained for all CCP management programs. The plan shall:

- (1) describe the operation of the program and any associated wastewater treatment systems and equipment in sufficient detail to show what operations are necessary for the program to

function and by whom the functions are to be conducted;

- (2) describe anticipated maintenance of wastewater treatment systems and equipment that are associated with the program;
- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate;
- (4) include spill control provisions including:
  - (a) response to spills including control, containment, and remediation and
  - (b) contact information for program personnel, emergency responders, and regulatory agencies; and
- (5) describe the sampling and analysis protocol used to ensure that the program complies with this Section and any issued permits.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1209 MONITORING AND REPORTING**

(a) Records shall be maintained by the permittee of all CCPs distributed for use or used and shall include the following:

- (1) source, volume and type of CCPs distributed for use or used;
- (2) date of CCPs distributed for use or used; and
- (3) name of the initial recipient of the CCPs and a description of their intended use.

(b) A report of all monitoring and reporting requirements as specified in the permit shall be submitted annually to the Division by the Permittee on or before March 1<sup>st</sup> of each calendar year.

(c) All records shall be retained for a minimum of five years.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

**15A NCAC 02T .1301 SCOPE**

The rules in this Section apply to all persons proposing to construct, modify, expand, or operate an animal waste management system. These Rules do not apply to manure haulers regulated pursuant to Section .1400 of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A;  
Eff. September 1, 2006.

**15A NCAC 02T .1303 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) Systems that do not meet the criteria of an animal operation permitted under Rule .1304 or Rule .1305 of this Subchapter and all other systems not specifically mentioned in this Section. If waste is land applied to land owned by the waste generator or under the waste generators authority, agronomic rates must be met.
- (2) Poultry operations which use a dry litter system with more than 30,000 birds and that do not meet the criteria specified in Rule .1305 of this Subchapter if:
  - (A) records are maintained for three years which include the dates the litter was removed, the estimated amount of litter removed and the location of the sites where the litter was land applied by the poultry operation;
  - (B) the waste is applied at no greater than agronomic rates;
  - (C) litter is stockpiled not closer than 100 feet from a perennial stream or perennial waterbody;
  - (D) litter is not stockpiled uncovered for greater than 15 days; and
  - (E) if a manure hauler is used, records must be maintained of the dates the litter was removed, the estimated amount of litter removed, and name, address and phone number of the manure hauler.
- (3) Land application sites under separate ownership from the waste generator, receiving animal waste from animal waste management systems which are deemed permitted, when all the following conditions are met:
  - (A) the waste is applied at no greater than agronomic rates; and
  - (B) a vegetative buffer (separation) of at least 25 feet is maintained from a perennial stream or perennial waterbody.

(b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113

of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A;  
Eff. September 1, 2006.

**15A NCAC 02T .1304 STATE PERMITTING REQUIREMENTS**

(a) This rule applies to animal waste management systems that meet the definition of an animal operation in G.S. 143-215.10B but are not subject to regulation under Rule .1305.

(b) An animal waste management plan shall be submitted as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission pursuant to 15A NCAC 06F .0104, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules at the time of development or design. NRCS standards relating to phosphorus application rates for animal waste are not incorporated as part of this rule.
- (2) As required by G.S. 143-215.10C, plans must be approved by any technical specialist and the certificate submitted to the Division on Division supplied forms or forms approved by the Division as providing the same information as required by the Division's forms. The technical specialist must approve that the best management practices that comprise the plan meet the applicable minimum standards and specifications.
- (3) The land application and siting setbacks must meet the applicable conditions established in G.S. 106-803 and NRCS Standards at the time of construction.
- (4) New and expanded animal waste treatment systems such as lagoons and waste storage structures shall be located at least 100 feet from a perennial stream or perennial waterbody. For new and expanding systems, this setback requirement shall also apply to areas where an established vegetative cover will not be maintained because of the concentration of animals, with the exception of stock trails and stream crossings.
- (5) The waste shall not be applied at greater than agronomic rates.
- (6) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit

must be issued before the additional animals are stocked.

(c) For each change of ownership of the system, the new owner must notify the Division in writing within 60 days of transfer of ownership.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A;  
Eff. September 1, 2006.

**15A NCAC 02T .1305 NPDES PERMITTING REQUIREMENTS**

(a) This Rule applies to animal waste management systems subject to regulation under 40 CFR § 122.23 and G.S. 143-215.10C.

(b) With the exception of dry litter poultry systems, an animal waste management plan shall be submitted as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission pursuant to 15A NCAC 06F .0104, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules and all applicable federal requirements at the time of development or design.
- (2) As required by G.S. 143-215.10C, plans must be approved by any technical specialist and the certificate submitted to the Division on Division supplied forms or forms approved by the Division as providing the same information as required by the Division's forms. The technical specialist must approve that the best management practices that comprise the plan meet the applicable minimum standards and specifications.
- (3) The land application and siting setbacks must meet the applicable conditions established in G.S. 106-803, NRCS Standards and 40 CFR Part 412 at the time of construction.
- (4) New and expanded animal waste treatment systems such as lagoons and waste storage structures shall be located at least 100 feet from a perennial stream or perennial waterbody. For new and expanding systems, this setback requirement shall also apply to areas where an established vegetative cover will not be maintained because of the concentration of animals, with the exception of stock trails and stream crossings.
- (5) The waste shall not be applied at greater than agronomic rates.
- (6) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new

individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

(c) Dry litter poultry systems, for the purpose of this Rule and G.S. 143-215.10C, shall submit an animal waste management plan as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules and all applicable federal requirements at the time of development or design.
- (2) The land application and siting setbacks must meet the conditions established in NRCS standards and 40 CFR Part 412 at the time of construction.
- (3) New and expanded animal waste structures such as houses and dry stacks shall be protected from the 100-year flood.
- (4) The waste shall not be applied at greater than agronomic rates.
- (5) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

(d) For each change of ownership of the system, the new owner must notify the Division in writing within 60 days of transfer of ownership.

(e) Systems shall meet all applicable requirements of 40 CFR Part 122 and 40 CFR Part 412.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A;  
Eff. September 1, 2006.

**15A NCAC 02T .1306 CLOSURE REQUIREMENTS**

Any containment basin, such as a lagoon or a waste storage structure, permitted under this Section shall continue to be subject to the conditions and requirements of the facility's permit until closed to NRCS standards and the permit is rescinded by the Division. Closure shall include pre-notification to the Division and submittal of closure form supplied by the Division or forms approved by the Division as providing the same information as required by the Division's forms within 15 days of completion of closure.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A;  
Eff. September 1, 2006.

**15A NCAC 02T .1401 SCOPE**

The rules in this Section apply to all manure hauler operations.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .1402 DEFINITIONS**

As used in this Section:

"Manure Hauler" means any person who accepts or purchases animal waste and land applies the animal waste on land not covered by the generator's permit.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .1403 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) Manure Hauler that land apply a total of 100 tons or less of animal waste per calendar year if:
  - (A) animal waste is applied at no greater than agronomic rates; and
  - (B) a setback of at least 25 feet is maintained from a perennial stream or perennial waterbody during land application.
- (2) Manure Hauler that land apply a total of more than 100 tons of animal waste per calendar year if:
  - (A) animal waste is applied at no greater than agronomic rates;
  - (B) animal waste is not stockpiled uncovered for greater than 15 days;
  - (C) animal waste is not stockpiled within 100 feet of a perennial stream or perennial waterbody;
  - (D) a setback of at least 25 feet is maintained from a perennial stream or perennial waterbody during land application;
  - (E) the Manure Hauler registers with the Division by one year from the effective date of this Rule. Manure Hauler that begin operation following the effective date of this Rule must register with the Division prior to accepting or purchasing manure.
  - (F) the Manure Hauler submits an annual report, as specified in this Section, to the Division by March 1 of each year; and
  - (G) the field on which animal waste is applied has had a representative Standard Soil Fertility Analysis within the last three years from a

Division certified laboratory pursuant to 15A NCAC 02H .0800.

(b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .1404 ANNUAL REPORTS**

(a) Manure Haulers that land apply more than 100 tons but less than 750 tons of animal waste per calendar year shall submit to the Division a report of the activities for the calendar year that includes the following:

- (1) Name, mailing address, and phone number of the Manure Hauler;
- (2) Date, location, and amount of all animal waste received; and
- (3) Date, location, amount, and acreage of all animal waste land application.

(b) Manure Haulers that land apply 750 tons or more of animal waste per calendar year shall submit to the Division a report of the activities for the calendar year that includes the following:

- (1) Name, mailing address, and phone number of the Manure Hauler;
- (2) Dates, locations, and amounts of animal waste received; and
- (3) Dates, locations, application rate, acreage, waste analysis, and receiving crop of all animal waste land applied.

(c) Annual reports shall be submitted by March 1 for the preceding calendar year, on Division supplied forms or forms approved by the Division as providing the same information as required by the Division's forms.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

**15A NCAC 02T .1502 DEFINITIONS**

The following definitions apply to this Section:

- (1) "Contaminated soil" means soil containing petroleum products or other soil that has been affected by non-petroleum substances as a result of a release or discharge, but does not include hazardous waste.
- (2) "Dedicated site" means a site used for the repetitive treatment of soils.
- (3) "Permitting agency" means the Division of Waste Management, UST Section, for contaminated soils originating from underground storage tanks (USTs) and for dedicated sites. For other soil, the permitting agency means the Division of Water Quality. When the permitting agency is the Division of Waste Management, the Division of Waste Management shall be considered the Division for the purposes of Section .0100 of this Subchapter.



- (4) "Petroleum contaminated soil" or "Soil containing petroleum products" shall mean any soil that has been exposed to petroleum products because of any emission, spillage, leakage, pumping, pouring, emptying, or dumping of petroleum products onto or beneath the land surface and that exhibits characteristics or concentrations of petroleum product constituents in sufficient quantities as to be detectable by compatible laboratory analytical procedures pursuant to 15A NCAC 02H .0800.
- (5) "Petroleum product" means all petroleum products as defined by G.S. 143-215.94A and includes motor gasoline, aviation gasoline, gasohol, jet fuels, kerosene, diesel fuel, fuel oils (#1 through #6), and motor oils (new and used).
- (6) "Soil remediation at conventional rates" means the treatment of contaminated soils by land application methods, at an evenly distributed thickness not to exceed six inches.
- (7) "Soil remediation at minimum rates" means the treatment of contaminated soils by land application methods, at an evenly distributed application thickness not to exceed an average of one inch.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

#### **15A NCAC 02T .1503 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted pursuant to Rule .0113 of this Subchapter provided the system meets the criteria in Rule .0113 of this Subchapter and all criteria required for the specific system in this Rule:

- (1) Storage sites for petroleum contaminated soils that are utilized for less than 45 days, storage is on 10 mil or thicker plastic, provisions are made for containing potential leachate and runoff, setbacks required in Rule .1506 of this Section are maintained, and approval of the activity has been received from the appropriate Regional Supervisor or his designee that the site meets the criteria of this Rule.
- (2) Land application sites for petroleum contaminated soils with volumes of soil from each source of less than or equal to 50 cubic yards or for the application of up to 100 cubic yards if the application is at minimum rate, setbacks required in Rule .1506 of this Section are maintained, and approval of the activity has been received from the appropriate Regional Supervisor or his designee that the site meets the criteria of this Rule.
- (3) Land application sites for the disposal of drill cuttings if applied on the site where the drilling occurs and setbacks required in Rule .1506 of this Section are maintained. Soils

contaminated with non-petroleum substances must be determined by chemical analysis to be non-hazardous wastes.

- (b) The Director may determine that a system should not be deemed permitted in accordance with this Rule and Rule .0113 of this Subchapter. This determination shall be made in accordance with Rule .0113(e) of this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. September 1, 2006.

#### **15A NCAC 02T .1504 APPLICATION SUBMITTAL**

(a) For all applications the following shall be submitted to the permitting agency by the applicant:

- (1) A complete chemical analysis of the contaminated soil to be remediated, including total petroleum hydrocarbons (TPH), semivolatile and volatile organics, pH, and heavy metals. All methods and procedures shall be in accordance with 15A NCAC 02H .0800.
- (2) A determination of hazardous waste constituents using the Toxicity Characteristic Leaching Procedure (TCLP) described in 40 CFR 261.24. Any substance shall be considered a hazardous waste if the results of the TCLP analysis indicates concentrations of constituents greater than the federal regulatory level, unless documentation is provided stating that the contaminated soil is not a hazardous waste (i.e. within the scope of this Section as provided in Rule .1501 of this Section). A TCLP analysis shall be required for all permit applications to dispose of petroleum contaminated soil in accordance with the following criteria:
  - (A) If the source of the soil contamination is a virgin (unused) petroleum product from an underground storage tank regulated under Subtitle I of RCRA, the contaminated soil shall not be considered a hazardous waste and no TCLP analysis is required. In lieu of the TCLP analysis, certification of soil contamination from a virgin petroleum product shall be required.
  - (B) If an analysis of the source of petroleum product is submitted showing concentrations less than the regulatory level associated with the constituents of the TCLP analysis (Table II.2 of the Federal Register, Volume 55, No. 61), the contaminated soil shall not be considered a hazardous waste and no TCLP analysis shall be required.
  - (C) For soils contaminated with used motor oil, the soils shall be

- considered hazardous until proven otherwise by a TCLP analysis for volatile organics and metals (EPA Hazardous Waste Nos. D004-D011).
- (D) For soils contaminated by waste oil, a TCLP analysis for all constituents in Table II.2 of the Federal Register, Volume 55, No. 61, with the exception of pesticides and herbicides, shall be required.
- (E) For soils contaminated with petroleum products not regulated under Subtitle I of RCRA (excluding used motor and waste oils), the soils shall be considered hazardous waste until proven otherwise.
- (3) Site map. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. A scaled map of the site with a horizontal scale of one inch equals 100 feet or less and topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less and including the following:  
[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]
- (A) all property boundaries and all structures within the treatment, storage and land application areas,
- (B) the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the waste disposal site;
- (C) setbacks as required by Rule .1506 of this Section; and
- (D) any residences or place of public assembly under separate ownership within 400 feet of the waste disposal site.
- (4) Confirmation that an erosion control plan has been submitted to the Division of Land Quality or its designee, for disposal sites encompassing more than one acre.
- (5) The volume of contaminated soil to be remediated.
- (6) A landowner agreement to allow the use of the property for the purpose of remediating contaminated soil. The agreement is not required when the permit applicant is the sole landowner.
- (b) For soil remediation at minimum rates the following shall be submitted to the permitting agency by the applicant:
- (1) a calculation of the area required for land application using the maximum application thickness of one inch,
- (2) an indication of cover crop(s), and
- (3) proof of written notification in the form of certified mail return receipts to each city and county government having jurisdiction over any part of the land over which disposal is to occur.
- (c) For soil remediation at conventional rates (dedicated or non-dedicated sites) the following shall be submitted to the permitting agency by the applicant:
- (1) A soils evaluation report of the disposal area to evaluate the soil to a depth of five feet. If required by G.S. 89F, a soil scientist shall prepare this evaluation. The report shall include:  
[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]
- (A) field descriptions of texture, color, and structure,
- (B) depth and thickness of soil horizons,
- (C) presence of any restrictive horizons,
- (D) depth to seasonal high water table,
- (E) soil pH and cation exchange capacity, and
- (F) estimates of liming and fertilization requirements.
- (2) The calculation of the size of the disposal area and thickness of application.
- (3) A description of the proposed cover crop.
- (4) A site maintenance plan.
- (5) Proposed groundwater quality monitor well network (dedicated sites only).
- (6) Proof of written notification in the form of certified mail return receipts to each city and county government having jurisdiction over any part of the land over which disposal is to occur.
- (d) For containment and treatment the following shall be submitted to the permitting agency by the applicant:
- (1) A soils evaluation report of the disposal area to evaluate the soil to a depth of five feet. If required by G.S. 89F, a soil scientist shall prepare this evaluation. The report shall include:  
[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

- (A) field descriptions of texture, color, and structure,
- (B) depth and thickness of soil horizons,
- (C) presence of any restrictive horizons, and
- (D) depth to seasonal high water table.
- (2) The plans and specifications of the soil containment vessel and any associated leachate collection system, including the operating thickness of the soil to be contained and treated.
- (3) A description of the chemical or biological additives used in treating the contaminated soil.
- (e) For containment and utilization at brick, asphalt, or other production facilities, a site management plan, consisting of a complete description of all operational procedures related to the handling of soils at the proposed facility shall be submitted to the permitting agency by the applicant, including:
  - (1) a description of the staging area(s) designated for initial receipts of the contaminated soils,
  - (2) the method of emplacement of the soils in the containment area(s),
  - (3) the average residence time of the soils in the containment area(s),
  - (4) the method of incorporation of the soils into the production facility's product materials, and
  - (5) the method of containment and disposal of any leachate or runoff resulting from the containment and storage of contaminated soils.
- (f) For soil remediation using mobile or portable self-contained facilities the following shall be submitted to the permitting agency by the applicant:
  - (1) a description of the treatment system to include procedures for controlling any vapors, liquid or solid by-products of the treatment process,
  - (2) the method by which any by-products will be disposed,
  - (3) the predicted average concentration of contaminants in the untreated soil,
  - (4) the sampling procedures and analytical methods by which the concentration(s) and type(s) of contaminants in the treated soil will be determined,
  - (5) the method of disposal of the treated soil, and
  - (6) for applications proposing to stage soils, a description of the method proposed to prevent contact of contaminated soil with the environment.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

#### **15A NCAC 02T .1505 DESIGN CRITERIA**

(a) Land Application of Soils Containing Petroleum Products at Minimum Rates. Petroleum contaminated soils shall be incorporated into the native soils of the receiver site immediately

upon application. Liming, fertilization, and aeration of the soils mixture shall be optional. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures pursuant to 15A NCAC 02H .0800, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below analytical detection levels.

(b) Land Application of Soil Containing Petroleum Products at Conventional Rates. Land application of soils containing petroleum products at an application thickness greater than one inch shall require fertilization, liming, and aeration of the native soils and petroleum contaminated soils mixture. Application thickness shall be based upon the nature of the receiver site soils, depth to the seasonal high water table, the intended cover crop, and the source of contamination. Operation of the land application program shall not result in contravention of groundwater or surface water standards. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures pursuant to 15A NCAC 02H .0800, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below analytical detection levels.

(c) Disposal of Soils Containing Petroleum Products at Dedicated Land Application Sites. Subsequent applications of petroleum contaminated soils at dedicated sites shall not recur until such time as it can be demonstrated that additional applications of contaminated soils will not result in the contravention of any groundwater or surface water standards.

(d) Containment and Treatment and Containment and Utilization of Contaminated Soil.

- (1) A containment structure designed to bioremediate or volatilize contaminated soil shall be constructed of either a synthetic liner of at least 30 mils thickness or of a one foot thick liner of natural material, compacted to at least 95 percent standard proctor dry density and with a permeability of less than  $1 \times 10^{-7}$  cm/sec.
- (2) The bottom of the containment structure shall be at least three feet above the seasonal high water table or bedrock.
- (3) A leachate collection system must be installed in order to prevent runoff from the contaminated soils within the containment structure, or a cover provided to avoid accumulation of stormwater within the containment structure.
- (4) The containment structure shall be compatible with the chemical and physical properties of the contaminants involved.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

**15A NCAC 02T .1506 SETBACKS**

Remediation systems shall adhere to the following setbacks and greater where necessary to comply with minimum horizontal distance requirements set by the Division pursuant to Subchapter 15A NCAC 02L .0107:

	Feet
Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site	100
Any well with the exception of a Division approved groundwater monitoring well	100
Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)	100
Surface water diversions (ephemeral streams, waterways, ditches)	25
Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	25
Subsurface groundwater lowering drainage systems	25
Any building foundation except treatment facilities	15
Any basement	15
Any property line	50
Any water line	10
Any swimming pool	100
Rock outcrops	25
Public right-of-way	50

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.

**15A NCAC 02T .1507 CLOSURE REQUIREMENTS**

(a) A permit must be held and renewed if necessary until such time that the soil remediation facility has satisfied all conditions for closure and the permitting agency has notified the permit holder that the facility has satisfied conditions necessary for closure and rescinded the permit. The permittee must notify the permitting agency 30 days prior to the initiation of closure activities. This Rule does not apply to deemed permitted facilities as described in Rule .1503 of this Section.

(b) A facility may be considered for closure once all of the following conditions have been satisfied:

- (1) Any and all outstanding enforcement actions levied by the permitting agency have been resolved.
- (2) Requirements for all other related on-site permitted activities have been met.
- (3) For all land application sites the applicant shall provide to the permitting agency:
  - (A) Demonstration that no contaminant constituents in the groundwater exceed groundwater standards for dedicated and conventional rate land application sites.
  - (B) Demonstration that all remaining contaminated soil has been remediated to below detection levels. The demonstration shall be based upon representative samples from the permitted site.
  - (C) If a groundwater drainage system or surface waters are present on the site or within the compliance boundary, a demonstration that surface water has not been impacted by contaminants at concentrations in excess of those

established in Subchapter 15A NCAC 02B.

- (4) For facilities utilizing containment and treatment or portable self-contained treatment systems.
  - (A) Demonstration by the applicant to the permitting agency that all treated soil has been remediated to below detection levels based upon analysis of representative soil samples or is disposed of under Subparagraph (b)(4)(B) of this Rule.
  - (B) All remaining soil that contains contaminants at levels that exceed the method detection levels must be disposed of at another permitted facility and the permitting agency must be notified prior to transport.
  - (C) Demonstration by the applicant to the permitting agency that the facility has been decontaminated based upon analysis of samples.
- (5) For storage facilities, a demonstration that the storage facility has been decontaminated to below detection levels shall be submitted by the permittee to the Division. The demonstration shall be based upon analysis of pollutants identified in the contaminated soil as provided in Rule .1504(a)(1) of this Section.
- (c) A facility that satisfies the conditions for closure may petition the permitting agency for closure status approval and shall provide the following information:
  - (1) identification of the original permit authorizing the construction and operation of the soil remediation facility;

- (2) the reason(s) for closure of facility;
- (3) the name and title of the contact;
- (4) sample analyses (tabulated and graphed) for the last four groundwater sampling events prior to facility shutdown showing the concentrations of the parameters of concern and if groundwater monitoring is required at a land application site, groundwater analytical results for sample collection to satisfy Rule .1507(b)(3)(A);
- (5) laboratory analytical results for soil samples collected from the treated soil, which have been analyzed by methods approved in accordance with Rule .1504(a)(1) of this Section;
- (6) if a groundwater drainage network (ditches) or surface waters are present on the site or within the compliance boundary, analytical results for surface water samples collected upstream of the facility, within the facility if applicable, and at a downstream location at the edge of the property to document that surface waters have not been impacted;
- (7) decontamination procedures for any treatment or containment structure;
- (8) a sedimentation and erosion control plan, prepared in accordance with the Division of Land Resources requirements pursuant to Subchapter 15A NCAC 04B, if a plan to restore the site to pre-soil treatment conditions is proposed that will disturb an area of land equal to or greater than one acre;
- (9) a map of the facility, which shows the size, orientation, and location of the facility relative to existing monitor wells, roads, structures, and other site features; and
- (10) certification that the closure has been accomplished and that the information submitted is complete, factual and accurate.

(d) Once the permitting agency has determined that all conditions required for site closure have been satisfied, the permitting agency shall issue a notice stating that the permit for the facility has been rescinded and "closure status" has been granted.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006.*

#### **15A NCAC 02T .1602 DEFINITIONS**

The terms used for the purpose of this Section shall be defined as follows:

- (1) "Closed-loop groundwater remediation system" is as defined in G.S. 143-215.1A.
- (2) "Contaminant" is as defined in 15A NCAC 02L .0102.
- (3) "Infiltration gallery" means a subsurface ground absorption system expressly designed for the introduction of wastewater into the subsurface environment.

- (4) "Injection well" is as defined in 15A NCAC 02C .0204.
- (5) "Oversight agency" means the state or local agency with jurisdiction over the contamination incident.
- (6) "Receptor" is as defined in 15A NCAC 02L .0102.
- (7) "Water table" is as defined in 15A NCAC 02L .0102.

*History Note: Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A; Eff. September 1, 2006.*

#### **15A NCAC 02T .1604 APPLICATION SUBMITTAL**

(a) Site Description and Incident Information shall be provided by the applicant to the Division including the following:

- (1) The applicant must identify the site by name, address, permit number, and incident number assigned by the oversight agency (if applicable).
- (2) The applicant must briefly describe the site, noting pertinent site information including:
  - (A) contaminant(s) of concern,
  - (B) source(s) and date(s) of the contaminant release,
  - (C) remedial actions to date,
  - (D) current land use, and
  - (E) potential receptors.

(b) Soils Evaluation. For systems with proposed discharge within seven feet of land surface and above the seasonal high water table, a soil evaluation of the disposal site shall be provided to the Division by the applicant. If required by G.S. 89F, a soil scientist shall submit this evaluation. This evaluation shall be presented in a report that includes the following components:

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

- (1) Field description of soil profile. Based on examinations of excavation pits or auger borings, the following parameters shall be described by individual diagnostic horizons to a depth of seven feet below land surface or to bedrock:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s);
  - (G) pH;
  - (H) cation exchange capacity; and
  - (I) presence or absence and depth of evidence of any seasonal high water table.

Applicants shall dig pits when necessary for evaluation of the soils at the site.

- (2) Recommendations concerning annual and instantaneous loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon.

(c) **Hydrogeologic Evaluation.** A hydrogeologic evaluation prepared by a Licensed Geologist, License Soil Scientist, or Professional Engineer if required by Chapters 89E, 89F, or 89C respectively of the disposal site shall be provided to the Division by the applicant. This evaluation shall be conducted to a depth that includes the depth of existing contamination and the total depth of the injection well(s) or infiltration gallery(ies). This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:

[Note: The North Carolina Board for Licensing of Geologists, via letter dated April 6, 2006, North Carolina Board for Licensing of Soil Scientists, via letter dated December 1, 2005, and North Carolina Board of Examiners for Engineers and Surveyors, via letter dated December 1, 2005, have determined that preparation of hydrogeologic description documents pursuant to this Paragraph constitutes practicing geology under G.S. 89E, soil science under G.S. 89F, or engineering under G.S. 89C.]

- (1) a description of the regional and local geology and hydrogeology;
- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity, transmissivity, and storativity (specific yield if unconfined aquifer) of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features; and
- (8) a discussion of the groundwater flow regime of the site focusing on the relationship of the plume and remediation system to groundwater receptors, groundwater discharge features, and groundwater flow media.

(d) **Demonstration of Hydraulic Control.** Computer modeling or predictive calculations based on site-specific conditions shall be provided to the Division by the applicant to demonstrate that operation of the system will not cause or contribute to:

- (1) the migration of contaminants into previously uncontaminated areas, and
- (2) a violation of the groundwater standards at the compliance boundary.

(e) **Maps and Cross-Sections.** If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of facility components including:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

- (1) a scaled map of the site, with site-specific topographic contour intervals and showing all facility-related structures and fences within the treatment, storage and disposal areas;
- (2) locations of all test auger borings or inspection pits;
- (3) the location of all wells (including usage and construction details if available), designated wellhead protection areas, streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, other surface drainage features, and any other site activities or features that may involve possible exposure to contamination within 500 feet of all waste treatment, storage, and disposal site(s);
- (4) setbacks as required by Rule .1606 of this Section;
- (5) delineation of the property boundary(ies), review boundary(ies), and compliance boundary(ies);
- (6) the horizontal and vertical extent of the contaminant plume for each of the contaminants of concern, including isoconcentration lines and plume cross-sections;
- (7) cross-section(s) depicting soil and rock layers and features to a depth including the depth of existing contamination and the total depth of the injection well(s) or infiltration gallery(ies); and
- (8) hydrologic features such as potentiometric surface / water table contours and the direction of groundwater flow.

(f) **Engineering design documents.** If required by G.S. 89C, a professional engineer shall prepare these documents. The following documents shall be provided to the Division by the applicant:

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant

to this Paragraph constitutes practicing engineering under G.S. 89C.]

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product; and
- (3) plans that include construction details of recovery, injection, and monitoring wells and infiltration galleries.

(g) Operating and Monitoring Plans. An operation and monitoring plan shall be provided to the Division by the applicant. These documents shall be specific to the site and include:

- (1) The operating plan shall include:
  - (A) the operating schedule including any periodic shut-down times,
  - (B) required maintenance activities for all structural and mechanical elements,
  - (C) all consumable and waste materials with their intended source and disposal locations,
  - (D) restrictions on access to the site and equipment, and
  - (E) compliance with Rule .1605(b) of this Section.
- (2) The monitoring plan shall include:
  - (A) the monitoring well(s) that will be sampled,
  - (B) the constituent(s) for which those samples will be analyzed, and

(C) the schedule for sampling.

*History Note:* Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A;  
Eff. September 1, 2006.

#### **15A NCAC 02T .1605 DESIGN CRITERIA**

(a) The infiltration gallery(ies) or injection well(s) must be designed such that the infiltration gallery(ies) or injection well(s) shall not cause or contribute to:

- (1) the migration of contaminants into previously uncontaminated areas;
- (2) a violation of the groundwater standards at the compliance boundary (if discharge is within the compliance boundary of the disposal facility); and
- (3) a violation of the groundwater standards at the point of discharge (if discharge is not within the compliance boundary of the disposal facility).

(b) There shall be provisions in the operating plan to ensure the quality of the treated effluent and hydraulic control of the system at all times when any portion of the system ceases to function (e.g. standby power capability, complete system-off status, or duplicity of system components).

(c) Design shall include a minimum elevation protection of two feet above the 100-year flood elevation.

(d) Flow equalization of at least 25 percent of the facility's permitted hydraulic capacity must be provided for facilities with fluctuations in influent flow which may adversely affect the performance of the system.

*History Note:* Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A;  
Eff. September 1, 2006.

#### **15A NCAC 02T .1606 SETBACKS**

The location of the infiltration gallery or injection well(s) must meet the setback requirements specified below unless it can be demonstrated that these requirements cannot be met, and that operation of the infiltration gallery(ies) or injection well(s) at the proposed location(s) will not result in the migration of contaminants into previously uncontaminated areas, and a contravention of groundwater standards beyond the compliance boundary. The following setbacks (in feet) are applicable to these systems:

any well with the exception of an approved groundwater monitoring well	100
surface waters streams – intermittent and perennial, perennial waterbodies, and wetlands)	100
any property under separate ownership	50
structures – above-ground (e.g. buildings, retention walls)	10
structures – subsurface (e.g. utilities, basements, swimming pools)	15
any water line	10
rock outcrops	50
top of slope of embankments or cuts of two feet or more in vertical height	15
groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)	100
surface water diversions (ephemeral streams, waterways, ditches)	25
subsurface groundwater lowering drainage systems	100

*History Note:* Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A;  
Eff. September 1, 2006.

#### **15A NCAC 02T .1607 MONITORING AND**

#### **REPORTING REQUIREMENTS**

(a) A monitoring system plan shall be established to assess the impact of the discharge on groundwater quality. The monitoring plan shall:

- (1) be based on reaction rates, discharge rates, likelihood of secondary impacts, and site-specific hydrogeologic information,
- (2) track the performance of the permitted remediation system and verify that the intended remediation processes are occurring, and
- (3) include water level and flow meter measurements to ensure the system is operating properly.

(b) All sampling results shall be reported by the permittee to the Division on a frequency determined by the reaction rates, discharge rates, likelihood of secondary impacts, and site-specific hydrogeologic information.

(c) A report of the summarized results of related groundwater, influent, and effluent monitoring shall be submitted by the permittee to the Division annually.

*History Note: Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A;*

*Eff. September 1, 2006.*

**15A NCAC 02T .1608 REQUIREMENTS FOR CLOSURE**

(a) 30 days prior to initiation of closure of a groundwater remediation system, the permittee shall submit the following documentation to the Division:

- (1) the reason(s) for closure,
- (2) a letter from the oversight agency authorizing closure of the system, and
- (3) a description of the proposed closure procedure.

(b) The following closure procedures shall be followed:

- (1) injection well closure procedures as specified in 15A NCAC 02C .0214, and
- (2) infiltration galleries shall be closed such that the infiltration gallery will be rendered permanently unusable for the disposal or infiltration of fluids and will not serve as a source or channel of contamination.

(c) Within 30 days following upon completion of the closure of a groundwater remediation system, the permittee shall submit the following documentation to the Division:

- (1) a description of the completed closure procedure;
- (2) the dates of all actions taken relative to the procedure; and
- (3) a written certification that the closure has been accomplished, and that the information submitted is complete, factual and accurate.

*History Note: Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A;*

*Eff. September 1, 2006.*

**15A NCAC 07B .0802 PRESENTATION TO COASTAL**

**RESOURCES COMMISSION FOR CERTIFICATION**

(a) Re-Certification: If the CRC adopts new CAMA Land Use Plan rules, plans shall be updated within six years of the effective date of the new rules. If a scoping process is held, a summary shall be provided to the CRC along with the request for re-certification of the existing CAMA Land Use Plan.

(b) Committee Designated by CRC to Review Local Land Use Plans:

- (1) The appropriate DCM District Planner shall report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan, and recommend certification, conditional certification, or non-certification.
- (2) The Land Use Plan shall be presented to the committee designated by the CRC by an elected local official, municipal or county staff member, or designated citizen representative.
- (3) The public shall have an opportunity to present written objections, comments, or statements of support prior to action by the committee designated by the CRC. Written objections shall be received by DCM no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting and shall be limited to the criteria for CRC certification as defined in Subparagraph (c)(3) of this Rule. Written objections shall identify the specific plan elements that are opposed. A copy of any objections shall be sent by the DCM to the local government submitting the CAMA Land Use Plan.
- (4) The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at any time before review.

(c) CRC Certification:

- (1) The CRC shall certify the CAMA Land Use Plan following the procedures and conditions specified in this Rule.
- (2) Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next CRC meeting, the CRC shall certify, conditionally certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan shall be certified.
- (3) The CRC shall certify plans which:
  - (A) are consistent with the current federally approved North Carolina Coastal Management Program; and
  - (B) are consistent with the Rules of the CRC; and
  - (C) do not violate state or federal law; and



- (D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within Paragraphs (d) and (e) of 15A NCAC 07B .0702 the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified; and
- (E) contain a local resolution of adoption that includes findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP) have been evaluated, and determine that no internal inconsistencies exist.

(d) Non- Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing certified CAMA Land Use Plan shall remain in effect.

(e) Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.

*History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;*  
*Eff. August 1, 2002;*  
*Amended Eff. September 1, 2006.*

#### **15A NCAC 07H .1102 APPROVAL PROCEDURES**

(a) The applicant shall 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 shall 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 shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal

Management within ten days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall 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 determines that the project exceeds the guidelines established by the General Permit Process, the applicant shall be notified that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed bulkhead alignment can be appropriately marked. Written authorization to proceed with the proposed development may be issued during this visit. Construction of the bulkhead or riprap structure shall be completed within 90 days of this visit or the general authorization shall expire and it shall be necessary to re-examine the alignment to determine if the general authorization can be reissued.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*  
*Eff. March 1, 1984;*  
*Amended Eff. September 1, 2006; January 1, 1990; December 1, 1987.*

#### **15A NCAC 07H .1302 APPROVAL PROCEDURES**

(a) The applicant shall 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 shall 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 shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall 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 determines that the project exceeds the guidelines established by the General Permit Process, the applicant shall be notified that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed boat ramp alignment can be appropriately marked. Written authorization to proceed with the proposed development shall be issued during this visit. Construction of the boat ramp structure shall be completed within 90 days of this visit or the general authorization shall expire.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. September 1, 2006; January 1, 1990.*

**15A NCAC 07H .1503 APPLICATION FEE**

The applicant shall pay a permit fee of two hundred dollars (\$200.00) for maintenance excavation of 100 cubic yards or less or four hundred dollars (\$400.00) for maintenance excavation of 100 to 1,000 cubic yards. Permit fees shall be paid by check or money order payable to the Department.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. July 1, 1984; Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991.*

**15A NCAC 07H .2102 APPROVAL PROCEDURES**

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

(b) The applicant shall 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 shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall 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 determines that the project exceeds the guidelines established by the General Permit Process, the applicant shall be notified that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed breakwater alignment can be appropriately marked. Written authorization to proceed with the

proposed development may be issued during this visit. Construction of the breakwater shall be completed within 90 days of this visit or the general authorization shall expire and it shall be necessary to re-examine the alignment to determine if the general authorization can be reissued.

*History Note: Authority G.S. 113A-107; 113A-118.1; Eff. June 1, 1994; Amended Eff. September 1, 2006; August 1, 2000.*

**15A NCAC 18A .2831 ANIMAL AND VERMIN CONTROL**

(a) Unrestrained animals, except those used in supervised activities or pet therapy programs, shall not be allowed in a child care center, including the outdoor learning environment. When animals are on the premises, copies of vaccination records required by North Carolina law and local ordinances shall be available for review. Any animals kept as pets shall be examined by a veterinarian to determine that they are free from vermin, such as mites, lice, fleas, and ticks, and pathogens that could adversely affect human health. Turtles, iguanas, frogs, salamanders, and other reptiles or amphibians are not allowed to be kept as pets on the premises. Animals shall not be allowed in or kept at the entrances to food preparation areas. Animal cages shall be kept clean and waste materials shall be bagged, sealed, and immediately disposed of in the exterior garbage area in a covered container. Animals belonging to child care owners, employees, volunteers, visitors, and children shall not be allowed in child care centers or on the premises unless the above requirements are met.

(b) Effective measures shall be taken to keep uncontained insects, rodents, and other vermin out of the child care centers and to prevent their breeding or presence on the premises. Traps shall only be placed in areas inaccessible to children.

(c) All openings to the outer air shall be protected against the entrance of flying insects. In food preparation areas, only fly traps, pyrethrin-based insecticides or a fly swatter shall be used for extermination of flying insects. Products shall be used only in accordance with directions and cautions appearing on their labels. Insecticides shall not come in contact with raw or cooked food, utensils, or equipment used in food preparation and serving, or with any other food-contact surface.

(d) Only those pesticides which have been registered with the U.S. Environmental Protection Agency and the North Carolina Department of Agriculture and Consumer Services shall be used. Pesticides shall be used in accordance with the directions on the label and shall be stored in a locked storage room or cabinet separate from foods and medications. Pesticides shall not be applied or used when children are present in the area.

(e) Decks, fences, playground equipment, and other products constructed or installed after September 1, 2006 shall not be made from chromated copper arsenate (CCA) pressure-treated wood unless the use of CCA-treated wood is for an approved use listed on the CCA product label and allowed under the US EPA Supplemental Guidance on Interpretation of Revised Chromated Copper Arsenate (CCA) Wood Preservative Label, as amended.

(f) In areas accessible to children, CCA-treated wood decks, playground and recreational equipment, and structures installed or constructed:

- (1) prior to January 1, 2005; or
- (2) where EPA allows the use of CCA-treated wood,

shall be sealed using an oil-based, semi-transparent sealant; oil-based clear stain; or a water-based clear stain applied at least once every two years.

(g) At the time of the initial sealant or stain application and whenever more than two years has passed since the previous sealant application, soil under such wood shall be:

- (1) removed and replaced with similar material;
- (2) covered with at least four inches of soil, gravel, sand, sod, or other vegetation; or
- (3) otherwise made inaccessible.

(h) Any composting areas shall be covered and maintained to prevent attracting rodents or vermin. Worm bins shall be kept covered.

(i) Grass, fruit and vegetable gardens, vines on fences, and other vegetation shall be maintained in a manner which does not encourage the harborage of vermin.

(j) Pets kept outdoors shall be in a designated area that is maintained and separate from the outdoor area used by the children.

*History Note: Authority G.S. 110-91; Eff. July 1, 1991; Temporary Amendment Eff. April 15, 1998; Amended Eff. Pending Legislature Review; January 1, 2006; April 1, 1999.*

## **TITLE 17 – DEPARTMENT OF REVENUE**

### **17 NCAC 07B .3902 HOGSHEADS: CARDBOARD CONTAINERS: ETC.**

Sales of wooden hogsheads, cardboard containers and strapping to operators of prizeeries for use in moving tobacco from the prizeery to the redrying plant are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

### **17 NCAC 07B .3903 PACKAGING MATERIALS: WAREHOUSEMEN AND MOVERS**

Sales of packaging and packing materials to warehousemen and movers for use in the performance of storage and moving services are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

### **17 NCAC 07B .3904 MARKING MACHINES**

Sales of marking machines to retailers and wholesalers for use in imprinting price, size, or other information on tickets, tags, etc., are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

### **17 NCAC 07B .3905 ICE HANDLING SUPPLIES**

Sales of ice picks, ice tongs, tarpaulins and reusable canvas bags to merchants for use in the delivery of ice to customers, but which do not become a part of the sale, are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

### **17 NCAC 07B .4101 OBJECTS OF ART**

Retail sales of objects of art and art supplies are subject to the applicable statutory state and local sales or use tax except those sales that are exempt under G.S. 105-164.13.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

### **17 NCAC 07B .4102 SALES OF PHOTOGRAPHS**

The sale of photographs, including all charges for developing or printing, is subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

### **17 NCAC 07B .4103 PHOTO TINTING**

The tinting or coloring of photographs delivered to a photographer or photo finisher by a customer constitutes a service and the receipts therefrom are not taxable. Sales to photographers and photo finishers of materials to be used by them in performing such services are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

**17 NCAC 07B .4104 BLUEPRINTS**

Sales of photostatic copies or blueprints by a photostat or blueprint producer or others to consumers or users are subject to the applicable statutory state and local sales or use tax to be computed on the gross receipts.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

**17 NCAC 07B .4105 PHOTO SUPPLIES AND MATERIALS**

Sales of frames, films and other articles by photographers, photo finishers or others to users or consumers are subject to the applicable statutory state and local sales or use tax. Gross receipts from sales of photographs by commercial or portrait photographers or others are subject to the applicable statutory state and local sales or use tax; however, sales to commercial or portrait photographers of materials which become an ingredient or component part of the finished picture are not subject to the tax. Mounts, frames, and paper become an ingredient or component part of the finished picture and the sales of such materials to commercial or portrait photographers are not subject to the tax. Materials such as films, chemicals, proof paper, cameras, trays, and similar items that are used in the manufacture or fabrication of such pictures are exempt from the sales and use tax and subject to the privilege tax under the provisions of G.S. 105-187.51 when such materials are purchased by commercial or portrait photographers.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-187.50; 105-187.51; 105-187.52; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

**17 NCAC 07B .4106 PHOTOENGRAVINGS: ELECTROTYPES: ETC.**

Purchases by commercial printers of photoengravings, electrotypes and lithographs, when the same are not for resale, but which the purchaser uses in printing tangible personal property for sale are exempt from the sales and use tax and subject to the privilege tax under the provisions of G.S. 105-187.51. Sales of photoengravings, electrotypes and lithographs and all other printing equipment and supplies, including paper and ink, to consumer or captive printers are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-187.50; 105-187.51; 105-187.52; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

**17 NCAC 07B .4107 SALES OF MOVIE FILM**

The sale of developed movie film to users or consumers is subject to the applicable statutory state and local sales or use tax unless exempt by Statute.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13(5e); 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; July 5, 1980.*

**17 NCAC 07B .4109 BLUEPRINTS SOLD TO ARCHITECTS**

Sales of blueprints, photographs and other tangible personal property to an architectural or engineering firm for use or consumption and not for resale are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.*

**17 NCAC 07B .4202 EXEMPT SALES TO THE UNITED STATES GOVERNMENT**

(a) Purchase Requisitions: A vendor making sales directly to the United States Government, or any agency or instrumentality thereof, that issues purchase requisitions or affidavits must obtain and keep copies of such purchase requisitions or affidavits signed by the purchasing officer stating that such sales are being made directly to the United States Government or an agency or instrumentality thereof. Copies of such purchase requisitions or affidavits must be retained by the vendor in his files for three years following the date of sale and must be available for inspection by the Secretary of Revenue or her agents upon request.

(b) United States Government Credit Card Program – GSA Smartpay: Card designs may be viewed on the following Internet website: <http://www.gsa-smartpay.org/gsa-howidentify.html>.

- (1) Fleet Cards: All Federal Government fleet cards are centrally billed. This means that all charges are billed directly to and paid directly by the Federal Government and are exempt from the general rate of State tax and any applicable local sales and use tax.
- (2) Purchase Cards: All Federal Government purchase cards are centrally billed. This means that all charges are billed directly to and paid directly by the Federal Government and

are exempt from the general rate of State tax and any applicable local sales and use tax.

- (3) **Travel Cards:** Federal Government travel cards may be centrally billed or individually billed. Individually billed charges are billed to and paid by the Federal employee who is then reimbursed by the Federal Government. These charges are subject to the general rate of State tax and any applicable local sales and use tax. Centrally billed charges are billed directly to and paid directly by the Federal Government and are exempt from to the general rate of State tax and any applicable local sales and use tax.
- (4) **Integrated Cards:** Federal Government integrated cards include fleet, travel, purchase transactions or any combination thereof and offer the Federal Government a single card for all of its purchases. This card is in use only at the Department of the Interior. All fleet and purchase type transactions on an integrated card are centrally billed, and travel type transactions may be centrally billed or individually billed. Centrally billed charges are billed directly to and paid directly by the Federal Government and are exempt from the general rate of State tax and any applicable local sales and use tax. Individually billed charges are billed to and paid by the Federal employee and then reimbursed by the Federal Government. These charges are subject to the general rate of State tax and any applicable local sales and use tax.

*History Note:* Authority G.S. 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; April 1, 1997; January 1, 1995; October 1, 1993; October 1, 1991; August 1, 1988.

**17 NCAC 07B .4203 CONTRACTORS FOR THE FEDERAL GOVERNMENT**

Sales of tangible personal property to contractors for use in performing contracts with the United States Government or its agencies and instrumentalities are subject to the applicable statutory state and local sales or use tax.

*History Note:* Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.

**17 NCAC 07B .4205 FEDERAL CREDIT UNIONS AND THE FARM CREDIT SYSTEM**

(a) **Federal Credit Unions:** Sales of tangible personal property to federal credit unions organized under the Federal Credit Union

Act, 12 U.S.C. §§ 1751 et seq., are exempt from North Carolina sales and use tax. See 12 U.S.C. § 1768.

(b) **The Farm Credit System:** The Farm Credit System, 12 U.S.C. §§ 2001 et seq., includes the Farm Credit Banks, the Federal land bank associations, the production credit associations, the banks for cooperatives, and such other institutions as may be made part of the System, all of which are chartered by and subject to the regulation of the Farm Credit Administration.

- (1) Sales of tangible personal property to Farm Credit Banks and Federal land banks are exempt from North Carolina sales and use tax. See 12 U.S.C. §§ 2023 and 2098.
- (2) Sales of tangible personal property to production credit associations and banks for cooperatives for use or consumption are subject to the applicable statutory state and local sales or use tax. See 12 U.S.C. §§ 2077 and 2134.

*History Note:* Authority G.S. 105-164.13; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; November 1, 1995; January 1, 1995; January 3, 1984.

**17 NCAC 07B .4206 FED SAVINGS/LOAN ASSOC, NATL BANKS/ST BANKS/ST CHARTERED CREDIT UNIONS**

(a) Sales of tangible personal property to federal savings and loan associations and national banks for use or consumption are subject to the applicable statutory state and local sales or use tax. See 12 U.S.C. § 1464(h) and 548.

(b) Sales of tangible personal property to state banks and state chartered credit unions for use or consumption are subject to the applicable statutory state and local sales or use tax.

*History Note:* Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; January 1, 1995; October 1, 1993; October 1, 1991.

**17 NCAC 07B .4207 RESERVE OFFICERS' UNIFORMS**

Sales of uniforms, other than sales directly to the United States Government, for use in reserve officers training programs are subject to the applicable statutory state and local sales or use tax.

*History Note:* Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991.

**17 NCAC 07B .4301 REFUNDS TO INTERSTATE CARRIERS**

(a) Scope -- This Rule explains the sales and use tax refund allowed to interstate carriers under G.S. 105-164.14(a). The refund authorized by that statute does not apply to taxes listed in 17 NCAC 07B .1602(d).

(b) Eligible Items -- Sales and use taxes paid on railway cars and locomotives are eligible for refund. In addition, the following items are considered to be fuel, a lubricant, a repair part, or an accessory. Therefore, sales and use taxes paid on purchases of the following items are eligible for refund under G.S. 105-164.14(a):

- (1) antennas;
- (2) antifreeze;
- (3) bedding for motor vehicle sleeping compartments;
- (4) charts for tachographs;
- (5) decals for motor vehicles;
- (6) emergency flares and reflectors;
- (7) fire extinguishers;
- (8) freon or nitrogen used in refrigerating and cooling motor vehicles;
- (9) furniture pads;
- (10) lifeboats and oxygen masks;
- (11) load jacks and chains;
- (12) mobile CB radios;
- (13) motor vehicle seat cushions;
- (14) paints for decals;
- (15) polyethylene liners (used to waterproof trailers);
- (16) pouches for registration cards and permits;
- (17) radios;
- (18) ramp equipment (aircraft steps used to embark or disembark aircraft);
- (19) ropes and chains to tie down cargo (adapted for use on motor vehicles; otherwise not allowed);
- (20) signs (metal signs attached to trucks);
- (21) tarpaulins;
- (22) tire chains;
- (23) tire and tubes;
- (24) welding rods for repair of motor vehicles;
- (25) windshield solvents; or
- (26) zipped covers for grills.

(c) Items not Eligible -- The following items are not considered to be fuel, a lubricant, a repair part, or an accessory. Therefore, sales and use taxes paid on purchases of the following items are not eligible for refund under G.S. 105-164.14(a):

- (1) drivers' gloves;
- (2) drivers' uniforms;
- (3) food trays (airplanes);
- (4) fork lift tires and parts;
- (5) gauges for testing equipment;
- (6) hand trucks;
- (7) license and inspection fees;
- (8) pallets;
- (9) pillows (airplanes);
- (10) repair labor;
- (11) road service charges;
- (12) security seals;

- (13) sixty percent on recapped tires where forty percent of the combined price is taxed (17 NCAC 07B .1901);
- (14) tire volume discounts;
- (15) tools, shop supplies;
- (16) trip logs; or
- (17) wax and washing supplies.

(d) Other Items -- The lists in this Rule do not include every item that is or is not subject to refund. Upon request, the Sales and Use Tax Division shall determine if an item not included in either list is subject to refund.

(e) Amount of Refund -- G.S. 105-164.14(a) sets out the formula for computing the amount of a refund. Under the formula, an interstate carrier receives a refund for a percentage of the tax paid on eligible items.

*History Note: Authority G.S. 105-164.14; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; July 1, 2000; August 1, 1998; August 1, 1996; October 1, 1993; July 1, 1990; February 1, 1987; March 1, 1984.*

### **17 NCAC 07B .4303 APPLICATION**

An interstate carrier must file Form E-581 to obtain a refund under G.S. 105-164.14(a). A refund period is a calendar quarter. A claim for refund covers sales and use taxes paid during a quarter. A claim for refund is due within 60 days after the end of a quarter. The Department shall not accept a claim for refund filed later than three years after its due date. A claim for refund shall include only taxes paid for the calendar quarter covered by the claim. An amended claim for refund shall be filed to correct an understatement of a refund claimed for a prior quarter. An amended claim for refund must be filed to correct an overstatement of a refund made for a prior quarter.

*History Note: Authority G.S. 105-164.14; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; July 1, 2000; October 1, 1993; November 3, 1978.*

### **17 NCAC 07B .4603 MOTOR VEHICLE SERVICE BUSINESSES**

(a) Persons engaged in the business of repairing automobiles and other motor vehicles are liable for collecting and remitting the applicable statutory state and local sales or use tax on the sales price of any parts, accessories or other tangible personal property which they furnish in connection with repairing their customers' vehicles. Charges for labor to install the parts, accessories and similar property are not subject to tax if such charges are separately stated on the customers' invoices and in the vendor's records; otherwise, the total charges are subject to the tax.

(b) Sales of repair parts, accessories and other tangible personal property to automotive repair shops for resale in connection with repairing their customers' vehicles are not subject to tax when supported by a Streamlined Sales Tax Agreement Certificate of Exemption, Form E-595E.

(c) Sales of tools, equipment and supplies to automotive repair shops for use in conducting their business are subject to the

applicable statutory state and local sales or use tax and vendors making such sales are required to collect and remit same. Certificates of exemption are not applicable to sales of this nature. If, in addition to repairing motor vehicles, a repair shop actually makes sales of tools, equipment, supplies, and similar items to its customers, such repair shop may purchase such items under a certificate of exemption. Vendors selling tools, equipment, supplies and similar items to a repair shop, or similar business which does not ordinarily and customarily engage in reselling such articles at retail shall require from such vendee a certificate of exemption with each order for such articles. Such vendee is then liable for collecting and remitting the applicable statutory state and local sales or use tax on its sales of tools, equipment, supplies and similar items.

(d) The total charge for all tangible personal property, including windshields, window glass, seat covers, floor mats, head liners, runners, channels, pig rings, felt, tacks, screws, thread, tape, windlass, welt cord, and similar items installed in or upon motor vehicles or other articles by persons selling and installing such property are subject to the applicable statutory state and local sales or use tax. The charge for labor performed or other services rendered in installing the same are also subject to the applicable statutory state and local sales or use tax unless such charges are separately stated on the customer's invoice and in the vendor's records. All tax due hereunder must be collected and remitted to the department by the person selling and performing such installation service. Sales of tangible personal property for resale in connection with glass repair and reupholstery jobs are not subject to tax when supported by properly executed certificates of exemption; however, any tools, supplies or other property sold for use in performing such work are subject to the applicable statutory state and local sales or use tax.

(e) Persons engaged in the business of painting or refinishing motor vehicles are the users or consumers of tangible personal property which they purchase for use in the performance of such services. Sales to such businesses of paint, primer, sandpaper and belts, masking tape, putty and other finishing or refinishing materials, including those named in Paragraph (f) of this Rule, tools, supplies and any other tangible personal property for use in body repair, painting or refinishing work are subject to the applicable statutory state and local sales or use tax. If, in addition to such body repair, painting or refinishing work, said businesses purchase tangible personal property such as automobile fenders, doors, windshields or other parts or accessories, and sell the same to their customers, such businesses are liable for collecting and remitting the tax on such sales irrespective of whether the sales are made in connection with repair or refinishing jobs.

(f) Sales of soap, wax, polish, glaze, undercoating, scotchguard, finish protectants and other related materials to motor vehicle dealers and other businesses that use such materials to wash, wax, and/or apply a protective coating to automobiles are subject to the applicable statutory state and local sales or use tax thereon.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.5; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; October 1, 1993; June 1, 1992; October 1, 1991.*

#### **17 NCAC 07B .4604 SPECIAL EQUIPMENT-ACCESSORIES: MOTOR VEHICLES**

Persons selling pulling devices, hole digging devices, aerial working devices or other such special accessories at retail which they mount upon a motor vehicle chassis or body belonging to others must collect and remit the applicable statutory state and local sales or use tax thereon. Any charges for labor or services rendered in installing or applying such items are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of sale and in the vendor's records; otherwise the total amount is subject to tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; October 1, 1993; June 1, 1992; October 1, 1991; July 1, 1990.*

#### **17 NCAC 07B .4609 FIRE TRUCKS AND EQUIPMENT**

Retail sales of axes, brooms, buckets, shovels, ropes, general purpose tools, gas masks, first aid kits, blankets, portable pumps, portable fire extinguishers and like articles are considered to be other fire fighting equipment rather than accessories to the fire truck, and sales of such items at retail are subject to the applicable statutory state and local sales or use tax without any maximum tax applicable thereto notwithstanding such sales are made to the above type customers or that the items are sold with fire trucks. Privately owned fire trucks or vehicles on which fire fighting equipment has been mounted that are used only for fire fighting purposes are classified as special mobile equipment, and sales thereof are subject to the applicable statutory state and local sales or use tax. Sales of repair parts to municipalities, counties, rural fire protection districts, and industrial users for use in repairing fire trucks are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;*

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; July 1, 1990; January 3, 1984.*

#### **17 NCAC 07B .4614 PICKUP CAMPERS: TRAILERS**

Retail sales of camper trailers which are designed to run on the streets and highways and which are pulled by a self-propelled vehicle are classified as sales of motor vehicles and exempt from sales tax. Retail sales of such camper trailers are subject to the highway use tax. Retail sales of slide-in pickup camper units are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; October 1, 1990; July 1, 1990.*

**17 NCAC 07B .4615 MANUFACTURED HOMES**

(a) The tax is to be computed on the gross sales price of the manufactured home without any deduction whatever on account of any trade-in credit or allowance. The gross sales price of the manufactured home includes any parts or accessories installed thereon at the time of the sale and delivery to the customer, labor for installing such parts or accessories, freight, or any other charges for preparing the manufactured home for sale. Parts or accessories sold separately from the sale of a manufactured home are subject to the applicable statutory state and local sales or use tax; however, charges for labor to install such parts or accessories are not subject to tax when separately stated on the customer's invoice and in the vendor's records.

(b) Any furniture, appliances or accessories placed in a manufactured home by the manufacturer or the dealer and which are a part of the sale and delivery of the manufactured home to a customer are included in the gross sales price of the manufactured home, subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale. Anchor bolts, tie-downs, skirting, steps, and central or window air-conditioning units that are to be attached to a manufactured home and that are a part of the sale of a manufactured home at the time of delivery to the customer or at the time of installation by a dealer for his customer are included in the sales price subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale of each manufactured home.

(c) Any charge made by a vendor to a customer for running gear upon which a manufactured home is delivered is a part of the gross sales price of such manufactured home subject to the two percent rate of tax, with a maximum tax of three hundred dollars (\$300.00), notwithstanding that such charge may be separately stated from the charge for the manufactured home on the invoice given to the customer at the time of the sale. The return of running gear to a dealer for credit or refund of such charge does not alter the rate of tax applicable to the sale, and the customer is not entitled to a credit or refund of the tax paid on the charge for the running gear returned or sold to the dealer.

(d) Any sale of furniture, appliances and other accessories to a customer by a dealer after the sale of the manufactured home has been consummated is subject to the applicable statutory state and local sales or use tax. Cement blocks which are used to prepare or build the foundation for or to level a manufactured home, the sewer pipe used to connect a manufactured home to the septic or sewer system, and wedges used for leveling a manufactured home do not come within the definition of accessories attached at the time of delivery and, therefore, purchases of these items by dealers or other users or consumers in this state to be used in the installation of a manufactured home are subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; July 1, 1990; January 3, 1984.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS  
AND COMMISSIONS**

**CHAPTER 3 - NORTH CAROLINA BOARD OF  
ATHLETIC TRAINER EXAMINERS**

**21 NCAC 03 .0302 CONTINUING EDUCATION**

(a) Continuing education courses appropriate for license renewal are those in one or more of the following content areas: Human Anatomy, Human Physiology, Kinesiology/Biomechanics, Psychology, Exercise Physiology, Prevention of Athletic Injuries, Evaluation of Athletic Injuries, First Aid and Emergency Care, Therapeutic Modalities, Therapeutic Exercise, Personal Community Health, Nutrition, and Administration of Athletic Training Programs.

(b) A licensee shall complete 75 contact hours of continuing education during a three-year license renewal period. Contact hours are defined as the number of actual clock hours spent. One semester hour of credit is equivalent to 10 contact hours.

(c) Licensed athletic trainers who fail to document sufficient appropriate continuing education to renew their licenses shall be notified in writing of the deficiency and shall be allowed 45 days to respond. Continuing education may not be undertaken during this period to supplement the deficiency. The licenses of athletic trainers who fail to respond within the 45-day period, or who are unable to provide sufficient continuing education shall lapse and be subject to the lapsed license requirements.

*History Note: Authority G.S. 90-525; 90-533;  
Temporary Adoption Eff. March 16, 1998;  
Eff. May 1, 1999;  
Amended Eff. January 1, 2007.*

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**CHAPTER 36 - BOARD OF NURSING**

**21 NCAC 36 .0403 QUALIFICATIONS**

(a) The nurse aide I shall perform basic nursing skills and personal care activities after successfully completing an approved nurse aide I training and competency evaluation or competency evaluation program. The licensed nurse shall delegate these activities only after considering the variables defined in Rule .0401(b) and (c) of this Section. Pursuant to G.S. 90-171.55, as of April 1, 1992 no individual may function as a nurse aide I, regardless of title, to provide nursing care activities, as identified in Rule .0401(a) of this Section, to clients or residents until:

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing facility, a State approved nurse



aide I training and competency evaluation program or its equivalent; or a State approved competency evaluation program and the employing facility or agency has verified listing on the Division of Facility Services Nurse Aide Registry (DFSNA); or

(2) the employing agency or facility has assured that the individual is enrolled in a State approved nurse aide I training and competency evaluation program which the individual shall successfully complete within four months of employment date. During the four month period, the individual shall be assigned only tasks for which he has demonstrated competence and performs under supervision.

(b) The nurse aide II shall perform more complex nursing skills with emphasis on sterile technique in elimination, oxygenation, and nutrition after successful completion of an approved nurse aide II training and competency evaluation program. The licensed nurse shall delegate these activities to the nurse aide II only after consideration of the variables described in Rule .0401(b) and (c) of this Section. Pursuant to G.S. 90-171.55, as of January 1, 1991 no individual may function as a nurse aide II unless:

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing agency, a nurse aide II program approved by the Board of Nursing according to these Rules or its equivalent as identified by the Board of Nursing;
- (2) the individual is listed as a nurse aide I on the DFS Nurse Aide I Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- (3) the employing facility or agency has inquired of the Board of Nursing as to information in the Board of Nursing Nurse Aide II Registry concerning the individual and confirms with the Board of Nursing that the individual is listed on the Board of Nursing Nurse Aide II Registry (BONNAR) as a nurse aide Level II.

(c) Listing on a Nurse Aide Registry is not required if the care is performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

(d) Pursuant to G.S. 131E-114.2 and G.S. 131E-270, the medication aide shall be limited to performing technical aspects of medication administration consistent with Rule .0401(b) and (c) of this Section, Rule .0221 of this Chapter, and only after:

- (1) successful completion of a medication aide training program approved by the Board of Nursing;
- (2) successful completion of a state-approved competency evaluation program; and
- (3) listing on the Medication Aide Registry.

*History Note: Authority G.S. 90-171.20(2)(4)(7)d.,e.,g.; 90-171.43(4); 90-171.55; 90-171.56; 131E-114.2; 131E-270; 42U.S.C.S. 1395i-3 (1987);*

*Eff. March 1, 1989;*

*Temporary Amendment Eff. October 11, 1989 For a Period of 180 Days to Expire on April 6, 1990;*

*Amended Eff. September 1, 2006; December 1, 1995; March 1, 1990.*

## **21 NCAC 36 .0406 MEDICATION AIDE TRAINING REQUIREMENTS**

(a) Faculty for the medication aide training program are required to:

- (1) have a current, unrestricted license to practice as a registered nurse in North Carolina;
- (2) have had at least two years of practice experience as a registered nurse that includes medication administration;
- (3) have successfully completed an instructor training program approved by the Board according to these Rules; and
- (4) maintain Board of Nursing certification as a medication aide instructor.

(b) The medication aide instructor certification shall be renewed every two years provided the following requirements are met:

- (1) the individual has taught at least one medication aide training program within the preceding two years; and
- (2) the individual successfully completes a review program approved by the Board according to these Rules.

*History Note: Authority G.S. 90-171.56; 131E-114.2; 131E-270;*

*Eff. September 1, 2006.*

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## **CHAPTER 53 - BOARD OF LICENSED PROFESSIONAL COUNSELORS**

### **21 NCAC 53 .0402 GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

*History Note: Authority G.S. 90-334;*

*Eff. July 1, 1994;*

*Repealed Eff. September 1, 2006.*

## **TITLE 25 – OFFICE OF STATE PERSONNEL**

### **25 NCAC 01D .0115 SUPPLEMENTAL SALARY**

(a) Supplemental salary is any compensation from an affiliated public charity, foundation or other private source paid to a state employee for services that are part of the employee's regular job and is in addition to the employee's base salary paid by the state and any other compensation authorized by this Chapter.

(b) Receipt of supplements shall be subject to the approval of the agency head with final approval by the State Personnel

Commission. Requests shall be submitted to the Office of State Personnel and shall include documentation of relevant labor market information and any other information that the agency head believes justifies a salary supplement. The documentation shall also include why the payment of the supplement will not result in any conflict of interest. In the absence of a conflict of interest, the State Personnel Commission shall base its decision on documented labor market information submitted by the agency and any additional information of prevailing practices in the applicable labor market supplied by the Office of State Personnel.

(c) Salary supplements in existence on the effective date of this Rule shall be submitted for review and approval within 90 days.

(d) Any proposed changes in the amount of a salary supplement shall be resubmitted to the Office of State Personnel with documented labor market information and shall be subject to final approval by the State Personnel Commission. The State Personnel Commission shall base its decision on documented labor market information submitted by the agency and any additional information of prevailing practices in the applicable labor market supplied by the Office of State Personnel.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 2006.*

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## RULES REVIEW COMMISSION

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*This Section contains information for the meetings of the Rules Review Commission on Thursday September 21, 2006, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. 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  
Jeffrey P. Gray

#### Appointed by House

Jennie J. Hayman - Chairman  
John B. Lewis  
Mary Beach Shuping  
Judson A. Welborn  
John Tart

### RULES REVIEW COMMISSION MEETING DATES

October 19, 2006      November 16, 2006  
December 14, 2006      January 18, 2007

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### LIST OF APPROVED PERMANENT RULES September 21, 2006 Meeting

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<u>Cardio-Pulmonary Resuscitation</u>	10A	NCAC	13D	.2309
<u>Compliance with Laws</u>	10A	NCAC	13J	.0906
<u>Agency Management and Supervision</u>	10A	NCAC	13J	.1001
<u>Personnel</u>	10A	NCAC	13J	.1003
<u>In-Home Aide Services</u>	10A	NCAC	13J	.1107
<u>Medication Aide Competency Evaluation</u>	10A	NCAC	13O	.2001
<u>Registry of Medication Aides</u>	10A	NCAC	13O	.2002

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<u>Definitions</u>	10A	NCAC	26E	.0602
<u>Requirements for Transmission of Data</u>	10A	NCAC	26E	.0603
<u>Alcohol and Drug Education Traffic Schools</u>	10A	NCAC	27G	.3803
<u>Scope</u>	10A	NCAC	27I	.0601
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<u>Filing</u>	10A	NCAC	27I	.0603
<u>Change in Client</u>	10A	NCAC	27I	.0604
<u>Initial Response</u>	10A	NCAC	27I	.0605
<u>Hearing Schedule and Composition of the Panel</u>	10A	NCAC	27I	.0606
<u>Panel Hearing Procedures</u>	10A	NCAC	27I	.0607
<u>Panel Decision Findings</u>	10A	NCAC	27I	.0608
<u>Final Written Decision</u>	10A	NCAC	27I	.0609

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<u>Medical Services Covered</u>	10A	NCAC	43H	.0111
<u>Reimbursement for Professional Outpatient Other Services</u>	10A	NCAC	45A	.0403
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<u>Definitions</u>	10A	NCAC	48A	.0102
<u>Self-Assessment</u>	10A	NCAC	48A	.0201
<u>Site Visit</u>	10A	NCAC	48A	.0202
<u>Board Action</u>	10A	NCAC	48A	.0203
<u>Informal Review Procedures</u>	10A	NCAC	48A	.0204
<u>Re-Accreditation</u>	10A	NCAC	48A	.0205
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<u>Definitions</u>	10A	NCAC	48B	.0102
<u>Accreditation Requirements</u>	10A	NCAC	48B	.0103
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<u>Benchmark 2</u>	10A	NCAC	48B	.0202
<u>Benchmark 3</u>	10A	NCAC	48B	.0203
<u>Benchmark 4</u>	10A	NCAC	48B	.0301
<u>Benchmark 5</u>	10A	NCAC	48B	.0302
<u>Benchmark 6</u>	10A	NCAC	48B	.0303
<u>Benchmark 7</u>	10A	NCAC	48B	.0304
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<u>Benchmark 13</u>	10A	NCAC	48B	.0503
<u>Benchmark 14</u>	10A	NCAC	48B	.0601
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<u>Benchmark 18</u>	10A	NCAC	48B	.0703
<u>Benchmark 19</u>	10A	NCAC	48B	.0801
<u>Benchmark 20</u>	10A	NCAC	48B	.0802
<u>Benchmark 21</u>	10A	NCAC	48B	.0803
<u>Benchmark 22</u>	10A	NCAC	48B	.0804
<u>Benchmark 23</u>	10A	NCAC	48B	.0901
<u>Benchmark 24</u>	10A	NCAC	48B	.0902
<u>Benchmark 25</u>	10A	NCAC	48B	.0903
<u>Benchmark 26</u>	10A	NCAC	48B	.0904
<u>Benchmark 27</u>	10A	NCAC	48B	.1001
<u>Benchmark 28</u>	10A	NCAC	48B	.1101
<u>Benchmark 29</u>	10A	NCAC	48B	.1102
<u>Benchmark 30</u>	10A	NCAC	48B	.1201
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<u>Eligible Members</u>	11	NCAC	05A	.0301
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<u>Alarm and Communications</u>	11	NCAC	05A	.0506
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<u>Apparatus</u>	11	NCAC	05A	.0508
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<u>General Information</u>	11	NCAC	10	.0801
<u>Procedure for Application for New License</u>	11	NCAC	10	.0802
<u>Renewal License Fee for Rating Organizations</u>	11	NCAC	10	.0803
<u>Form License Certificate</u>	11	NCAC	10	.0804
<u>Changes in Filed Information</u>	11	NCAC	10	.0806
<u>General Information</u>	11	NCAC	10	.0901
<u>Procedure for Application of New License</u>	11	NCAC	10	.0902
<u>Changes in Filed Information</u>	11	NCAC	10	.0903
<u>Form License Certificate</u>	11	NCAC	10	.0906
<u>Renewal License Fee for Licensed Organizations</u>	11	NCAC	10	.0907
<u>General Requirements</u>	11	NCAC	10	.1701
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**WILDLIFE RESOURCES COMMISSION**

<u>Hunting and Game Lands</u>	15A	NCAC	10D	.0103
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<u>Purpose Scope and Applicability for Construction and Dem...</u>	15A	NCAC	13B	.0531
<u>Definitions for C&amp;DLF Facilities</u>	15A	NCAC	13B	.0532

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<u>Financial Assurance Requirements for C&amp;DLF Facilities and...</u>	15A	NCAC	13B	.0546
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<u>Awards Committee</u>	25	NCAC	01J	.0802
<u>Agency Department or University Responsibility</u>	25	NCAC	01J	.0805

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## CONTESTED CASE DECISIONS

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <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.*

*Beryl E. Wade*

*Melissa Owens Lassiter*

*Beecher R. Gray*

*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>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
Santos Ferman T/A Paraiso vs. ABC Commission	05 ABC 1828	Chess	05/31/06	
Owl's Eyes of Asheville, LLC, T/A Hooters v. ABC Commission	05 ABC 1989	Chess	06/07/06	
Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue Hight Point, NC 27262 v. ABC Commission	06 ABC 0719	Chess	08/07/06	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Timothy P. Webber v. Crime Victims Compensation Commission	05 CPS 1568	Lassiter	06/08/06	21:01 NCR 109
Valerie Joy McGill v. Crime Victims Compensation Commission	06 CPS 0038	Gray	06/08/06	
Charles Leon Champion v. Crime Victims Compensation Commission	06 CPS 0155	Elkins	06/08/06	
Sharron Smith v. Crime Control and Public Safety	06 CPS 0708	Gray	07/12/06	
Elaine B. Deloatch v. Crime Victims Compensation Commission	06 CPS 0736	Wade	08/15/06	
Christopher Lee Vess v. Crime Control Victims Compensation Services Division	06 CPS 0890	Gray	08/23/06	
Chris K. Daniels v. Crime Control and Public Safety, Div. of Victim Compensation Commission	06 CPS 0909	Lassiter	08/01/06	
Tamika L. Howard-Smith v. Crime Victims Compensation	06 CPS	1161	09/06/06	
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
<b><u>DEPARTMENT OF AGRICULTURE</u></b>				
Shacond Muse Bey v. Dept. of Agriculture	06 DAG 0985	Morrison	08/16/06	
<b><u>DEPARTMENT OF CULTURAL RESOURCES</u></b>				
William H. Miller v. Cultural Resources, State Historic Preservation	05 DCR 0439	Mann	07/03/06	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>				
Andrea Green, Parent, on behalf of her Miner Child, Andrew Price	01 DHR 2149	Gray	06/29/06	
Marquell's Enrichment Center for Edith James and Wilhelmenia Bridges v. Div. Child Development Regulatory Services Section	02 DHR 1537	Gray	08/21/06	
Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS	04 DHR 1513	Lassiter	06/14/06	
Restoration Church of God in Christ, d/b/a Restoration's Joys of the Heart Child Care Center v. DHHS, Div. of Child Development	05 DHR 0097	Elkins	08/30/06	
Restoration Church of God in Christ Iternation, d/b/a Joys of the Heart Child Care Center v. DHHS, Div. of Public Health, Child and Adult Care Food Program	05 DHR 0124	Elkins	08/30/06	
Handa of the Future, Sheila Martin v. DHHS, Child and Adult Care Food Program	05 DHR 0457	Wade	06/27/06	
Patricia Filyaw's FCCH vs. Div. of Child Development	05 DHR 0803	Gray	05/30/06	
Amanda M. Walters v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1121	Chess	05/30/06	

# CONTESTED CASE DECISIONS

Carolyn W. Cooper, Happy Days Child Care v. Div. of Child Development	05 DHR 1255	Lassiter	09/12/06	21:01 NCR 115
Shari Ann Torain v. DHHS	05 DHR 1317	Elkins	06/08/06	
County of Buncombe & NC Radiation Therapy Management Services, Inc. d/b/a 21 <sup>st</sup> Century Oncology v. DHHS, DFS, Certificate of Need Section, & Asheville Hematology and Oncology Associates, P.A.	05 DHR 1369	Gray	05/26/06	
Jamie Bluto, Guardian of Heather Bluto v. Mecklenburg County Area Mental Health and Developmental Disabilities	05 DHR 1427	Chess	05/17/06	
United Home Care, Inc v. DHHS, DFS, CON Section and Liberty Home Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1456	Wade	06/19/06	21:07 NCR 674
Total Care Home Health of NC, INC., v. DHHS, DFS, CON Section and Liberty Home , Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1464	Wade	06/19/06	
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Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1491	Lassiter	05/31/06	
Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1492	Lassiter	05/31/06	
Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1506	Lassiter	05/31/06	
LaBrenda Perry Bennett v. Health Care Personnel Registry	05 DHR 1579	Morrison	07/13/06	
Lisa D. Smith-Perri on behalf of Gibson Price Smith, Brother	05 DHR 1982	Gray	06/26/06	
All Braxton, The Braxton Home II v, DHHS, DFS	05 DHR 1986	Mann	07/20/06	
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STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
06 DHR 0022

COUNTY OF MECKLENBURG

HOSPICE & PALLIATIVE CARE  
CHARLOTTE REGION

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, DIVISION OF FACILITY  
SERVICES, CERTIFICATE OF NEED SECTION and  
NORTH CAROLINA DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, DIVISION OF FACILITY  
SERVICES, LICENSURE AND CERTIFICATION  
SECTION,

Respondents,

and

CONTINUUM II HOME CARE & HOSPICE,  
INC. d/b/a CONTINUUM HOME CARE &  
HOSPICE OF MECKLENBURG COUNTY,

Respondent-Intervenor.

**RECOMMENDED DECISION  
by  
SUMMARY JUDGMENT**

**UPON CONSIDERATION** of the Motion for Summary Judgment filed by Petitioner Hospice & Palliative Care Charlotte Region ("Charlotte Hospice") and the Cross-Motion for Partial Summary Judgment filed by Respondent-Intervenor Continuum II Home Care & Hospice, Inc. d/b/a Continuum Home Care & Hospice of Mecklenburg County ("Continuum"), and; after review of the parties' (Petitioner, Respondents, and Respondent-Intervenor) memoranda, filings, affidavits, supporting documents, and pleadings, and; upon hearing oral argument by all parties on August 7, 2006 in Raleigh, North Carolina, and; after review of the relevant law; the undersigned Administrative Law Judge, Augustus B. Elkins II, determines the Motions for Summary Judgment are ripe for disposition.

**APPEARANCES**

**For Petitioner Charlotte Hospice**

Nelson Mullins Riley & Scarborough, LLP  
Wallace C. Hollowell, III, Esq.  
Noah H. Huffstetler, III, Esq.

**For Respondent North Carolina Department of Health and Human Services, Division of Facility Services, Certificate of Need Section and Licensure and Certification Section**

North Carolina Department of Justice  
Office of the Attorney General  
Angel Gray, Esq.

**For Respondent-Intervenor Continuum:**

Nancy O. Mason, Esq.  
Erik P. Lindberg, Esq.

**PARTIES, PROCEDURE AND CONDUCT OF HEARING**

1. Hospice & Palliative Care Charlotte Region (“Charlotte Hospice”) is a not-for-profit North Carolina corporation with its principal place of business located in Charlotte, Mecklenburg County, North Carolina. Charlotte Hospice has been providing end-of-life and palliative health care and support services in Mecklenburg County since 1979.
2. Respondent North Carolina Department of Health and Human Services (“DHHS”), Division of Facility Services (“DFS”), Certificate of Need Section (“CON Section”), is the Section of DHHS that administers the Certificate of Need Act (“CON Law”, N.C. Gen. Stat. Chapter 131E, Article 9).
3. Respondent North Carolina Department of Health and Human Services, Division of Facility Services, Licensure and Certification Section (“Licensure and Certification Section”) is the Section of the DHHS that licenses hospices, as well as other health care facilities. The Licensure and Certification Section also surveys hospices and other facilities as the State Survey Agency for the Medicare program.
4. Respondent-Intervenor Continuum II Home Care & Hospice, Inc. d/b/a Continuum Home Care & Hospice of Mecklenburg County (“Continuum”) is a North Carolina for-profit corporation. At all times relevant to this contested case, Continuum operated a single hospice located in Onslow County at 3391 Henderson Drive, Jacksonville, North Carolina (license no. HC1209).
5. On November 15, 2005, Continuum submitted a letter to the CON Section, requesting a response from the CON Section that it could open a “branch office” in Mecklenburg County of its Jacksonville, Onslow County hospice without obtaining a certificate of need (“CON”).
6. On November 22, 2005, the CON Section sent a letter to Continuum stating that Continuum could open a new hospice office in Mecklenburg County without a CON.
7. By letter dated December 8, 2005, the Licensure and Certification Section issued a license effective December 5, 2005 to Continuum for a new hospice in Mecklenburg County, relying in part upon the determination by the CON Section that no CON was required to establish this hospice.
8. On January 5, 2006, Charlotte Hospice filed a Petition for Contested Case Hearing with the Office of Administrative Hearings (“OAH”), appealing the CON Section’s determination that no CON was required for Continuum to establish a hospice in Mecklenburg County, and the Licensure and Certification Section’s issuance of a license for a hospice in Mecklenburg County to Continuum.
9. On January 31, 2006, Continuum was allowed to intervene in the contested case.
10. The parties have engaged in discovery in this case, including requests for admission, interrogatories, requests for production of documents and depositions.
11. The parties have conducted the following depositions:
  - A. Cynthia Hodges, Administrator, Continuum; and
  - B. Raymond Baker, Vice President of Finance, Continuum.
12. The parties submitted the following affidavits:
  - A. Janet Fortner, President & CEO, Charlotte Hospice;
  - B. Peter Brunnick, Vice President of Finance & Operations, Charlotte Hospice; and
  - C. Lee Booth Hoffman, Chief, CON Section.

#### FINDINGS OF FACT

1. In 1999, Continuum purchased an exiting hospice on the eastern coast of North Carolina, in Onslow County (the “Onslow County Hospice”). Continuum’s 5/26/06 Responses to Interrogatories; Hodges Dep. at 20-22.
2. Continuum is affiliated, and under common ownership, with Britthaven, Inc. (“Britthaven”). Britthaven owns and operates skilled nursing facilities throughout North Carolina, including Britthaven of Charlotte, a skilled nursing facility in Charlotte, Mecklenburg County. Continuum’s 5/26/06 Responses to Interrogatories; Hodges Dep. at 11; Baker Dep. at 5-7.
3. In the Fall of 2005, Continuum began pursuing a plan to expand its hospice services into counties across North Carolina. As part of this plan, Continuum sought to provide hospice services to at least one patient in particular counties so that Continuum could obtain a “no review determination” from the CON Section that no CON review was required prior to establishing a hospice office in the particular county. After obtaining such a no review determination, it was Continuum’s plan to then obtain a hospice license for each particular new office. Baker Dep. at 7-13.

4. As part of this plan to expand its hospice services, Continuum recruited and hired additional staff in counties across North Carolina. Some of these new staff members were also employees of Britthaven. Hodges Dep. at 12-14, 39-42; Baker Dep. at 9-10.
5. In the fall of 2005, Continuum hired hourly staff in and around Mecklenburg County, prior to providing any hospice services in that county. Hodges Dep. at 62-66, 135-138, 91, 94, 96-101.
6. In early November 2005, Continuum conducted a two-day training session in hospice services in Raleigh for approximately 100 new Continuum employees. Hodges Dep. at 46-48.
7. As part of its plan to expand its hospice services, Continuum sought out referrals of hospice patients by informing its affiliated Britthaven nursing facilities that it was interested in expanding its hospice services into the area. Hodges Dep. at 42-44.
8. Mr. Baker spoke with the Administrator of Britthaven of Charlotte, Doris Afam, and told her about the strategic plan that Continuum had to open branch offices and told her that Continuum would like any assistance that she could provide in that process. Baker Dep. At 13-14.
9. As a result of pursuing this plan to expand its hospice services, Continuum was able to obtain approximately 40 licenses for branch hospice offices by the end of 2005. Continuum has no plans to open all 40 of these branch offices in the "short term." Instead, it sought to have these offices licensed prior to a change in the CON Law that took effect on December 31, 2005, which requires a CON prior to the development of any new hospice office. Baker Dep. at 17-18; 2005 N.C. Sess. Laws 325.
10. Prior to November 15, 2005, Continuum was not serving, and had not served, any hospice patients in Mecklenburg County. Continuum's 2004, 2005, and 2006 Licensure Renewal Applications; Continuum's 5/26/06 Responses to Interrogatories; Continuum's 5/22/06 Responses to Requests for Admission; Hodges Dep. at 61-62, 66.
11. On November 15, 2005, Continuum admitted a single hospice patient, J.A. (initials used for confidentiality), in Mecklenburg County. Continuum served J.A. for a total of ten days, until the patient died on November 25, 2005. Continuum's 5/26/06 Responses to Interrogatories; Hodges Dep. at 65-66, 83, 87.
12. J.A. was a resident of Britthaven of Charlotte. Continuum's 5/26/06 Responses to Interrogatories; Hodges Dep. at 83-84, 89.
13. All of the hospice services that were provided to J.A. by Continuum were provided by individuals who Continuum had hired and trained in November 2005. Continuum's 5/26/06 Responses to Interrogatories; Hodges Dep. at 46-48, 91, 94, 96-101.
14. Continuum recruited, hired, and trained staff in and around Mecklenburg County prior to serving, J.A., the single patient in Mecklenburg County to whom Continuum has provided hospice services. Hodges Dep. at 65-66.
15. All of the individuals who provided hospice services to J.A., with the exception of the Hospice Chaplain, were also employees of Britthaven. Continuum's 5/26/06 Responses to Interrogatories; Hodges Dep. at 91-92, 97-101.
16. No one traveled from the Onslow County Hospice in Jacksonville, North Carolina to Britthaven of Charlotte to provide hospice services to J.A. Continuum's 5/26/06 Responses to Interrogatories.
17. J.A. is the only hospice patient that Continuum has ever served in Mecklenburg County. Continuum's 5/26/06 Responses to Interrogatories; Hodges Dep. at 66-67.
18. The data set forth in Continuum's licensure renewal applications for its Onslow County Hospice for 2004, 2005, and 2006 show that Continuum had not served any hospice patients in Mecklenburg County from October 1, 2002 through September 30, 2005. Continuum's 2004, 2005, and 2006 Licensure Renewal Applications; Hodges Dep. at 69-73.
19. The data set forth in Continuum's licensure renewal applications for its Onslow County Hospice for 2004, 2005, and 2006 show that Continuum had not served any hospice patients in any counties that are contiguous to Mecklenburg County from October 1, 2002 through September 30, 2005. Continuum's 2004, 2005, and 2006 Licensure Renewal Applications.
20. The 2005 State Medical Facilities Plan ("SMFP"), which was in effect at the time of the CON Section's November 22, 2005 no review determination, as well as the Draft 2006 SMFP, which was available to the CON Section at that time, shows that Continuum had not served any hospice patients in Mecklenburg County from October 1, 2002 through September 30, 2004. 2005 SMFP; Draft 2006 SMFP.
21. There was no need determination for any additional hospice offices in Mecklenburg County in the 2005 SMFP or the Draft 2006 SMFP.
22. In order for Continuum to serve hospice patients from an office in Mecklenburg County, Continuum needs to, and in fact already has, hired new staff. Continuum's 5/26/06 Responses to Interrogatories; Hodges Dep. at 62-66, 91, 94, 96-101, 114-117; Baker Dep. at 20-21.
23. Continuum intends to hire a new medical director and new administrator for its Mecklenburg County hospice office. Continuum's 5/26/06

Responses to Interrogatories; Hodges Dep. at 113-116.

24. Continuum does not have any existing patients who would be served by a hospice office in Mecklenburg County. Hodges Dep. at 117-118.
25. Onslow County and Mecklenburg County are not contiguous. 2005 SMFP Appendix C, List of “Contiguous Counties.” There are at least 12 counties – Duplin, Pender, Sampson, Bladen, Cumberland, Robeson, Hoke, Scotland, Moore, Richmond, Anson, and Union – that are located between Onslow County and Mecklenburg County. 2005 SMFP Appendix A, North Carolina Counties by Health Service Area.
26. Documents produced by the Licensure and Certification Section in this case indicate that the distance between Continuum's Onslow County Hospice (3391 Henderson Drive, Jacksonville, North Carolina) and Britthaven of Charlotte (9200 Glenwater Drive, Charlotte, North Carolina) is 272.9 miles with an estimated travel time of 5 hours and 24 minutes. Yahoo! Driving Directions (<http://maps.yahoo.com>).
27. On the same day that Continuum admitted a single hospice patient in Mecklenburg County, November 15, 2005, Continuum submitted a letter to the CON Section, in which it requested confirmation that it could develop a hospice office in Mecklenburg County without a CON. As support for this request, Continuum stated that it serves hospice patients in Mecklenburg County and attached a single sheet of paper, which indicated that Continuum had admitted a single hospice patient in Mecklenburg County on November 15, 2005. 11/15/06 Letter from N. Randy Uzzell to Lee Hoffman.
28. After receiving Continuum's November 15, 2005 no review request, the CON Section did not request from Continuum any additional information. Continuum's 5/22/06 Responses to Requests for Admission.
29. The CON Section only considered whether Continuum's Onslow County Hospice had provided hospice services to at least one patient in Mecklenburg County. CON Section's 5/25/06 Responses to Requests for Admission.
30. In 2005, the CON Section did not have any written, published regulations, criteria or guidelines concerning when a branch hospice office could be opened without a CON. 6/12/06 Final Agency Decision (05 DHR 1244).
31. On November 22, 2005, the CON Section issued a “no review determination,” which stated that Continuum's proposal to develop a hospice office in Mecklenburg County does not require a CON, so long as this hospice office is licensed prior to December 31, 2005. 11/22/06 Letter from Mary Edwards and Lee Hoffman to N. Randy Uzzell.
32. Lee Hoffman, Chief of the CON Section, does not consider no review determinations for branch hospice offices, such as the one at issue in this case, to be an “exemption” as that term is used in the CON Law. 11/02/05 Hoffman Dep. at 90-91.
33. The CON Section did not provide any notice to Charlotte Hospice of its November 22, 2005 no review determination.
34. At the time of the CON Section's November 22, 2005 no review determination, Charlotte Hospice had already filed petitions for contested case hearings regarding two other hospice no review determinations that had been issued by the CON Section for Mecklenburg County. In both cases, Charlotte Hospice asserted that it was a person aggrieved by the CON Section's no review determinations. 7/19/05 Petition for Contested Case Hearing (05 DHR 1142); 7/29/05 Petition for Contested Case Hearing (05 DHR 1211).
35. Charlotte Hospice was actively litigating both of these cases prior to, and at the time of, the CON Section's November 22, 2005 no review determination, including taking the deposition of Lee Hoffman, Chief of the CON Section, less than three weeks prior to the November 22, 2005 no review determination. 11/02/05 Hoffman Dep.
36. On November 29, 2005, Continuum submitted an application to the Licensure and Certification Section for a hospice license for a new office in Mecklenburg County. This application included a copy of the CON Section's November 22, 2005 no review determination. 11/29/06 Letter from Cynthia Hodges to Azzie Conley, with attachments; Hodges Dep. at 55, 120-121.
37. The address Continuum proposed for its new hospice office, 9200 Glenwater Drive in Charlotte, is the exact same address as Britthaven of Charlotte. 11/29/06 Letter from Cynthia Hodges to Azzie Conley, with attachments; Hodges Dep. at 55, 120-121.
38. As shown by the lease and facility floor plan that Continuum submitted with its licensure application, the new hospice office is actually located inside of Britthaven of Charlotte. 11/29/06 Letter from Cynthia Hodges to Azzie Conley, with attachments; Hodges Dep. at 138.
39. By letter dated December 8, 2005, the Licensure and Certification Section issued Continuum a license for its Mecklenburg County branch office, located at 9200 Glenwater Drive in Charlotte (license no. HOS3253). 12/08/05 Letter from Nancy P. Joyce to Cynthia Hodges, with enclosed License No. HOS3253.
40. The Licensure and Certification Section relied upon the CON Section's November 22, 2005 no review determination in its decision to issue License No. HOS3253 to Continuum. Licensure and Certification Section's 6/15/06 Responses to Requests for Admission.
41. The Licensure and Certification Section did not provide any notice to Charlotte Hospice of its December 8, 2005 decision to issue License No. HOS3253 to Continuum.
42. Charlotte Hospice provides hospice services in Mecklenburg County. 2005 SMFP, p. 263; 2006 SMFP, p. 270.

43. Charlotte Hospice has a history of providing hospice services to individuals who are residents of Britthaven of Charlotte. Brunnick Aff., ¶ 5.
44. During the 12-month period January 1, 2004 through December 31, 2004, Charlotte Hospice provided hospice services to 12 patients at Britthaven of Charlotte. These hospice services amounted to 501 patient days of care and resulted in gross revenue of \$118,245 for Charlotte Hospice. Brunnick Aff., ¶ 6.
45. During the 12-month period January 1, 2005 through December 31, 2005, Charlotte Hospice provided hospice services to 11 patients at Britthaven of Charlotte. These hospice services amounted to 434 patient days of care and resulted in gross revenue of \$98,658 for Charlotte Hospice. Brunnick Aff., ¶ 7.
46. During the 6-month period from January 1, 2006 through June 30, 2006, Charlotte Hospice provided hospice services to 6 patients at Britthaven of Charlotte. These hospice services amounted to 328 patient days of care and resulted in gross revenue of \$85,558 for Charlotte Hospice. Brunnick Aff., ¶ 8.
47. Based on the level of hospice services that Charlotte Hospice has provided to patients at Britthaven of Charlotte from January 1, 2006 through June 30, 2006, Charlotte Hospice could reasonably expect to generate at least \$128,000 in gross revenue from providing hospice services to patients at Britthaven of Charlotte during calendar year 2006, unless Continuum develops a hospice office in Mecklenburg County. Brunnick Aff., ¶ 10.
48. If Continuum develops a hospice office in Mecklenburg County, Charlotte Hospice can reasonably expect that it will lose most, if not all, of the hospice referrals and revenue it would have otherwise received for patients at Britthaven of Charlotte, which would significantly impact Charlotte Hospice's revenues. Brunnick Aff., ¶ 12; Fortner Aff., ¶¶ 22, 24; Baker Dep. at 22.
49. If Continuum develops a hospice office in Mecklenburg County, Charlotte Hospice can reasonably expect that Continuum would serve hospice patients in other parts of Mecklenburg County besides at Britthaven of Charlotte, which would significantly impact Charlotte Hospice's revenues. Fortner Aff., ¶ 25; Baker Dep. at 22.
50. Charlotte Hospice can reasonably expect a need to divert more resources away from providing uncompensated community services and expend more resources in its fundraising efforts. Fortner Aff., ¶¶ 18.
51. Charlotte Hospice can reasonably expect a need/requirement to expend more resources in its recruitment of volunteers. Fortner Aff., ¶ 20. Further, if Continuum develops a hospice office in Mecklenburg County, Charlotte Hospice can reasonably expect that this will negatively impact Charlotte Hospice's ability to recruit and retain necessary staff. Fortner Aff., ¶ 26.
52. As an existing provider of healthcare services in Mecklenburg and surrounding counties, Charlotte Hospice has an interest in maintaining the integrity of the CON review process and the health planning process in North Carolina. Fortner Aff., ¶ 27. As a result, Charlotte Hospice has an interest in having the CON Section conduct a review of Continuum's proposed Mecklenburg County hospice office pursuant to the criteria and procedure set forth in N.C. Gen. Stat. §§ 131E-183 and 131E-185 prior to the CON Section permitting Continuum to develop a new hospice office in Mecklenburg County. *Id.*
53. Charlotte Hospice has an interest in the health care delivery system in North Carolina in general and in Mecklenburg County in particular. Fortner Aff., ¶ 28. Among other things, Charlotte Hospice has an interest in maintaining the standards of practice for hospice care in North Carolina and Mecklenburg County, including the standards of practice that relate to reasonable distances between hospice providers and the patients they serve. *Id.*
54. The CON Section has admitted "that allowing the development of hospice branch offices without a CON is contrary to the purposes of the CON Law to prevent the unnecessary duplication of services." CON Section's 5/25/06 Responses to Requests for Admission.

### CONCLUSIONS OF LAW

#### SUMMARY JUDGMENT IN FAVOR OF PETITIONER IS WARRANTED

1. This contested case is not governed by N.C. Gen. Stat. § 131E-188 because the CON Section's November 22, 2005 no review determination is not an "exemption" as that term is used in the CON Law. As a result, the CON Section's November 22, 2005 no review determination is not a "[d]ecision of the Department to issue, deny or withdraw a CON or exemption or to issue a CON pursuant to a settlement agreement."



2. The Licensure and Certification Section issued to Continuum a license for a hospice office in Mecklenburg County (license no. HOS3253), pursuant to its authority under the Hospice Licensure Act and regulations. N.C. Gen. Stat. § 131E-200 *et seq.* The Hospice Licensure Act does not establish any procedure for appeal of hospice licensure actions other than the North Carolina Administrative Procedure Act.

3. This contested case is governed by N.C. Gen. Stat. § 150B-23. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.

4. An Administrative Law Judge may rule on any prehearing motions authorized by the North Carolina Rules of Civil Procedure, including summary judgment motions. *See* N.C. Gen. Stat. §150B-33(b)(3a); 26 N.C.A.C. 3.0105(1) and (6).

5. Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56(c).

6. The party moving for summary judgment meets its burden of proof by showing that an essential element of the non-movant's claim does not exist, or by showing that the non-movant cannot produce evidence of an essential element of his or her claim. *Roumillat v. Simplistic Enters., Inc.*, 331 N.C. 57, 63, 414 S.E.2d 339, 342 (1992).

7. Once such a showing is made, the non-movant must "produce a forecast of evidence demonstrating specific facts, as opposed to allegations, showing that [it] . . . can at least establish a *prima facie* case at trial." *Hoffman v. Great American Alliance Insurance Co.*, 166 N.C. App. 422, 426, 601 S.E.2d 908, 911 (2004).

8. Interpretation of appellate opinions in CON cases is a judicial function that does not require any deference to agency interpretation.

9. An expansion or partial relocation of a health service facility to a second location is considered a relocation. *See Christenbury Surgery Center v. N.C. Dep't. of Health & Human Services*, 138 N.C. App. 309, 312, 531 S.E.2d 219, 222 (2000) (describing expansion of a portion of an existing ambulatory surgical program to a second site as a "relocation and expansion").

10. A CON is required to relocate "a health service facility from one service area to another." N.C. Gen. Stat. § 131E-176(16)(q). Such relocation is considered a new institutional health service that must undergo CON review and satisfy applicable CON criteria. N.C. Gen. Stat. § 131E-178(a) and 183.

11. Because a hospice is a health service facility under N.C. Gen. Stat. § 131E-176(9b), relocation of a hospice from one service area to another requires a CON.

12. The Court in *Christenbury* determined that an existing health service facility may only expand to a second or additional site without a CON if the second site is within the same service area for which it received a CON. *Id.* at 312-313, 531 S.E.2d at 222.

13. "Service area" is defined in the CON Law to mean "the area of the State, as defined in the State Medical Facilities Plan or in the rules adopted by the Department, which receives services from a health service facility." N.C. Gen. Stat. § 131E-176(24a). This is the only definition of "service area" in the CON Law. The CON Law does not state a different definition of "service area" for a relocation or expansion of an existing health service facility as compared to a new facility.

14. In November 2005, there was no CON rule or regulation that defined the service area for a hospice. The 2005 SMFP, which was in effect at the time of Continuum's November 15, 2005 no review request to the CON Section and at the time of the agency actions at issue, defines the service area for a hospice as the county in which it is located, and provides that each county in North Carolina constitutes a hospice service area. *See* 2005 SMFP, p. 270-72.

15. Under the 2005 SMFP, a hospice service area was the county in which the hospice is located. This is the only definition of hospice service area in the 2005 SMFP. This definition, therefore, applies to the opening of a first or additional hospice office.

16. Applying a different, broader definition of "service area" to relocations or expansions of existing hospice offices as compared to establishment of new hospices would allow the proliferation of unnecessary and duplicative hospice services, undermine the need methodology for hospices in the SMFP that is based upon a county service area, and be contrary to the clear language, intent and purposes of the CON Law as set forth by the North Carolina General Assembly and stated in N.C. Gen. Stat. § 131E-175.

17. Continuum's proposal to open a hospice office in Mecklenburg County is a relocation (as a result of an expansion) of an existing health service facility outside of that hospice's existing service area of Onslow County, and as such, requires a CON.
18. Based upon the undisputed Findings of Fact, and pursuant to the Conclusions of Law set forth above, the CON Section erred as a matter of law by not requiring Continuum to obtain a CON before opening an additional hospice office in Mecklenburg County. These Conclusions of Law alone are sufficient to warrant summary judgment in favor of Petitioner.
19. The CON Section based its decision that no CON was required for Continuum to open a hospice office in Mecklenburg County on its interpretation of *In re Total Care*, 99 N.C. App. 517, 518, 393 S.E.2d 338, 339 (1990). CON Section's 6/6/06 Responses to Interrogatories. Alternatively, under *In re Total Care*, Continuum is required to obtain a CON to develop and offer a Hospice Office in Mecklenburg County.
20. Judicial review of *Total Care* provides the Undersigned with guidance regarding when an existing hospice can open an additional hospice office without a CON.
21. The CON Section erred by not fully and properly applying the criteria and limits established by the Court of Appeals in *Total Care*.
22. The *Total Care* opinion held that a CON was not required to open an additional home health office in the home health agency's existing, current service area as determined by the CON Law and regulations in effect at that time.
23. The basic philosophy of the *Total Care* case centers on the proposition that if a health care provider (in *Total Care*, a home health agency) has a history of serving patients in nearby counties, a no review request to put an office in those counties to better serve its existing patients is reasonable.
24. The Court in *Total Care* relied upon the definition of "service area" for home health agencies that was in effect at the time. At that time, a home health agency's service area was defined by rule as "a county in which a proponent proposes to establish a home health agency or contiguous counties whose boundaries touch the boundary of the county in which the office of the home health agency will be located and whose grouping is consistent with established medical care utilization patterns." 10 N.C.A.C. 03R.2002 (1989).
25. The CON Law in effect in 2005 prior to December 31, 2005, defines the service area for a hospice as the county in which the hospice is located. N.C. Gen. Stat. § 131E-176(24a); 2005 SMFP.
26. Under *Total Care*, therefore, the opening of an additional hospice office outside the county in which the hospice is located requires a CON.
27. Continuum's hospice was located in Jacksonville in Onslow County. Under the 2005 SMFP, the service area for Continuum's hospice was Onslow County.
28. Mecklenburg County is not within the service area for Continuum's hospice located in Jacksonville. Therefore, under *Total Care*, a CON is required for Continuum to open a hospice office in Mecklenburg County.
29. Based upon the Findings of Fact, and pursuant to the Conclusions of Law set forth in above, the CON Section erred as a matter of law in failing to determine that Mecklenburg County was outside the current service area for Continuum's hospice in Onslow County pursuant to *Total Care*, and in failing to require Continuum to obtain a CON to open a hospice office in Mecklenburg County. These Conclusions of Law in paragraphs 19-29 alone are sufficient to warrant summary judgment in favor of Petitioner.
30. At the time of the *Total Care* case, the service area for home health agencies was defined by rule to include "contiguous counties where boundaries touch the boundary of the county in which the office of the home health agency will be located and whose grouping is consistent with established medical care utilization patterns." 10 N.C.A.C. 03R.2002 (1989).
31. The Court in *Total Care* relied upon the rule defining a home health agency's service area and did not base its decision on any description of geographic service area proposed by the proponent in its submittal to the agency or the proponent's own policies.
32. The Court in *Total Care* relied upon information reported in *Total Care's* annual license renewal applications to determine the "established medical care utilization patterns." *Total Care* at 522, 393 S.E.2d at 341. The Court explicitly noted that the *Total Care* agency had an established history of serving patients in what the Court described as a "fourteen county area block" as evidenced

by the Total Care agency's annual licensure renewal applications. It was in this block that the Total Care agency wished to establish new offices. *Id.*

33. Continuum has never served any hospice patients in Mecklenburg County, with the sole exception of J.A., who was served as part of Continuum's efforts to expand its hospice services through the development of branch offices without CON review.

34. The data set forth in Continuum's licensure renewal applications for its Onslow County Hospice for 2004, 2005, and 2006 show that Continuum had not served any hospice patients in any counties that are contiguous to Mecklenburg County from October 1, 2002 through September 30, 2005. Continuum's 2004, 2005, and 2006 Licensure Renewal Applications.

35. The 2005 SMFP, which was in effect at the time of the CON Section's November 22, 2005 no review determination, as well as the Draft 2006 SMFP, which was available to the CON Section at that time, shows that Continuum had not served any hospice patients in Mecklenburg County from October 1, 2002 through September 30, 2004. 2005 SMFP; Draft 2006 SMFP.

36. Continuum did not provide the CON Section with any evidence that it had a history of serving hospice patients in Mecklenburg County, with the sole exception of J.A. 11/15/06 Letter from N. Randy Uzzell to Lee Hoffman; Hodges Dep. at 101-102.

37. After receiving Continuum's November 15, 2005 no review request, the CON Section did not request from Continuum any additional information. Continuum's 5/22/06 Responses to Requests for Admission.

38. The CON Section only considered whether Continuum's Onslow County Hospice had provided hospice services to at least one patient in Mecklenburg County. CON Section's 5/25/06 Responses to Requests for Admission.

39. The *Total Care* opinion does not state nor can it be interpreted that services to one patient establishes a "current geographic service area."

40. Even if *Total Care* is interpreted as allowing a broader geographic area than a single county to be the service area for a hospice, the CON Section failed as a matter of law to apply the appropriate criteria under *Total Care* because it never examined the annual SMFP data or Continuum's licensure renewal applications to determine that Continuum reported no history of days of care to hospice patients in Mecklenburg County. Moreover, in establishing the CON Law, the General Assembly intended that multiple factors be reviewed to establish a CON. Likewise, those factors must have at least some reasonable review in order to establish that a CON is not required.

41. The CON Law was not meant to encourage or endorse a hospice agency 270 miles away, going quickly to find one patient and provide services to one patient in order to establish a branch office without the scrutiny of the CON process.

42. An analysis of the criteria outline in *Total Care* does not support the CON Section's decision to allow Continuum to establish a branch office, 270 miles and 12 counties away, based upon service to only one patient. The CON Section failed to properly consider the factors that the Court relied upon in *Total Care*.

43. In November of 2005, Mecklenburg County was not within Continuum's existing, current service area because Continuum had only provided hospice services to one patient for ten days in Mecklenburg County. Providing services to one patient is not sufficient to establish an existing, current service area under *Total Care*.

44. Moreover, Continuum did not have an established history of providing hospice services to patients in counties that are contiguous to Mecklenburg County.

45. In addition, Mecklenburg County was not within Continuum's existing and current service area because it was not a county that is contiguous to Mecklenburg County.

46. "The fundamental purpose of the CON Law is to limit the construction of health care facilities in this state to those that the public needs and that can be operated efficiently and economically for their benefit." *Humana Hosp. Corp., Inc. v. N.C. Dep't. of Human Res.*, 81 N.C. App. 628, 632, 345 S.E.2d 235, 237 (1986).

47. As part of the statutory mandate to limit and control the development of health services, including hospices, the DHHS and the State Health Coordinating Council develop an annual SMFP, approved by the Governor, which includes determinations of the need for health services and health service facilities. N.C. Gen. Stat. §§ 131E-176(25) and 131E-177(4). In determining the need for

hospice services, the SMFP sets forth a specific methodology which is applied to each county to determine whether there is a need for additional hospice services in that county. 2005 SMFP. The CON Section failed to properly consider the purpose and intent of the SMFP by issuing a “no review” letter thereby approving Continuum’s request to establish hospice services in Mecklenburg County, which showed no need for an additional hospice.

48. The CON Law requires a CON for the development of a hospice program to prevent the random development of such programs in areas where there is no need. N.C. Gen. Stat. §§ 131E-178(a), 131E-176(9b) and (16)(a). Allowing the development of a hospice branch office based upon service to one patient 270 miles away results in the proliferation of unnecessary and duplicative hospice services, undermines the need methodology for hospices in the SMFP, and is contrary to the clear language, intent and purpose of the CON Law as set forth in N.C. Gen. Stat. § 131E-175. The CON Section has admitted “that allowing the development of hospice branch offices without a CON is contrary to the purposes of the CON Law to prevent the unnecessary duplication of services.” CON Section’s 5/25/06 Responses to Requests for Admission.

49. “‘A court should always construe the provisions of a statute in a manner which will tend to prevent it from being circumvented,’ otherwise, the problems which prompted the statute’s passage would not be corrected.” *Good Hope Hospital, Inc. v. N.C. Dep’t. of Health and Hum. Serv.*, -- N.C. App. --, 623 S.E.2d 315, 318 (N.C. App. 2006) (quoting *Campbell v. Church*, 298 N.C. 476, 484, 259 S.E.2d 558, 564 (1979)).

50. Based upon the Findings of Fact, and pursuant to the Conclusions of Law set forth above, the CON Section erred as a matter of law in failing to determine that Mecklenburg County was outside the current service area for Continuum’s hospice in Onslow County pursuant to *Total Care*, and in failing to require Continuum to obtain a CON to open a hospice office in Mecklenburg County. The Conclusions of Law in paragraphs 30-50 alone are sufficient to warrant summary judgment in favor of Petitioner.

51. *Total Care* also requires that the health service facility not “substantially change its services” when opening an additional site without a CON. *Total Care* at 522, 393 S.E.2d at 342.

52. The Department has interpreted *Total Care* to mean that there is no substantial change in hospice services if existing staff, medical records and patients are relocated to the additional site to serve the same service area and no new capabilities are added. DFS Declaratory Ruling to Triangle Hospice (2/15/94).

53. The CON Section failed to obtain any information to evaluate whether Continuum was “substantially changing its services” by opening an additional hospice office in Mecklenburg County. Again, the CON Section failed to review an important factor of statutory importance in deciding whether a CON was needed or whether no review was warranted both in truth and in fact.

54. Continuum did not relocate existing hospice staff to an additional office in Mecklenburg County to continue a history of service to hospice patients in Mecklenburg County.

55. In order for Continuum to serve hospice patients from an office in Mecklenburg County, Continuum needs to, and in fact already has, hired new staff. Continuum’s 5/26/06 Responses to Interrogatories; Hodges Dep. at 62-66, 91, 94, 96-101, 114-117; Baker Dep. at 20-21.

56. Continuum intends to hire a new medical director and new administrator for its Mecklenburg County hospice office. Continuum’s 5/26/06 Responses to Interrogatories; Hodges Dep. at 113-116.

57. Continuum substantially changed its services by advertising for and hiring new hospice staff.

58. Continuum does not have any existing patients who would be served by a hospice office in Mecklenburg County. Hodges Dep. at 117-118.

59. Contrary to the facts in *Total Care*, the branch office in Mecklenburg County requested by Continuum was not for administrative convenience to better serve an existing flow of patients.

60. A CON is required to “develop” or “offer” a hospice home care program. N.C. Gen. Stat. §§ 131E-176(7), (9c), (13a), (16) and (18) and 178(a).

61. Because Continuum did not have an established history of serving hospice patients in Mecklenburg County from its hospice in Jacksonville in Onslow County as demonstrated by its annual license renewal applications and because it did not relocate existing

hospice staff or patients from Onslow to Mecklenburg County, Continuum substantially changed its services and its actions constituted developing and offering a new hospice in Mecklenburg County that requires a CON.

62. Based upon the undisputed Findings of Fact, and pursuant to the Conclusions of Law set forth above, the CON Section erred as a matter of law in failing to determine that Continuum established a new hospice in Mecklenburg County that required a CON before a valid hospice license could be issued. *See* N.C. Gen. Stat. § 131E-176(13a). The Conclusions of Law in paragraphs 51-62 alone are sufficient to warrant summary judgment in favor of Petitioner.

63. As a matter of law, the Licensure and Certification Section erred in issuing a license to Continuum for a new hospice in Mecklenburg County based on an incorrect determination by the CON Section that a CON was not required. This Conclusion of Law alone is sufficient to invalidate the license issued to Continuum and to warrant summary judgment in favor of Petitioner.

64. The actions of the CON Section and the Licensure and Certification Section were contrary to the intent and spirit of the CON Law and of *Total Care*.

65. In analyzing a no review request, the CON Section should give reasonable scrutiny to the CON Law provisions and regulations that a provider asserts do not apply to its project in order to make a fair and informed decision. The CON Section failed to do so in this case.

66. If a statute administered by an agency is silent or ambiguous with respect to a specific issue, a court must consider whether the agency's interpretation is reasonable and based on a permissible construction of a statute. *Teasley v. Beck*, 155 N.C. App. 282, 289, 574 S.E.2d 137, 141 (2002). In issuing an interpretation of the *Total Care* case, the CON Section's construal of the case is a non-binding statement that need not be given deference.

67. As articulated in the CON Law's legislative findings, the purpose of CON review is to regulate capital expenditures and prevent unnecessary duplication of health care facilities and services, in order to ensure that North Carolinians have equal access to safe, affordable health care. N.C. Gen. Stat. § 131E-175.

68. The SMFP articulates areas of need for new health care services and facilities and prevents unnecessary duplication of health care services by dictating that new services may only be established in areas in which a need is determined to exist.

69. Neither *Total Care* nor the CON Law as it relates to hospices are meant to encourage, endorse, or ratify the actions of a hospice provider in seeking out a single patient in a county in which the provider has no history of service in order to establish a branch office in that county and thus escape the scrutiny of the CON review process.

70. In granting Continuum's no review request, the CON Section considered only whether Continuum had a location in North Carolina that was licensed to provide hospice services, and whether Continuum was serving a single patient in Mecklenburg County. The CON Section failed to consider the type or nature of the license, the distance of the licensed location from Mecklenburg County, or the type, quality, or duration of services provided to the patient.

71. A court will not follow an administrative interpretation that is in direct conflict with the intent and purpose of the act or with the interpretation of the courts. *See Duke Power Co. v. Clayton*, 274 N.C. 505, 164 S.E.2d 289 (1968).

72. The CON Section's review of Continuum's no review request, and the Licensure and Certification Section's reliance on that no review and subsequent actions thwart the intent of the General Assembly in its enactment of the CON Law. Further, the actions of the Respondents are in opposition to the spirit of both the CON Law and the *Total Care* case.

Petitioner is a Person Aggrieved Who is Substantially Prejudiced by Respondents' Actions as a Matter of Law.

73. An aggrieved party is one that is affected substantially in his or its person, property, or employment by an administrative decision. N.C. Gen. Stat. § 150B-2(6).

74. In *In re Wilkesboro*, 55 N.C. App. 313, 319, 285 S.E.2d 626, 630 (1982), the Court expressly acknowledged that it could "think of no better person [than the existing competitor] to assure complete review" of the Agency's decision, and determined that such existing facility had a "substantial stake" in the outcome of any request by a potential competitor that would allow the potential competitor to develop a similar health service in the same area. The Court in *Wilkesboro* determined that the existing provider was aggrieved and thus "affected substantially."

75. In *Empire Power Co. v. N.C. Dep't. of Environmental and Natural Resources*, 112 N.C. App. 566, 436 S.E.2d 594 (1993), the Court concluded that an existing power company met the definition of an aggrieved person because it had an interest in having the prospective competitor be required to follow the same rules as all other registered entities before being issued a permit. *Id.* at 571, 436 S.E.2d at 598.

76. Because of the CON Section's erroneous decision to grant Continuum's no review request, Continuum has been permitted to circumvent the requirements of North Carolina's CON Law. As a competing hospice provider in Mecklenburg County, Charlotte Hospice is a person aggrieved who is substantially prejudiced as a matter of law.

77. If Continuum develops a hospice office in Mecklenburg County, Charlotte Hospice can reasonably expect that it will lose most, if not all, of the hospice referrals and revenue it would have otherwise received for patients at Brithaven of Charlotte, which would significantly impact Charlotte Hospice's revenues. Brunnick Aff., ¶ 12; Fortner Aff., ¶¶ 22, 24; Baker Dep. at 22. As a result, Charlotte Hospice is substantially prejudiced as a result of the erroneous decisions of the CON Section and the Licensure and Certification Section.

78. There was no need determination for any additional hospice offices in Mecklenburg County in the 2005 SMFP or the Draft 2006 SMFP. 2005 SMFP; Draft 2006 SMFP.

79. If Continuum develops a hospice office in Mecklenburg County, Charlotte Hospice can reasonably expect that Continuum would serve hospice patients in other parts of Mecklenburg County besides at Brithaven of Charlotte, which would significantly impact Charlotte Hospice's revenues. Fortner Aff., ¶ 25; Baker Dep. at 22. As a result, Charlotte Hospice is substantially prejudiced as a result of the erroneous decisions of the CON Section and the Licensure and Certification Section.

80. Charlotte Hospice can reasonably expect to divert more resources away from providing uncompensated community services and expend more resources in its fundraising efforts. As a result, Charlotte Hospice is substantially prejudiced as a result of the erroneous decisions of the CON Section and the Licensure and Certification Section.

81. Charlotte Hospice can reasonably expect to expend more resources in its recruitment of volunteers. As a result, Charlotte Hospice is substantially prejudiced as a result of the erroneous decisions of the CON Section and the Licensure and Certification Section.

82. If Continuum develops a hospice office in Mecklenburg County, Charlotte Hospice can reasonably expect that this will negatively impact Charlotte Hospice's ability to recruit and retain necessary staff. As a result, Charlotte Hospice is substantially prejudiced as a result of the erroneous decisions of the CON Section and the Licensure and Certification Section.

83. As an existing provider of healthcare services in Mecklenburg and surrounding counties, Charlotte Hospice has an interest in maintaining the integrity of the CON review process and the health planning process in North Carolina. As a result, Charlotte Hospice has an interest in having the CON Section conduct a review of Continuum's proposed Mecklenburg County hospice office pursuant to the criteria and procedure set forth in N.C. Gen. Stat. §§ 131E-183 and 131E-185 prior to the CON Section permitting Continuum to develop a new hospice office in Mecklenburg County. Charlotte Hospice is a person aggrieved who is substantially prejudiced by the decisions of the CON Section and the Licensure and Certification Section that permit Continuum to develop and operate a hospice office in Mecklenburg County without a CON.

84. Charlotte Hospice has an interest in the health care delivery system in North Carolina in general and in Mecklenburg County in particular. Charlotte Hospice has an interest in maintaining the standards of practice for hospice care in North Carolina and Mecklenburg County, including the standards of practice that relate to reasonable distances between hospice providers and the patients they serve. As a result, Charlotte Hospice is a person aggrieved who is substantially prejudiced by the decisions of the CON Section and the Licensure and Certification Section that permit Continuum to develop and operate a hospice office in Mecklenburg County, approximately 270 miles from Continuum's hospice in Onslow County, North Carolina.

85. The CON Law precludes the development of new institutional health services without a CON, *inter alia*, to preclude the unnecessary duplication of health care services. N.C. Gen. Stat. § 131E-175(4) (legislative findings underlying the CON Law include "[t]hat the proliferation of unnecessary health service facilities results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services"); N.C. Gen. Stat. § 131E-183(a)(6) (An applicant for a CON must demonstrate "that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities"). The CON Section has admitted "that allowing the development of hospice branch offices without a CON is contrary to the purposes of the CON Law to prevent the unnecessary duplication of services." CON Section's 5/25/06 Responses to Requests for Admission.

86. A prerequisite to the development of a new hospice in North Carolina is a need determination in the annual SMFP. Because there is no need determination in either the 2005 or 2006 SMFP for an additional hospice in Mecklenburg County, Continuum's development of such an additional hospice without a CON would unnecessarily duplicate the hospice services already provided in Mecklenburg County by Charlotte Hospice. 2005 SMFP; 2006 SMFP. As a result, Charlotte Hospice is a person aggrieved who is substantially prejudiced by the decisions of the CON Section and Licensure and Certification Section that permit Continuum to develop those services in Mecklenburg County without a CON.

87. The CON Section did not establish and give public notice of any criteria, guidelines or standards for opening an additional hospice office in another county, which made its review not legally sufficient and substantially prejudiced Charlotte Hospice as a matter of law.

88. The CON Section's failure to apply the Court's holding in *Total Care* standing alone substantially prejudiced Charlotte Hospice as a matter of law.

89. The Licensure and Certification Section's issuance of a license to Continuum for a hospice in Mecklenburg County based on an incorrect determination by the CON Section that a CON was not required substantially prejudiced Charlotte Hospice as a matter of law.

Petitioner's Petition for Contested Case Hearing Was Timely Filed

90. N.C. Gen. Stat. § 131E-188(a) provides:

After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for contested case hearing shall be filed within 30 days after the Department makes its decision.

91. This contested case is not governed by N.C. Gen. Stat. § 131E-188 because it is not a case regarding a decision to issue an "exemption."

92. The CON Law uses the term "exemption" in two other sections. Review of these sections shows that in order for a project to qualify for an "exemption," it must meet two tests. First, it must be a "new institutional health service" that is subject to CON review. Second, the project must meet the statutory criteria that provide an exemption from CON review.

93. This two step analysis is shown in N.C. Gen. Stat. § 131E-184, which provides a list of the grounds upon which one may obtain an "exemption" from CON review. This statute provides, in part, as follows:

Exemptions from review

...the Department shall exempt from certificate of need review a new institutional health service if it receives prior written notice from the entity proposing the new institutional health service, which notice includes an explanation of why the new institutional health service is required, for any of the following [reasons]...

94. As explained by the Court of Appeals:

A certificate of need (CON) is required before an entity can develop a "new institutional health service" . . . However, the CON law exempts certain projects that would otherwise be subject to CON review if they fit within any of the listed grounds contained in N.C. Gen. Stat. § 131E-184.

*Good Hope Hospital, Inc. v. N.C. Dep't of Health and Hum. Serv.*, -- N.C. App. --, 623 S.E.2d 315, 318 (N.C. App. 2006).

95. N.C. Gen. Stat. § 131E-179 likewise shows that in order to obtain an "exemption" under the CON Law, a project must (1) be a new institutional health service and (2) meet the statutory criteria to be exempt from CON review. This statute provides, in part, as follows:

Notwithstanding any other provisions of this Article, a health service facility may offer new institutional health services to be used solely for research, or incur the obligation of a capital expenditure solely for research, without a certificate of need, if the Department grants an exemption. The Department shall grant an exemption if the health service facility files a notice of intent with the Department in accordance with rules promulgated by the Department and if the Department finds that the offering or obligation will not:

- (1) Affect the charges of the health service facility for the provision of medical or other patient care services other than services which are included in the research;
- (2) Substantially change the bed capacity of the facility; or
- (3) Substantially change the medical or other patient care services of the facility.

96. The DHHS has also promulgated administrative rules regarding “exemptions” from CON review. *See* 10A N.C.A.C. 14C.0301 *et seq.* These rules likewise show that the term “exemption” only applies to situations in which a project would otherwise be subject to CON review. *See, e.g.,* 10A N.C.A.C. 14C.0301 (“a health care facility may apply to the agency for an exemption from obtaining a certificate of need . . .”)

97. In contrast, the CON Section in this case determined that Continuum’s proposed hospice office in Mecklenburg County was not a new institutional health service, and, thus, was not subject to CON review, without regard to any statutory criteria for exemptions from CON review. 11/22/06 Letter from Mary Edwards and Lee Hoffman to N. Randy Uzzell.

98. In this litigation, the CON Section’s decision has been referred to as a “no review determination,” that is, a determination that the proposed project is not subject to CON review, because it is not a new institutional health service. This is a different type of agency decision than an “exemption” decision.

99. An exemption decision means that a project constitutes a “new institutional health service,” which would normally require CON review. However, as a result of satisfying the criteria set forth in N.C. Gen. Stat. §§ 131E-179 or 131E-184, the project may be exempted from CON review. In contrast, a no review determination by the CON Section represents the CON Section’s conclusion that the project is not a “new institutional health service,” and, therefore, that no CON review would ever be required.

100. This understanding of the difference between a no review determination and an exemption is further consistent with the plain meaning of the terms “exempt” and “exemption.”

101. “In the construction of any statute . . . words must be given their common and ordinary meaning, nothing else appearing.” *Appeal of Clayton-Marcus Co., Inc.*, 286 N.C. 215, 219, 210 S.E.2d 199, 202-203 (1974). “Dictionaries may be used to determine the plain meaning of language.” *Sawyers v. Farm Bureau Insurance of N.C., Inc.*, 170 N.C. App. 17, 21 612 S.E.2d 184, 188 (2005).

102. To “exempt” means to “relieve, excuse, or set free from a duty or service imposed upon the general class to which the exempted individual belongs.” *Black’s Law Dictionary* 571 (6th ed. 1990). To be “exempt” means to be “freed from an obligation, a duty, or a liability to which others are subject; excused.” *The American Heritage Dictionary* 641 (3d ed. 1992). “Exemption” is “the act or an instance of exempting.” *Id.*

103. According to the plain and ordinary meaning of the term “exemption,” one must first belong to a certain class that is subject to an obligation or duty (such as a project that is a new institutional health service and must undergo CON review) and then be freed or excused from that obligation or duty (such as no longer having to undergo CON review). This is exactly how the term “exemption” is used in the CON Law. N.C. Gen. Stat. §§ 131E-179 or 131E-184. As a result, the plain and ordinary meaning of this term is consistent with the General Assembly’s use of the term in the CON Law itself.

104. “Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning.” *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990).

105. In addition, Lee Hoffman, Chief of the CON Section, does not consider no review determinations for branch hospice offices, such as the one at issue in this case, to be an “exemption” as that term is used in the CON Law. 11/02/05 Hoffman Dep. at 90-91. “The construction adopted by the administrators who execute and administer a law in question is one consideration where an issue of statutory construction arises.” *A & F Trademark, Inc. v. Tolson*, 167 N.C. App. 150, 154, 605 S.E.2d 187, 190 (2004) (*quoting Polaroid Corp. v. Offerman*, 349 N.C. 290, 301, 507 S.E.2d 284, 293 (1998)).



106. Moreover, our Courts' use of the term "exemption" in the CON Law context, as well as in the context of other statutes, is consistent with the plain meaning of this term described above. *See, e.g., Koltis v. N.C. Dep't. of Hum. Res.*, 125 N.C. App. 268, 480 S.E.2d 702 (1997) (addressing the question of whether a project that was otherwise subject to CON review was "exempt" from such review as a result of satisfying certain requirements of a grandfather clause); *News & Observer Pub. Co., Inc. v. Poole*, 330 N.C. 465, 486, 412 S.E.2d 7, 19 (1992) (holding that "in the absence of clear statutory exemption or exception, documents falling within the definition of 'public records' in the Public Records Act must be made available for public inspection.").

107. Because N.C. Gen. Stat. § 131E-188 does not govern this contested case, the 30 day time limitation for filing a petition for contested case hearing contained in that statute does not apply in this case. This contested case is governed by N.C. Gen. Stat. § 150B-23. Accordingly, the 60 day time limitation set forth in that statute applies. N.C. Gen. Stat. § 150B-23(f). Charlotte Hospice's petition for contested case hearing was timely filed.

108. Even if it were the case that N.C. Gen. Stat. § 131E-188 governs this contested case, such that the 30 day time limitation set forth in that statute does apply, the 30 day filing deadline did not begin to run against Charlotte Hospice because it never received proper notice of this agency decision as required by N.C. Gen. Stat. § 150B-23(f).

109. N.C. Gen. Stat. § 131E-188 provides that following an exemption decision by the CON Section "any affected person . . . shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes." N.C. Gen. Stat. § 131E-188(a). Thus, the CON Law expressly incorporates the provisions of the North Carolina Administrative Procedure Act ("APA") regarding administrative hearings.

110. The APA's provisions for commencing a contested case are set forth in N.C. Gen. Stat. § 150B-23. With regard to the time limitation for commencing such a case, this statute provides as follows:

Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition.

N.C. Gen. Stat. § 150B-23(f)

111. As a result, even if it were the case that the 30 day filing deadline set forth in N.C. Gen. Stat. § 131E-188 applies to this contested case, this 30 day deadline does not commence until proper notice has been provided by the CON Section pursuant to N.C. Gen. Stat. § 150B-23(f). *See, e.g., Gray v. N.C. Dep't. of Envir., Health and Nat'l Res.*, 149 N.C. App. 374, 560 S.E.2d 394 (2002) (applying notice requirement set forth in N.C. Gen. Stat. § 150B-23(f) to trigger the running of a 30 day filing period for an appeal arising under another statute, N.C. Gen. Stat. § 130A-24); *C.M. ex rel. J.M. v. Board of Educ. of Henderson County*, 241 F.3d 374 (4th Cir. 2001) (applying notice requirement set forth in N.C. Gen. Stat. § 150B-23(f) to claims under the federal Individuals with Disabilities Education Act).

112. Charlotte Hospice is a "person aggrieved" who was "known to the agency" at the time of the CON Section's November 22, 2005 no review determination, which is at issue in this case.

113. N.C. Gen. Stat. § 150B-2(6) defines "person aggrieved" as "any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision." N.C. Gen. Stat. § 150B-2(6).

114. In *In re Wilkesboro*, 55 N.C. App. 313, 319, 285 S.E.2d 626, 630 (1982), the Court expressly acknowledged that it could "think of no better person [than the existing competitor] to assure complete review" of the Agency's decision, and determined that such existing facility had a "substantial stake" in the outcome of any request by a potential competitor that would allow the potential competitor to develop a similar health service in the same area. The Court in *Wilkesboro* determined that the existing provider was aggrieved and thus "affected substantially."

115. Similarly, as a prospective competitor of Continuum's hospice office in Mecklenburg County, Charlotte Hospice has a "substantial stake" in the outcome of Continuum's no review request and is "affected substantially" by the CON Section's decision that CON review is not required. Charlotte Hospice is a "person aggrieved."

116. In *Empire Power Co. v. N.C. Dep't. of Envir. and Nat'l Res.*, 112 N.C. App. 566, 436 S.E.2d 594 (1993), the Court addressed the issue of whether a competing power company was a "person aggrieved" for purposes of bringing a contested case. The Court concluded that it was, reasoning that "Empire satisfies the definition of an aggrieved person because its interest in having DEHNR prepare an EIS [environmental impact statement] before issuing a permit and its interest in the air resources of the State are adversely affected by DEHNR's granting of the Permit." *Id.* at 571, 436 S.E.2d at 598.

117. Like the petitioner in *Empire*, Charlotte Hospice has an interest in maintaining the integrity of the CON review process and the health planning process in North Carolina. As a result, Charlotte Hospice has an interest in having the CON Section conduct a review of Continuum's proposed Mecklenburg County hospice office pursuant to the criteria and procedure set forth in N.C. Gen. Stat. §§ 131E-183 and 131E-185 prior to the CON Section permitting Continuum to develop a new hospice office in Mecklenburg County.

118. Charlotte Hospice also has an interest in the health care delivery system in North Carolina in general and in Mecklenburg County in particular. Among other things, Charlotte Hospice has an interest in maintaining the standards of practice for hospice care in North Carolina and Mecklenburg County, including the standards of practice that relate to reasonable distances between hospice providers and the patients they serve.

119. At the time of the CON Section's November 22, 2005 no review determination, Charlotte Hospice was known to the CON Section as an existing hospice provider in Mecklenburg County. 2005 SMFP. As a result, Charlotte Hospice was a person aggrieved who was known to the agency.

120. At the time of the CON Section's November 22, 2005 no review determination, Charlotte Hospice had already filed petitions for contested case hearings regarding two other hospice no review determinations that had been issued by the CON Section for Mecklenburg County. In both cases, Charlotte Hospice asserted that it was a person aggrieved by the CON Section's no review determinations. 7/19/05 Petition for Contested Case Hearing (05 DHR 1142); 7/29/05 Petition for Contested Case Hearing (05 DHR 1211).

121. Charlotte Hospice was actively litigating both of these cases prior to, and at the time of, the CON Section's November 22, 2005 no review determination, including taking the deposition of Lee Hoffman, Chief of the CON Section, less than three weeks prior to the November 22, 2005 no review determination. 11/02/05 Hoffman Dep.

122. As a result of this ongoing litigation, Charlotte Hospice was a person aggrieved who was known to the agency to have a substantial interest in any no review determinations for hospice branch offices in Mecklenburg County.

123. As a result, in order for the deadline for filing a petition for contested case hearing to begin to run against Charlotte Hospice, the CON Section was required to provide Charlotte Hospice with notice of its decision as set forth in N.C. Gen. Stat. § 150B-23(f).

124. Because the CON Section did not provide such notice to Charlotte Hospice, the filing deadline, whether set forth in N.C. Gen. Stat. § 131E-188 or § 150B-23(f), did not begin to run against Charlotte Hospice. Charlotte Hospice's petition for contested case hearing was timely filed.

125. Respondent-Intervenor has made no argument regarding the timeliness of Charlotte Hospice's petition for contested case hearing regarding the Licensure and Certification Section's December 8, 2005 decision to issue a hospice license to Continuum for a hospice office in Mecklenburg County.

126. Charlotte Hospice's petition for contested case hearing regarding the Licensure and Certification Section's December 8, 2005 decision was filed on January 5, 2006.

127. The Licensure and Certification Section issued to Continuum a license for a hospice office in Mecklenburg County pursuant to its authority under the Hospice Licensure Act and regulations. N.C. Gen. Stat. § 131E-200 *et seq.* The Hospice Licensure Act does not establish any procedure for appeal of hospice licensure actions other than the APA. As a result, this contested case is governed by N.C. Gen. Stat. § 150B-23, including its 60 day time limitation for filing petitions for contested case hearings.

128. Charlotte Hospice's petition for contested case hearing regarding the Licensure and Certification Section's December 8, 2005 decision was timely filed.

129. The Licensure and Certification Section relied upon the CON Section's November 22, 2005 no review determination in its decision to issue License No. HOS3253 to Continuum. Licensure and Certification Section's 6/15/06 Responses to Requests for Admission. As a result, if the underlying determination that this hospice office does not require a CON is erroneous, then the license that was issued in reliance upon this determination is likewise erroneous and invalid.

130. As described above, as a matter of law the Licensure and Certification Section erred in issuing a license to Continuum for a new hospice in Mecklenburg County based on an incorrect determination by the CON Section that a CON was not required. These conclusions alone are sufficient to invalidate the license issued to Continuum, to warrant summary judgment in favor of Petitioner, and to deny Respondent-Intervenor's motion for partial summary judgment.

131. The result of the CON Section's failure to apply N.C. Gen. Stat. § 131E Article 9 to Continuum's request to open a hospice office in Mecklenburg County resulted in an unequal application of the CON Law, allowed Continuum to open a hospice office in Mecklenburg County without a CON, and thwarted the intent of the General Assembly in its establishment of the CON Law.

132. Based upon the Findings of Fact, when considering Continuum's November 15, 2005 request, the CON Section did not consider the 2005 SMFP, information available in prior SMFPs or the Draft 2006 SMFP, Continuum's annual license renewal applications, the location of Onslow and Mecklenburg Counties, the distance between Jacksonville and Charlotte or any information other than that contained in Continuum's November 15, 2005 letter and that Continuum held a license for a hospice in Jacksonville. The CON Section did not request any information or do any investigation to determine whether Continuum had a history of providing hospice services to patients in Mecklenburg County, whether Continuum was currently providing hospice services to patients in Mecklenburg County, or whether Continuum was substantially changing its services by opening a hospice office in Mecklenburg County. The only information that the CON Section considered was Continuum's representation that it was serving one hospice patient, J.A., in Mecklenburg County, from its Onslow County Hospice. This review was not legally sufficient, was erroneous, was arbitrary, substantially prejudiced Charlotte Hospice and warrants summary judgment in favor of the Petitioner as a matter of law.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

RECOMMENDED DECISION by Summary Judgment

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby found and so decided that Petitioner's motion for summary judgment is GRANTED and Respondent-Intervenor's motion for partial summary judgment is DENIED. As a matter of law, Continuum must obtain a CON before developing or offering a hospice office in Mecklenburg County.

The findings and conclusions of this matter warrant, and it is hereby recommended that the CON Section withdraw the no review letter that was the subject of this case it issued to Continuum Home Care & Hospice and that the Licensure and Certification Section declare invalid the license it issued to Continuum Home Care & Hospice.

NOTICE

Before the Agency makes the Final Decision, it is required by N.C. Gen. Stat. § 150B-36(a) to give each party an opportunity to file exceptions to this Recommended Decision, and to present written arguments to those in the Agency who will make the final decision.

The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the parties' attorneys of record. The Agency that will make the Final Decision in this case is the North Carolina Department of Health and Human Services.

**IT IS SO ORDERED.**

This the 14<sup>th</sup> day of September, 2006.

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Augustus B. Elkins II  
Administrative Law Judge