

NORTH CAROLINA REGISTER

VOLUME 21 • ISSUE 17 • Pages 1535 - 1615

March 1, 2007

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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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Rule Review and Legal Issues

Rules Review Commission

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

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

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@nclm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2007 – December 2007

| 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 th day from publication in the Register |
| 21:13 | 01/02/07 | 12/07/06 | 01/17/07 | 03/05/07 | 03/20/07 | 05/01/07 | 05/08 | 09/29/07 |
| 21:14 | 01/16/07 | 12/20/06 | 01/31/07 | 03/19/07 | 03/20/07 | 05/01/07 | 05/08 | 10/13/07 |
| 21:15 | 02/01/07 | 01/10/07 | 02/16/07 | 04/02/07 | 04/20/07 | 06/01/07 | 05/08 | 10/29/07 |
| 21:16 | 02/15/07 | 01/25/07 | 03/02/07 | 04/16/07 | 04/20/07 | 06/01/07 | 05/08 | 11/12/07 |
| 21:17 | 03/01/07 | 02/08/07 | 03/16/07 | 04/30/07 | 05/21/07 | 07/01/07 | 05/08 | 11/26/07 |
| 21:18 | 03/15/07 | 02/22/07 | 03/30/07 | 05/14/07 | 05/21/07 | 07/01/07 | 05/08 | 12/10/07 |
| 21:19 | 04/02/07 | 03/12/07 | 04/17/07 | 06/01/07 | 06/20/07 | 08/01/07 | 05/08 | 12/28/07 |
| 21:20 | 04/16/07 | 03/23/07 | 05/01/07 | 06/15/07 | 06/20/07 | 08/01/07 | 05/08 | 01/11/08 |
| 21:21 | 05/01/07 | 04/10/07 | 05/16/07 | 07/02/07 | 07/20/07 | 09/01/07 | 05/08 | 01/26/08 |
| 21:22 | 05/15/07 | 04/24/07 | 05/30/07 | 07/16/07 | 07/20/07 | 09/01/07 | 05/08 | 02/09/08 |
| 21:23 | 06/01/07 | 05/10/07 | 06/16/07 | 07/31/07 | 08/20/07 | 10/01/07 | 05/08 | 02/26/08 |
| 21:24 | 06/15/07 | 05/24/07 | 06/30/07 | 08/14/07 | 08/20/07 | 10/01/07 | 05/08 | 03/11/08 |
| 22:01 | 07/02/07 | 06/11/07 | 07/17/07 | 08/31/07 | 09/20/07 | 11/01/07 | 05/08 | 03/28/08 |
| 22:02 | 07/16/07 | 06/22/07 | 07/31/07 | 09/14/07 | 09/20/07 | 11/01/07 | 05/08 | 04/11/08 |
| 22:03 | 08/01/07 | 07/11/07 | 08/16/07 | 10/01/07 | 10/22/07 | 12/01/07 | 05/08 | 04/27/08 |
| 22:04 | 08/15/07 | 07/25/07 | 08/30/07 | 10/15/07 | 10/22/07 | 12/01/07 | 05/08 | 05/11/08 |
| 22:05 | 09/04/07 | 08/13/07 | 09/19/07 | 11/05/07 | 11/20/07 | 01/01/08 | 05/08 | 05/31/08 |
| 22:06 | 09/17/07 | 08/24/07 | 10/02/07 | 11/16/07 | 11/20/07 | 01/01/08 | 05/08 | 06/13/08 |
| 22:07 | 10/01/07 | 09/10/07 | 10/16/07 | 11/30/07 | 12/20/07 | 02/01/08 | 05/08 | 06/27/08 |
| 22:08 | 10/15/07 | 09/24/07 | 10/30/07 | 12/14/07 | 12/20/07 | 02/01/08 | 05/08 | 07/11/08 |
| 22:09 | 11/01/07 | 10/11/07 | 11/16/07 | 12/31/07 | 01/21/08 | 03/01/08 | 05/08 | 07/28/08 |
| 22:10 | 11/15/07 | 10/25/07 | 11/30/07 | 01/14/08 | 01/21/08 | 03/01/08 | 05/08 | 08/11/08 |
| 22:11 | 12/03/07 | 11/08/07 | 12/18/07 | 02/01/08 | 02/20/08 | 04/01/08 | 05/08 | 08/29/08 |
| 22:12 | 12/17/07 | 11/26/07 | 01/01/08 | 02/15/08 | 02/20/08 | 04/01/08 | 05/08 | 09/12/08 |

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.



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 116
TERMINATION OF EXECUTIVE ORDER NO. 1, AND
DESIGNATION OF CERTAIN STATE EMPLOYEES AS COVERED
“PUBLIC SERVANTS” UNDER THE STATE GOVERNMENT ETHICS ACT**

WHEREAS, Executive Order No. 1 was signed on January 12, 2001, providing for a comprehensive procedure to ensure and maintain the highest level of integrity in the Office of the Governor, and all other state executive departments which choose to be included; and,

WHEREAS, the 2006 North Carolina General Assembly enacted, and the Governor signed into law on August 4, 2006, the State Government Ethics Act (hereinafter “Act”), Session Law 2006-201, which took full effect on January 1, 2007. The Act, although patterned on Executive Order No. 1, is more comprehensive in scope and applies to all three branches of state government; and,

WHEREAS, the Act, although comprehensive, has failed to include a small group of officials who were previously covered under Executive Order No. 1; and,

WHEREAS, the Act, [NCGS §138A-3 (30) g] authorizes the Governor to designate other state employees or appointees as “public servants” under the Act.

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

EXECUTIVE ORDER NO. 1, dated January 12, 2001, is terminated, along with all subsequent amendments to Executive Order No. 1. Furthermore, pursuant to NCGS §138A-3 (30) g, I designate the following state employees or appointees as covered “public servants” under the State Government Ethics Act:

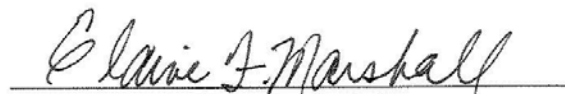
- Thomas H. Wright, State Personnel Director
- Robert L. Powell, State Controller
- George Bakolia, Chief Information Officer (ITS)
- Lawrence J. Wheeler, Director, State Museum of Art
- Vacant, Executive Director, Agency for Public Telecommunication
- George E. Tatum, Commissioner of Motor Vehicles
- Joseph A. Smith, Commissioner of Banks
- David B. Hanson, Deputy Commissioner, Banking Commission
- Mark E. Pearce, Deputy Commissioner, Banking Commission
- R. Kucab, Executive Director, NC Housing Finance Agency

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-sixth day of January in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-first.




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.



U.S. Department of Justice
Civil Rights Division

JKT:RPL:HEW:par
DJ 166-012-3
2006-6965

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

January 24, 2007

Ms. Karen M. McDonald
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Ms. McDonald:

This refers to three annexations (Ordinance Nos. 2006-08-496, 2006-10-497, and 2006-10-498) and their designation to districts of the City of Fayetteville in Cumberland 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 December 1, 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. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

A handwritten signature in dark ink, appearing to read "John Tanner", is written over the typed name.

John Tanner
Chief, Voting Section

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Haywood Advancement Foundation, Inc.**

Pursuant to N.C.G.S. § 130A-310.34, the Haywood Advancement Foundation, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Waynesville, Haywood County, North Carolina. The Property, known as the former Dayco Facility, consists of 35.942 acres. It is bordered to the north by Allens Creek, to the south by Hyatt Creek Road, to the east by South Main Street, and to the west by Richland Creek. Environmental contamination exists on the Property in the soil and groundwater. The Haywood Advancement Foundation, Inc. has committed itself to limit redevelopment of the Property to commercial/retail establishments, defined as buildings, properties or activities, including in this case restaurants and a gas station, the principal use or purpose of which is the sale of goods, products, services or merchandise directly to consumers. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the Haywood Advancement Foundation, Inc., which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Haywood County Library 678 South Haywood St., Waynesville, NC 28786 by contacting Jennifer Pratt at that address or at 828-452-5169; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), at shirley.liggins@ncmail.net, or at (919) 508-8434.

Written public comments, and/or requests for a public meeting, may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Thus, if Haywood Advancement Foundation, Inc., as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on March 2, 2007. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Highwoods 301 Fayetteville St., LLC**

Pursuant to N.C.G.S. § 130A-310.34, Highwoods 301 Fayetteville St., LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Raleigh, Wake County, North Carolina. The Property consists of 0.833 acres and is located at 301 Fayetteville Street. Environmental contamination exists on the Property in soil and groundwater. Highwoods 301 Fayetteville St., LLC has committed itself to redevelopment of the Property for no uses other than as the site of a 33-story structure for retail, office, banking/financial services, auto parking and multi-family residential use. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Highwoods 301 Fayetteville St., LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) any proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of the North Carolina Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605, by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8434. DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents.

Written public comments, and/or requests for a public meeting, may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Thus, if Highwoods 301 Fayetteville St., LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on March 2, 2007. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Standard Tools and Equipment Co.**

Pursuant to N.C.G.S. § 130A-310.34, Standard Tools and Equipment Co. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") for the property in Greensboro, Guilford County, North Carolina. The Property, which is known as the former Industrial Plastics Property, consists of 17.77 acres and is located at 4810 Clover Road. Environmental contamination exists on the Property in soil and groundwater. Standard Tools and Equipment Co. has committed itself to redevelopment of the Property for strictly non-residential commercial and/or industrial uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Standard Tools and Equipment Co., which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Greensboro Public Library, 219 North Church Street, Greensboro, NC by contacting Frank Barefoot at Greensboro Public Library, P.O. Box 3178, Greensboro, NC 27402--3178, at (336) 373-2715 or at frank.barefoot@greensboro-nc.gov; or at the offices of the N.C. Brownfields Program (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments, and/or requests for a public meeting, may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Brownfields property is located, or in the North Carolina Register, whichever is later. Thus, if Standard Tools and Equipment Co., as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on March 2, 2007. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

Notice of Intent to Engage in Permanent Rulemaking and Request for Comments

**Subject: Secretary of State, State Franchise for Cable Television Service Rules,
18 NCAC Chapter 13**

The Department of the Secretary of State seeks public comments as it begins the process of permanent rulemaking relating to the State Franchise for Cable Television Service Act, found in Article 42 of Chapter 66 of the General Statutes. The Department adopted temporary rules on this topic that were approved by the Rules Review Commission in December 2006. A copy of these temporary rules may be found at <http://reports.oah.state.nc.us/ncac.asp> or <http://www.sosnc.com/>.

The Department is requesting comments regarding the following:

- (1) Adoption of the temporary rules as permanent rules;
- (2) Notice of commencement of service document or related issues (section reserved in temporary rulemaking);
- (3) Topic areas not covered by the current temporary rules that may need to be included in the permanent rules.

NOTE: The Department desires that any comments requesting that permanent rules exceed the scope of the current temporary rules also include supporting legal authority for such expansion.

The Department's deadline for receiving these comments is March 23, 2007. When the Department subsequently files proposed permanent rules it will also file a notice with instructions on how to submit public comments on the specifically proposed rules as part of the permanent rulemaking process. Therefore, even if you do not respond to this general opportunity to comment, you will later have the opportunity to formally comment on specific proposed permanent rules.

Comments should be submitted to:

Via electronic Mail: rules@sosnc.com

Via Mail: Ann B. Wall, General Counsel
Rulemaking Coordinator
NC Department of the Secretary of State
PO Box 29622, Raleigh, NC 27626-0622.

Contact for further information: Elliot Rushing, Assistant General Counsel, (919) 807-2145

Notice of Intent to Engage in Permanent Rulemaking and Request for Comments

Subject: Secretary of State Lobbying Act Rules, 18 NCAC Chapter 12

The Department of the Secretary of State seeks public comments as it begins the process of permanent rulemaking relating to the Lobbying Act, found in Chapter 120C of the General Statutes. The Department adopted temporary rules on this topic that were approved by the Rules Review Commission in December 2006. A copy of these temporary rules may be found at <http://reports.oah.state.nc.us/ncac.asp> or <http://www.sosnc.com/>.

The Department is requesting comments regarding the following:

- (1) Adoption of the temporary rules as permanent rules;
- (2) Clarification or addition of definitions;
- (3) Topic areas not covered by the current temporary rules that may need to be included in the permanent rules;
- (4) Rules specific to certain topic areas including, for example:
 - Executive branch lobbying;
 - Lobbyists;
 - Reporting requirements;
 - Solicitation; and
 - Material omissions.

NOTE: The Department desires that any comments requesting that permanent rules exceed the scope of the current temporary rules also include supporting legal authority for such expansion.

The Department's deadline for receiving these comments is March 23, 2007. When the Department subsequently files proposed permanent rules it will also file a notice with instructions on how to submit public comments on the specifically proposed rules as part of the permanent rulemaking process. Therefore, even if you do not respond to this general opportunity to comment, you will later have the opportunity to formally comment on specific proposed permanent rules.

Comments should be submitted to:

Via electronic Mail: rules@sosnc.com

Via Mail: Ann B. Wall, General Counsel
Rulemaking Coordinator
NC Department of the Secretary of State
PO Box 29622, Raleigh, NC 27626-0622.

Contact for further information: Joal Broun, Lobbying Compliance Director, (919) 807-2172

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 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 adopt the rules cited as 15A NCAC 02N .0901-.0907 and amend the rules cited as 15A NCAC 02N .0201, .0203, .0301-.0302, .0304, .0502-.0503.

Proposed Effective Date: August 1, 2007

Public Hearing:

Date: March 19, 2007

Time: 4:00 p.m. to 6:00 p.m.

Location: 2728 Capital Blvd, Raleigh, NC

Date: March 27, 2007

Time: 5:00 p.m. to 7:00 p.m.

Location: Winston-Salem Regional Office, 585 Waughtown Street, Winston-Salem, NC

Reason for Proposed Action: NC Session Law 2003-352 added Section (13) to G.S. 143-215.94T which states that the Environmental Management Commission (EMC) shall adopt standards and requirements for "Secondary containment for non-tank components of petroleum underground storage tank systems." Also the Federal Energy Policy Act of 2005 (enacted August 8, 2005) amended Subtitle I of the Solid Waste Disposal Act (42 USC 6991) requiring that states receiving federal grant money implement either secondary containment for new and replacement UST systems or financial responsibility for UST manufacturers and installers such that they would have to pay for corrective action if a release is due to improper manufacture or installation. Federal grant money will be withheld from states that fail to comply.

Procedure by which a person can object to the agency on a proposed rule: A person may submit written objections concerning this rule to the UST Section of the Division of Waste Management of the Department of Environment and Natural Resources. Such correspondence should be submitted to the attention of: Ruth A. Strauss, NCDENR/DWM/UST Section, 1637 Mail Service Center, Raleigh, NC 27699-1637, fax (919)733-9413, email ruth.strauss@ncmail.net.

Comments may be submitted to: Ruth Strauss, 1637 Mail Service Center, Raleigh, NC 27699-1637, phone (919)733-8486, fax (919)733-9413, email ruth.strauss@ncmail.net.

Comment period ends: April 30, 2007

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: A copy of the fiscal note can be obtained from the agency.

- ☒ **State** – 15A NCAC 02N .0301-.0302, .0901, .0903-.0906
- ☒ **Local** – 15A NCAC 02N .0301-.0302, .0901, .0903-.0906
- ☒ **Substantive** (≥\$3,000,000) – 15A NCAC 02N .0301-.0302, .0901, .0903-.0906
- ☒ **None** – 15A NCAC 02N .0201-.0203, .0304, .0502-.0503, .0907

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02N - UNDERGROUND STORAGE
TANKS**

**SECTION .0200 - PROGRAM SCOPE AND INTERIM
PROHIBITION**

15A NCAC 02N .0201 APPLICABILITY

The provisions for "Applicability" contained in 40 CFR 280.10 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c) except ~~that that~~:

- (a) underground Underground storage tanks containing de minimus concentrations of regulated substances are subject to the requirements for permanent closure in Rules .0802 and .0803 of this ~~subchapter~~. Subchapter;

- (b) UST systems defined at 40 CFR 280.10(c) are also deferred from meeting the requirements of 15A NCAC 02N .0900; and
- (c) UST systems defined at 40 CFR 280.10(d) are subject to all of the requirements in 15A NCAC 02N .0900.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0203 DEFINITIONS

(a) The definitions contained in 40 CFR 280.12 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) This Rule shall apply throughout this Subchapter except that:

- (1) "Implementing agency" shall mean the "Division of Environmental Management."
- (2) "Division" shall mean the "Division of Environmental Management."
- (3) "Director" and "Director of the Implementing Agency" shall mean the "Director of the Division of Environmental Management."

(c) The following definitions shall apply throughout this Subchapter:

- (1) "De minimis concentration" means the amount of a regulated substance which does not exceed one percent (1%) of the capacity of the tank, excluding piping and vent lines.
- (2) "Expediently emptied after use" means the removal of a regulated substance from an emergency spill or overflow containment UST system within 48 hours after the necessity for use of the UST system has ceased.
- (3) "Previously closed" means:
 - (A) An UST system from which all regulated substances had been removed using commonly employed practices, the tank filled with a solid inert material, and tank openings were sealed or capped prior to December 22, 1988; or
 - (B) An UST system removed from the ground prior to December 22, 1988.
- (4) "Temporarily closed" means:
 - (A) An UST system from which the product has been removed such that not more than one inch of product and residue are present in any portion of the tank; or
 - (B) Any UST system in use as of December 22, 1988 which complies with the provisions of 15A NCAC 2N .801
- (5) "Secondary containment" means a method or combination of methods of release detection for UST systems that includes, but is not limited to:
 - (A) For tanks installed prior to August 1, 2007, double-walled construction,

external liners (including vaults) or other methods, approved by the Division, which meet the provisions of 40 CFR 280.42(b)(5); and

- (B) For underground piping installed prior to August 1, 2007, trench liners, double-walled construction or other methods, approved by the Division, which meet the provisions of ~~40 CFR 280.42(b)(5)~~, 40 CFR 280.42(b)(5);
- (C) For tanks installed on or after August 1, 2007, double-walled construction and interstitial release detection monitoring which meet the provisions of 15A NCAC 02N .0900;
- (D) For all other non-tank components of an UST system installed on or after August 1, 2007, double-walled construction or containment within a liquid-tight sump, and interstitial release detection monitoring which meet the provisions of 15A NCAC 02N .0900. The Division may approve other methods of secondary containment for underground piping provided the methods are capable of meeting the requirements of 15A NCAC 02N .0900.
- (6) "Person qualified to assess site conditions" means a person who, through a combination of training and experience, is competent to evaluate the conditions existing at an UST system site, including the physical and chemical conditions of the subsurface.
- (7) "UST system" or "Tank system" shall include the dispenser and aboveground ancillary equipment within a dispenser.
- (8) "Interstitial space" means the opening formed between the inner and outer wall of an UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.
- (9) "Replace" means to remove an UST system or UST system component and to install another UST system or UST system component in its place.
- (10) "UST system component" means any part of an UST system.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

SECTION .0300 - UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION FOR NEW UST SYSTEMS INSTALLED OR REPLACED AFTER DECEMBER 22, 1988 AND BEFORE AUGUST 1, 2007

15A NCAC 02N .0301 PERFORMANCE STANDARDS

FOR NEW UST SYSTEMS INSTALLED OR REPLACED AFTER DECEMBER 22, 1988 AND BEFORE AUGUST 1, 2007

(a) The "Performance standards for new UST systems" contained in 40 CFR 280.20 (Subpart B) have been adopted by reference in accordance with G.S. 150B-14(c) except that:

- (1) 40 CFR 280.20(a)(2)(iv) has been changed to read "Cathodic protection systems are operated and maintained in accordance with 15A NCAC 2N .402, or as approved by the Director;"
- (2) 40 CFR 280.20(b)(2)(iv) has been changed to read "Cathodic protection systems are operated and maintained in accordance with 15A NCAC 2N .402, or as approved by the Director;"
- (3) 40 CFR 280.20(a)(4) is not adopted by reference; and
- (4) 40 CFR 280.20(b)(3) is not adopted by reference.

(b) No UST system shall be installed within 100 feet of a well serving a public water system, as defined in 15A NCAC 18C .0102, or within 50 feet of any other well supplying water for human consumption.

(c) An UST system existing on the date of adoption of this Subchapter and located within the area described in Paragraph (b) of this Rule, may be replaced with a new tank meeting the performance standards of 40 CFR 280.20 and the secondary containment provisions of 40 CFR 280.42(b)(1) through (4). The replacement UST system may not be located nearer to the water supply source than the UST system being replaced.

(d) Except as prohibited in Paragraph (b) of this rule an UST system must meet the requirements for secondary containment described at 40 CFR 280.42(b)(1) through (4) if installed:

- (1) Within 500 feet of a well serving a public water supply or within 100 feet of any other well supplying water for human consumption; or
- (2) Within 500 feet of any surface water classified as High Quality Water (HQW), Outstanding Resource water (ORW), WS-I, WS-II or SA;
- (3) In a location determined by the Director to be unsuitable for conventional installation based on an evaluation of the site by Division staff.

(e) An UST system or UST system component installed on or after August 1, 2007 to replace an UST system or UST system component located within the areas described in Paragraph (b), (c), or (d) of this Rule shall meet the requirements of 15A NCAC 02N .0900.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0302 UPGRADING OF EXISTING UST SYSTEMS AFTER DECEMBER 22, 1988 AND BEFORE AUGUST 1, 2007

(a) The provisions for "Upgrading of existing UST systems" contained in 40 CFR 280.21 (Subpart B) have been adopted by reference in accordance with G.S. 150B-14(c) except that existing UST systems located within the areas defined at Rule

.0301(b) and (d) of this Section shall be upgraded in accordance with the provisions of 40 CFR 280.21(b) through (d) and shall be provided secondary containment as described at 40 CFR 280.42(b)(1) through (4). An UST system so upgraded may not be located nearer to a source of drinking water supply than its location prior to being upgraded.

(b) Owners must submit to the Division, on forms provided by the Division and within 30 days following completion, a description of the upgrading of any UST system conducted in accordance with the requirements of 40 CFR 280.21.

(c) UST systems upgraded in accordance with 40 CFR 280.21 prior to the date of adoption of this Subchapter are in compliance with these Rules.

(d) An UST system or UST system component installed on or after August 1, 2007 to upgrade or replace an UST system or UST system component described in Paragraph (a) of this Rule shall meet the performance standards of 15A NCAC 02N .0900.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0304 IMPLEMENTATION SCHEDULE FOR PERFORMANCE STANDARDS FOR NEW UST SYSTEMS AND UPGRADING REQUIREMENTS FOR EXISTING UST SYSTEMS LOCATED IN AREAS DEFINED IN RULE .0301(D)

(a) The following implementation schedule shall only apply to owners and operators of UST systems located within areas defined in Rule .0301(d) of this Section. This implementation schedule shall be used by the Department for tank owners and operators to comply with the secondary containment requirements contained in Rule .0301(d) for new UST systems and the secondary containment requirements contained in Rule .0302(a) for existing UST systems located within areas defined in Rule .0301(d).

- (1) All new UST systems and replacements to ~~a~~ an UST system shall be provided with secondary containment ~~in accordance with 40 CFR 280.42(1) through (4)~~ as of the effective date of this Rule.
- (2) All steel or metal connected piping and ancillary equipment of ~~a~~ an UST regardless of date of installation, shall be provided with secondary containment ~~in accordance with 40 CFR 280.42(1) through (4)~~ as of January 1, 2005.
- (3) All fiberglass or non-metal connected piping and ancillary equipment of ~~a~~ an UST regardless of date of installation, shall be provided with secondary containment ~~in accordance with 40 CFR 280.42(1) through (4)~~ as of January 1, 2008.
- (4) All UST systems installed on or before January 1, 1991 shall be provided with secondary containment ~~in accordance with 40 CFR 280.42(1) through (4)~~ as of January 1, 2008.
- (5) All UST systems installed after January 1, 1991 shall be provided with secondary

containment ~~in accordance with 40 CFR 280.42(b)(1) through (4)~~ as of January 1, 2016.

(b) All owners and operators of UST systems shall implement the following enhanced leak detection monitoring as of the effective date of this rule. The enhanced leak detection monitoring must consist of the following:

- (1) Install an automatic tank gauging system (ATG) for each UST;
- (2) Install an electronic line leak detector (ELLD) for each pressurized piping system;
- (3) Conduct at least one valid 0.1 gallon per hour (gph) test per month or at least one valid 0.2 gph test per week on each UST system;
- (4) Conduct a line tightness test capable of detecting a leak rate of 0.1 gph, at least once per year for each suction piping system. No release detection is required for suction piping that is designed and constructed in accordance with 40 CFR 280.41(b)(2)(i) through (iv);
- (5) If the UST system is located within 500 feet of a public water supply well or within 100 feet of any other well supplying water for human consumption, sample the supply well at least once per year. The sample collected from the well must be analyzed for the constituents of petroleum using the following methods:
 - (i) EPA Methods 601 and 602, including methyl tertiary butyl ether, isopropyl ether and xylenes;
 - (ii) EPA Method 625; and
 - (iii) If a waste oil UST system is present which does not meet the requirements for secondary containment in accordance with 40 CFR 280.42(b)(1) through (4), the sample shall also be analyzed for lead and chromium using Standard Method 3030C preparation.
- (6) The first sample collected in accordance with with Subparagraph .0304(b)(5) of this Rule shall be collected and the results received by the Division by October 1, 2000 and yearly thereafter.

(c) An UST system or UST system component installed on or after August 1, 2007 to upgrade or replace an UST system or UST system component described in Paragraph (a) of this Rule shall meet the performance standards of 15A NCAC 02N .0900.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

SECTION .0500 - RELEASE DETECTION

15A NCAC 02N .0502 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

The "Requirements for petroleum UST systems" provisions contained in 40 CFR 280.41 (Subpart D) have been adopted by reference in accordance with G.S. 150B-14(c) except that UST systems designated in Rule .0301(d) and installed or replaced before August 1, 2007 must meet the requirements for secondary

containment described at 40 CFR 280.42(b)(1) through (4). UST systems or UST system components installed or replaced on or after August 1, 2007, must meet the secondary containment requirements of 15A NCAC 02N .0900.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0503 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS

The "Requirements for hazardous substance UST systems" provisions contained in 40 CFR 280.42 (Subpart D) have been adopted by reference in accordance with G.S. 150B-14(c) except that ~~the requirements for secondary containment described at 40 CFR 280.42(b)(1) through (4) shall also apply to petroleum UST systems described at Rule .0301(d).~~ hazardous substance UST systems or UST system components installed or replaced on or after August 1, 2007 must meet the secondary containment requirements of 15A NCAC 02N .0900.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

SECTION .0900 - PERFORMANCE STANDARDS FOR UST SYSTEMS OR UST SYSTEM COMPONENTS INSTALLED OR REPLACED ON OR AFTER AUGUST 1, 2007

15A NCAC 02N .0901 GENERAL REQUIREMENTS

(a) An UST system or UST system component installed or replaced on or after August 1, 2007 shall meet the requirements of this Rule.

(b) An UST system or UST system component shall not be installed or replaced within an area defined at 15A NCAC 02N .0301(b).

(c) A tank shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule.

(d) Non-tank components of an UST system including but not limited to connected piping, underground ancillary equipment, dispenser, aboveground ancillary equipment within a dispenser, line leak detectors, submersible pumps, spill buckets, siphon bars and remote fill pipes shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule. Only gravity-fed vertical fill pipes, vapor recovery, vent lines and containment sumps are excluded from the secondary containment requirements.

(e) UST system designs must be certified by a Professional Engineer licensed by the North Carolina Board of Examiners for Engineers and Surveyors. An UST system design is required for installation or replacement of an UST system, UST or connected piping.

(f) Persons installing, replacing or repairing UST systems or UST system components must be trained and certified by the equipment manufacturer to install, replace or repair such equipment.

(g) UST systems or UST system components shall be installed, tested, operated and maintained in accordance with the manufacturer's specifications and the codes of practice and industry standards described at 15A NCAC 02N .0907.

(h) UST systems or UST system components may not be installed or replaced in areas where they will be in contact with contaminated soil or free product.

(i) Secondary containment systems shall be designed, constructed, installed and maintained to:

- (1) Detect the failure of the inner wall and outer wall for UST system components with double wall construction;
- (2) Contain regulated substances released from an UST system until they are detected and removed;
- (3) Prevent a release of regulated substances to the environment;
- (4) Direct releases to a monitoring point or points;
- (5) Provide a release detection monitoring device or monitoring method for the interstitial space;
- (6) Continuously monitor the interstitial space of double-walled tanks for releases using pressure, vacuum or hydrostatic monitoring methods;
- (7) Continuously monitor the interstitial space of non-tank components for releases using pressure, vacuum, or hydrostatic methods, or by using an electronic sensor placed in a containment sump and in the interstitial space of a double-walled spill bucket; and
- (8) Provide a printed record of release detection monitoring results and an alarm history for each month.

(j) New or replacement dispensers and new or replacement aboveground ancillary equipment within a dispenser shall be provided with under dispenser containment sumps and shall meet the secondary containment requirements and performance standards of this Rule.

(k) Performance claims pertaining to all release detection systems used and the manner in which these claims have been justified or tested by the equipment manufacturer or installer shall be maintained at the UST system site or at the owner or operator's place of business and readily available for inspection so long as the equipment is used for release detection.

(l) All release detection monitoring equipment shall be installed, calibrated, operated and maintained in accordance with manufacturer's instructions. All release detection monitoring equipment shall be certified annually by the manufacturer or the manufacturer's authorized representative for operability, proper operating condition and proper calibration. The last certification must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

(m) Suspected releases shall be reported in accordance with 15A NCAC 02N .0601 and investigated in accordance with 15A NCAC 02N .0602 and .0603.

(n) Releases detected in an interstitial space shall be reported in accordance with 15A NCAC 02N .0601 and investigated in accordance with the manufacturers written guidelines. Any changes in the original physical characteristics or integrity of a piping system or a containment sump must also be reported in accordance with 15A NCAC 02N .0601 and investigated in accordance with the manufacturer's written guidelines.

(o) All repairs to an UST system or UST system component shall be performed in accordance with 15A NCAC 02N .0404 and repair records maintained in accordance with 15A NCAC 02N .0405.

(p) Release detection monitoring records and suspected release investigation results shall be maintained in accordance with 15A NCAC 02N .0405 and .0506.

(q) Spills and overfills from UST systems shall be reported and cleaned up in accordance with 15A NCAC 02N .0604.

(r) UST systems and UST system components shall also meet all of the installation requirements specified in 40 CFR 280.20(c), (d) and (e). In addition, overfill prevention equipment shall be checked annually for operability, proper operating condition and proper calibration by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's written instructions for installation or routine maintenance. The manufacturer or the manufacturer's authorized representative shall certify in writing that the equipment meets the performance standards of 40 CFR 280.20(c)(1)(ii). The last certification must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0902 NOTIFICATION

(a) Owners and operators must provide notification of installation or replacement of an UST system, UST or connected piping to the Division in accordance with 15A NCAC 02N .0303. The notice shall include:

- (1) The UST system design certified by a licensed North Carolina Professional Engineer.
- (2) Equipment to be installed including model and manufacturer and the materials of construction.
- (3) Device or method to be used to allow piping to be located after it is buried underground.
- (4) A site plan drawn to scale showing the proposed location of UST systems relative to buildings and other permanent structures; roadways; utilities; other UST systems; monitoring wells; and water supply wells used for human consumption within 500 feet.
- (5) A schedule for UST system installation or replacement.

(b) Owners and operators must notify the Division at least 48 hours prior to the following stages of construction so that the Division may perform an inspection of the installation:

- (1) Pre-installation tightness testing of tanks; and
- (2) Final tightness testing of piping before it is backfilled.

(c) Documents showing the following minimum information shall be submitted to the Division within 30 days after UST system installation and shall be maintained at the UST system site or the owner's or operator's place of business for the life of the UST system. These records shall be transferred to a new tank owner at the time of a transfer of tank ownership.

- (1) Certification from the UST system installer containing:

- (A) The UST system installer's name, address and telephone number; training and certification received from the manufacturer of the equipment that was installed or replaced including any certification number;
- (B) An as-built diagram drawn to scale showing: the name and address of the UST system site; the date of UST system installation or replacement; the equipment that was installed including model and manufacturer; the information described at 15A NCAC 02N .0903(c); the method used to anchor a tank in the ground; if the equipment has single-walled or double-walled construction; the year the piping was manufactured and any production code; and the device or method used to allow piping to be located after it is buried underground. The as-built diagram shall also show the location of the installed or replaced UST systems relative to: buildings and other permanent structures, utilities, monitoring wells and other UST systems located at the site; adjacent roadways; and water supply wells used for human consumption within 500 feet and
- (C) The manufacturer's written guidelines, codes of practice and industry standards used for installation; and
- (D) A statement that the UST system was installed in accordance with the engineered design and the manufacturer's specifications.
 - (2) Manufacturer warranties;
 - (3) Any equipment performance claims; and
 - (4) Records of all tightness testing performed.
- (2) The diameter in feet;
- (3) The capacity in gallons;
- (4) The materials of construction of the inner and outer walls of the tank including any external or internal coatings;
- (5) Serial number or other unique identification number designated by the tank manufacturer;
- (6) Date manufactured; and
- (7) Identity of manufacturer.
- (d) All components of a tank including gaskets and sealant must be compatible with the regulated substance including any additives stored in the tank in accordance with 40 CFR 280.32. If the regulated substance is changed to one not listed by the manufacturer as a substance that is compatible with the tank, written confirmation from the manufacturer shall be obtained certifying compatibility of the liquid with the system, prior to the change. The written confirmation shall be submitted to the Division prior to the change in regulated substance and shall be maintained at the UST system site or at the owner or operator's place of business and readily available for inspection so long as the tank is used to store the substance. The written confirmation shall be transferred to a new tank owner at the time of a transfer of tank ownership.
- (e) Whenever an existing tank is removed prior to installation of a new tank, piping that does not meet the standards of 15A NCAC 02N .0900 shall also be removed. The replacement tank shall not be connected to piping that does not meet the standards of 15A NCAC 02N .0900.
- (f) Tanks that will be reused must be certified by the tank manufacturer prior to re-installation and must meet all of the requirements of 15A NCAC 02N .0900. Proof of certification must be submitted to the Division along with a notice of intent to install the tank in accordance with 15A NCAC 02N .0902.
- (g) Tanks shall be tested for tightness before and after installation in accordance with the following requirements:
 - (1) Pre- Installation Tightness Test - Before installation, the primary containment and the interstitial space shall be tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." The presence of soap bubbles or water droplets during a pressure test, any change in vacuum during a vacuum test or any change in liquid in an interstitial space liquid reservoir, shall be considered a failure of the integrity of the tank.
 - (2) Post-installation Tightness Test - The interstitial space shall be checked for a loss of pressure or vacuum, or a change in liquid level in an interstitial space liquid reservoir. Any loss of pressure or vacuum, or a change in liquid level, shall be considered a failure of the integrity of the tank.
 - (3) If a tank fails a tightness test, tank installation shall be suspended until the tank is replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0903 TANKS

- (a) Tanks must be protected from external corrosion in accordance with 40 CFR 280.20(a)(1), (3) or (5).
- (b) Tanks installed in areas subject to high water tables or flooding shall be anchored in the ground in accordance with the manufacturer's written guidelines and a code of practice developed by a nationally recognized association or independent testing laboratory. One of the following methods shall be used:
 - (1) Deadman anchors or
 - (2) Bottom hold-down pad.
- (c) The exterior surface of a tank shall bear a permanent marking, code stamp or label showing the following minimum information:
 - (1) The engineering standard used;

specifications. Following any repair, the tank shall be re-tested for tightness in accordance with 15A NCAC 02N .0903(g)(1) if it failed the pre-installation tightness test and in accordance with 15A NCAC 02N .0903(g)(2) if it failed the post-installation tightness test.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0904 PIPING

(a) Piping with the exception of flexible connectors and piping connections shall be pre-fabricated with double-walled construction. Any flexible connectors or piping connections that do not have double-walled construction shall be installed in containment sumps that meet the requirements of 15A NCAC 02N .0905.

(b) Piping must be protected from corrosion by being constructed of non-corroding materials. Metal flexible connectors and piping connections shall be protected from corrosion by being installed in containment sumps that meet the requirements of 15A NCAC 02N .0905.

(c) Piping must comply with the UL 971 standard "Nonmetallic Underground Piping for Flammable Liquids;" that is in effect at the time the piping is installed.

(d) Piping that is buried underground must be constructed with a device or method that allows it to be located once it is installed;

(e) Piping that conveys regulated substances under pressure must also be equipped with an automatic line leak detector that meets the requirements of 40 CFR 280.44(a);

(f) All components of the piping system must be compatible with the regulated substance including any additives to which the piping system may be exposed in accordance with 40 CFR 280.32. If the regulated substance is changed to one not listed by the manufacturer as a substance that is compatible with the piping, written confirmation from the manufacturer shall be obtained certifying compatibility of the liquid with the system, prior to the change. The written confirmation shall be submitted to the Division prior to the change in regulated substance and shall be maintained at the UST system site or at the owner or operator's place of business and readily available for inspection so long as the piping is used to convey or dispense the substance. It shall be transferred to a new tank owner at the time of a transfer of tank ownership.

(g) Whenever existing piping is replaced or extended, the entire piping system shall meet the standards of 15A NCAC 02N .0900. However, if only existing riser pipes, flexible connectors, fittings, flanges, valves or pumps are replaced, then only the replacement equipment must meet the standards of 15A NCAC 02N .0900.

(h) At the time of installation, the primary containment and interstitial space of the piping shall be initially tested, monitored during construction and finally tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." The presence of soap bubbles or water droplets or any loss of pressure during testing shall be considered a failure of the integrity of the piping. If the piping fails a tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in

accordance with the manufacturer's specifications. Following any repair, the piping must be re-tested for tightness in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."

(i) Piping that is not monitored continuously for releases using vacuum, pressure or hydrostatic methods, must be tested for tightness every three years following installation. The primary containment and interstitial space of the piping shall be tested in accordance with the manufacturers written guidelines and PEI/RP100 "Recommended Practice for Installation of Underground Liquid Storage Systems." If the piping fails a tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the piping must be re-tested for tightness. The last periodic tightness test record must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0905 CONTAINMENT SUMPS

(a) Containment sumps must be constructed of non-corroding materials.

(b) Containment sumps must be designed and manufactured expressly for the purpose of containing and detecting a release.

(c) Containment sumps must be designed, constructed, installed and maintained to prevent water infiltration.

(d) Electronic sensor probes used for release detection monitoring must be located no more than two inches above the lowest point of the containment sump.

(e) Containment sumps must be compatible with the regulated substance stored in the UST system in accordance with 15A NCAC 02N .0904(f).

(f) At installation, containment sumps shall be tested for tightness after construction, but before backfilling. Tightness testing shall be conducted in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." Any change in water level shall be considered a failure of the integrity of the sump. Other tightness test methods may be used if they are approved by the Division. In approving a containment sump tightness testing method the Division shall consider the following factors:

(1) The entire inner surface of the sump is tested including piping and electrical conduit penetrations and

(2) The method is capable of detecting a fracture, perforation or gap in the sump within the specified test period.

(g) If a containment sump fails an installation tightness test, the sump must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump must be re-tested for tightness in accordance with 15A NCAC 02N .0905(f).

Containment sumps that are not monitored continuously for releases using vacuum, pressure or hydrostatic interstitial

monitoring methods shall be tested for tightness every three years following installation in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." If a containment sump fails a periodic tightness test, the sump must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump must be re-tested for tightness in accordance with 15A NCAC 02N .0905(f). The last periodic tightness test record must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

(i) All containment sumps shall be visually inspected at least annually for the presence of water and/or regulated substance. Any water or regulated substance must be removed from the sump within 48 hours of discovery. The presence of a regulated substance shall be reported and investigated in accordance with 15A NCAC 02N .0901(o). The visual inspection results must be documented and must be maintained for at least one year at the UST site or the tank owner's or operator's place of business and must be readily available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0906 SPILL BUCKETS

(a) Spill buckets shall be pre-fabricated with double-walled construction.

(b) Spill buckets must be protected from corrosion by being constructed of non-corroding materials.

(c) Spill buckets must be designed, constructed, installed and maintained to prevent water infiltration.

(d) Spill buckets must be compatible with the regulated substance stored in the UST system in accordance with 15A NCAC 02N .0904(f).

(e) After installation but before backfilling, the primary containment and interstitial space of the spill bucket shall be tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." Any change in vacuum during a vacuum test or any change in liquid level in an interstitial space liquid reservoir shall be considered a failure of the integrity of the spill bucket. If the spill bucket fails a tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket must be re-tested for tightness in accordance with the manufacturers' written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."

(f) Spill buckets that are not monitored continuously for releases using vacuum, pressure or hydrostatic methods, must be tested for tightness every three years following installation. The primary containment and interstitial space of the spill bucket shall be tested in accordance with the manufacturers' written guidelines and PEI/RP100 "Recommended Practice for Installation of Underground Liquid Storage Systems." If the spill bucket fails a tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative

in accordance with the manufacturer's specifications. Following any repair, the spill bucket must be re-tested for tightness. The last periodic tightness test record must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

15A NCAC 02N .0907 NATIONAL CODES OF PRACTICE AND INDUSTRY STANDARDS

(a) The most recent versions of the following national codes of practice and industry standards applicable at the time of UST system installation or replacement shall be used to comply with 15A NCAC 02N .0900.

- (1) American Concrete Institute (ACI) International 224R-89, "Control of Cracking in Concrete Structures;"
- (2) ACI International 350R-89, "Environmental Engineering Concrete Structures;"
- (3) American Petroleum Institute (API) Standard 570, "Piping Inspection Code: Inspection Repair, Alteration and Re-rating of In-Service Piping Systems;"
- (4) API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines;"
- (5) API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems;"
- (6) API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets;"
- (7) API Recommended Practice 1631, "Interior Lining of Underground Storage Tanks;"
- (8) API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals;"
- (9) American Society of Mechanical Engineers (ASME) International: B31.4-1992, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols;"
- (10) American Society for Testing and Materials (ASTM) Specification D4021-92, "Standard Specification for Glass Fiber Reinforced Polyester Underground Petroleum Storage Tanks;"
- (11) National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code;"
- (12) NFPA 30A, "Automotive and Marine Service Station Code;"
- (13) NFPA 329, "Handling Underground Releases of Flammable and Combustible Liquids"
- (14) Petroleum Equipment Institute (PEI): PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems;"

- (15) Steel Tank Institute (STI) ACT 100 F894, "Specifications for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks;"
- (16) STI ACT 100-U F961, "Specifications for External Corrosion Protection of Composite Steel Underground Storage Tanks;"
- (17) STI 922, "Specifications for Permatank;"
- (18) Underwriters Laboratory (UL) 58, "Steel Underground tanks for Flammable and Combustible Liquids;"
- (19) UL 567, "Pipe Connectors for Petroleum Products and LP Gas;"
- (20) UL 971, "Nonmetallic Underground Piping for Flammable Liquids;"
- (21) UL 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures;"
- (22) UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks."

(b) Other appropriate codes or standards applicable at the time of UST system installation or replacement may be used provided they are developed by ACI, American National Standards Institute (ANSI), API, ASME, ASTM, NFPA, PEL, STI and UL.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .1102, .1202, .1302, .1402, .2002, .2102, .2202, .2402, .2702; 07J .0210; 07K .0209; 07M .0303, .0306-.0307.

Proposed Effective Date: August 1, 2007

Public Hearing:

Date: March 22, 2007

Time: 5:00 pm

Location: Ramada Oceanfront Hotel, Virginia Dare Trail, Kill Devil Hills, NC

Reason for Proposed Action: *The proposed changes to 07J .0210 clarify the methods for determining fifty percent damage, and state that connected but functionally independent structures will be treated separately. The proposed changes also create a distinction between water dependent and non-water dependent structures. DCM will use different methods for determining value and repair versus replacement for these different categories of structures. 07K .0209 is being amended to include a citation to the conditions contained within 07J .0210. CRC is proceeding in rulemaking in order to make changes to its shorefront access policies, particularly to the Public Beach and Coastal Waterfront Access Program. Economically distressed communities are highly underrepresented in applications submitted and grants received. Primary changes are a*

reduction in the match requirement from these communities, and more flexibility in the source of their match obligations. The CRC's intent is to reduce the imbalance in grant applications and awards across the different tiers by making it more affordable for economically distressed communities to participate in the program. The primary result will be a reduction in the matching funds that local governments will need to contribute. Local governments should be able to acquire land and install facilities for public access at a lower total cost requirement for Tier 1 and Tier 2 communities from 12.5 percent to 5 percent. At the same time, they reduce the minimum cash match for Tier 3-5 communities for 12.5 percent to 7.5 percent for acquisition projects, but leave the requirement at 12.5 percent for site improvement projects. No anticipation of any increased local government expenditures as a result of this action. 07H rules are being amended in order to extend the time allowed for construction from 90 days to 120 days for certain types of projects. The extension was requested by permittees who have been unable to complete their projects within 90 days, forcing them to apply and pay for renewal permits.

Procedure by which a person can object to the agency on a proposed rule: *Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.*

Comments may be submitted to: *Charles S. Jones, 400 Commerce Avenue, Morehead City, NC 28557, phone (252)808-2808, fax (252)247-3330, email charles.s.jones@ncmail.net*

Comment period ends: April 30, 2007

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: A copy of the fiscal note can be obtained from the agency.

☒ **State** – (15A NCAC 07H .1102, .1202, .1302, .1402, .2002, .2102, .2202, .2402, .2702; 07J .0210; 07K .0209)

☐ **Local**

☐ **Substantive** (≥\$3,000,000)

☒ **None** – (15A NCAC 07M .0303, .0306-.0307)

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS

OF ENVIRONMENTAL CONCERN

**SECTION .1100 - GENERAL PERMIT FOR
CONSTRUCTION OF BULKHEADS AND THE
PLACEMENT OF RIPRAP FOR SHORELINE
PROTECTION IN ESTUARINE AND PUBLIC TRUST
WATERS AND OCEAN HAZARD AREAS**

15A NCAC 07H .1102 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management and ~~complete an application form requesting~~ 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 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~~ 120 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.

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

**SECTION .1200 - GENERAL PERMIT FOR
CONSTRUCTION OF PIERS, DOCKS, AND BOAT
HOUSES IN ESTUARINE AND PUBLIC TRUST
WATERS AND OCEAN HAZARD AREAS**

15A NCAC 07H .1202 APPROVAL PROCEDURES

(a) The applicant ~~must shall~~ shall contact the Division of Coastal Management and ~~complete an application form requesting~~

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 ~~must shall~~ 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 any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff 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 finds that the comments are worthy of more in-depth review, the applicant shall be notified that he must submit an application for a major development permit.

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

(d) Construction ~~must shall~~ shall be completed within ~~90~~ 120 days of the approval of the permit or the permit expires.

(e) Any modification or addition to the approved project shall require prior approval from the Division of Coastal Management.

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

**SECTION .1300 – GENERAL PERMIT TO MAINTAIN:
REPAIR AND CONSTRUCT BOAT RAMPS ALONG
ESTUARINE AND PUBLIC TRUST SHORELINES AND
INTO ESTUARINE AND PUBLIC TRUST WATERS**

15A NCAC 07H .1302 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management and ~~complete an application form requesting~~ 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 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~~ 120 days of this visit or the general authorization shall expire.

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

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

15A NCAC 07H .1402 APPROVAL PROCEDURES

(a) The applicant ~~must~~ shall contact the Division of Coastal Management and ~~complete an application form requesting request~~ approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address. 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. The notice shall also indicate that no response shall be interpreted as no objection.

(b) The applicant ~~must~~ 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. The notice shall also 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.

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

(d) Construction ~~must~~ shall be completed within ~~90~~ 120 days of the approval of the permit or the permit expires.

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

SECTION .2000 - GENERAL PERMIT FOR AUTHORIZING MINOR MODIFICATIONS AND REPAIR TO EXISTING PIER/MOORING FACILITIES IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .2002 APPROVAL PROCEDURES

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

(b) The applicant ~~must~~ shall provide:

- (1) a dated plat(s) showing existing development and the proposed development; and
- (2) confirmation that:
 - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
 - (B) the adjacent property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response will be interpreted as no objection.
 - (C) DCM staff will review all comments. If DCM determines that:
 - (i) the comments are relevant to the potential impacts of the proposed project; and
 - (ii) the permitting issues raised by the comments are worthy of more detailed review, the applicant will be notified that he/she must submit an application for a major development permit.

(c) Approval of individual projects will be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit ~~must~~ shall be completed within ~~90~~ 120

days of permit issuance or the general authorization expires and a new permit shall be required to begin or continue construction.

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

**SECTION .2100 - GENERAL PERMIT FOR
CONSTRUCTION OF MARSH ENHANCEMENT
BREAKWATERS FOR SHORELINE PROTECTION IN
ESTUARINE AND PUBLIC TRUST WATERS AND
OCEAN HAZARD AREAS**

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~~ 120 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.

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

**SECTION .2200 - GENERAL PERMIT FOR
CONSTRUCTION OF FREESTANDING MOORINGS IN
ESTUARINE WATERS AND PUBLIC TRUST AREAS
AND OCEAN HAZARD AREAS**

15A NCAC 07H .2202 APPROVAL PROCEDURES

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

(b) The applicant ~~must~~ shall provide:

- (1) information on site location, dimensions of the project area, and his/her name and address;
- (2) a dated plat(s) showing existing and proposed development; and
- (3) confirmation that:
 - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
 - (B) the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials 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. If DCM determines that:
 - (i) the comments are relevant to the potential impacts of the proposed project; and
 - (ii) the permitting issues raised by the comments are worthy of more detailed review, the applicant shall be notified that he/she must submit an application for a major development permit.

(c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit ~~must~~ shall be completed within ~~90~~ 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or continue construction.

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

**SECTION .2400 – GENERAL PERMIT FOR
PLACEMENT OF RIPRAP FOR WETLAND
PROTECTION IN ESTUARINE AND PUBLIC TRUST
WATERS**

15A NCAC 07H .2402 APPROVAL PROCEDURES

(a) The applicant must 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 ~~must~~ 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 any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the requirements of the rules in this Section. If DCM staff finds that the comments are worthy of more in-depth review, the applicant shall be notified that he must submit an application for a major development permit.

(d) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative so that the wetland protection structure can be appropriately marked. Written authorization to proceed with the proposed development may be issued during this visit. Construction of the wetland protection structure ~~must~~ shall be completed within ~~90~~ 120 days of this visit or the general authorization expires and it shall be necessary to re-examine the alignment to determine if the general authorization can be reissued.

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

SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .2702 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management and ~~complete an application form requesting request~~ approval for development. The applicant shall provide information on site location, dimensions of the project area, and applicant 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 any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection.

(c) 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.

(d) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development shall be issued by the Division of Coastal Management. Construction of the project shall start within ~~90~~ 120 days of the issuance date of this permit or the general authorization expires and it shall be necessary to re-examine the proposed development to determine if the general authorization shall be reissued.

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

SUBCHAPTER 07J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, AND DECLARATORY RULINGS

SECTION .0200 - APPLICATION PROCESS

15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES

~~Replacement of existing structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and will require CAMA permits. The proposed work will be considered replacement if the cost of the proposed work exceeds 50 percent of the physical value of the structure at the time of damage. The physical value of the structure shall be determined by the local building inspection office. Replacement of structures can be allowed if they are found to be consistent with current CRC rules.~~

(a) NON-WATER DEPENDENT STRUCTURES. Replacement of non-water dependent structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and shall require CAMA permits. Replacement of structures shall be permitted if the replacement is consistent with current CRC rules.

- (1) The proposed work shall be considered replacement if the cost to do the work exceeds 50 percent of the market value of the structure immediately prior to the time of damage or the time of request. Market value of the structure does not include the value of the land, value resulting from the location of the property, value of accessory structures, or value of other

improvements located on the property. Market value of the structure shall be determined by the Division based upon information provided by the applicant using any of the following methods:

- (A) independent certified professional appraisal;
 - (B) replacement cost with depreciation for age of the structure and quality of construction; or
 - (C) tax assessed value.
- (2) The cost to repair the structure is the cost for complete repair to the structure's pre-damage condition, using qualified labor and materials obtained at current market prices, regardless of the actual cost incurred by the owner to repair the structure. It shall include the costs of construction necessary to comply with local and state building codes and any improvements that the owner chooses to construct. The cost to repair shall be determined by the Division utilizing any or all of the following:
- (A) an estimate provided by a North Carolina licensed contractor qualified by license to provide an estimate or bid with respect to the proposed repairs;
 - (B) an insurance company's report itemizing the cost of repairs to the structure excluding contents and accessory structures; or
 - (C) an estimate provided by the local building inspections office.

(b) WATER DEPENDENT STRUCTURES. Replacement of water dependent structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and shall require CAMA permits. The proposed work will be considered replacement if it enlarges the existing structure. The proposed work shall also be considered replacement if:

- (1) in the case of fixed docks, piers, platforms, boathouses, boatlifts, and free standing moorings, more than 50 percent of the framing and structural components (beams, girders, joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition. Water dependent structures that are structurally independent from the principal pier or dock, such as boatlifts or boathouses, shall be considered as separate structures for the purpose of this Rule;
- (2) in the case of boat ramps and floating structures such as docks, piers, platforms, and modular floating systems, more than 50 percent of the square feet area of the structure must be rebuilt in order to restore the structure to its pre-damage condition;
- (3) in the case of bulkheads, seawalls, groins, breakwaters, and revetments, more than 50

percent of the linear footage of the structure must be rebuilt in order to restore the structure to its pre-damage condition.

Authority G.S. 113A-103(5)b.5; 113A-107(a),(b).

SUBCHAPTER 07K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT

15A NCAC 07K .0209 EXEMPTION / ACCESSORY USES / MAINTENANCE REPAIR / REPLACEMENT

(a) Accessory buildings customarily incident to an existing structure are specifically excluded from the definition of development if the work does not involve filling, excavation, or the alteration of any sand dune or beach as set out in ~~G.S. 113A-103(5)(b)(6)~~, G.S. 113A-103(5)b.6. Accessory buildings shall be subordinate in area and purpose to the principal structure and shall not require, or consist of the expansion of the existing structure as defined by an increase in footprint or total floor area of the existing structure. A building with a footprint of 100 square feet or less shall be considered an accessory building as long as it is customarily incident to and subordinate in area and purpose to the principal structure. Buildings of a larger size may be considered accessory buildings if necessary for customary use.

(b) Accessory uses as defined in Paragraph (a) of this Rule and that are directly related to the existing dominant use, but not within the exclusion set out in ~~G.S. 113A-103(5)(b)(6)~~, G.S. 113A-103(5)b.6, and that require no plumbing, electrical or other service connections and do not exceed 200 square feet shall be exempt from the CAMA minor development permit requirement if they also meet the criteria set out in Paragraph (d) of this Rule.

(c) Any ~~structure~~ structure, or part ~~thereof~~ thereof, consistent with current CRC rules may be maintained, repaired or replaced in a similar manner, size and location as the existing structure without requiring a permit, unless such repair or replacement would be in violation of the criteria set out in Paragraph (d) of this Rule. This exemption applies to those projects that are not within the exclusion for maintenance and repairs as set out in ~~G.S. 113A-103(5)(b)(5)~~ and G.S. 113A-103(5)b.5, Rule .0103 of this Subchapter and Rule 07J .0210.

(d) In order to be eligible for the exemptions described in Paragraphs (b) and (c), of this Rule, the proposed development activity must meet the following criteria:

- (1) the development must not disturb a land area of greater than 200 square feet on a slope of greater than 10 percent;
- (2) the development must not involve removal, damage, or destruction of threatened or endangered animal or plant species;

- (3) the development must not alter naturally or artificially created surface drainage channels;
- (4) the development must not alter the land form or vegetation of a frontal dune;
- (5) the development must not be within 30 feet of normal water level or normal high water level; and
- (6) the development must be consistent with all applicable use standards and local land use plans in effect at the time the exemption is granted.

Authority G.S. 113A-103(5)b; 113A-103(5)c; 113A-111; 113A-118(a); 113A-120(8).

SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0300 - SHOREFRONT ACCESS POLICIES

15A NCAC 07M .0303 GUIDELINES FOR PUBLIC ACCESS

- (a) Development shall not interfere with the public's right of access to the waterfront where such access has been established through donation, acquisition, express or implied dedication or prescriptive easement.
- (b) Public beach nourishment projects funded by the state and federal government ~~must shall~~ include provisions for adequate public access within the vicinity of the project based on applicable Division of Coastal Management standards.
- (c) Policies regarding state and federal properties with waterfront areas intended to be used by the public ~~must shall~~ provide for public access and adequate parking so as to achieve maximum public use and benefit of these areas consistent with established legislation.
- (d) Local governments are encouraged to participate in the Public Beach and Coastal Waterfront Access Program as authorized by G.S. 113A-134.1 - 113A-134.3. The access program is intended to serve both year-round and seasonal users. In determining parking needs for access, particularly for day visitor destination beaches, local governments may use the ~~peak~~ current and projected seasonal population ~~estimate-estimates~~ provided in their land use plan as set out in ~~7B .0211, 07B .0702(c)(1)(A)(ii) and (D).~~
- (e) Public access projects shall be consistent with public access policies contained in the local ~~government's~~ government's land use plan as required in 15A NCAC ~~7B .0212(a)(3)(x)-07B .0702(d)(3)(A)(ii) and (iii)~~ of this Chapter or in its local waterfront access plan. If a local access plan does not exist, a local recreation plan that addresses public access may provide guidance as to local needs.
- (f) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113-134.3 may charge ~~reasonable~~ user fees as long as those fees are used exclusively for operation and maintenance of the access facility. ~~Funding from others agencies or sources may carry different regulations about user fees.~~ Other regulations, including schedules of operation, may also be established.

(g) Local governments shall have lead responsibility for the selection of public access sites within their jurisdiction. Access shall be based on identified needs as stated in land use plans approved pursuant to 15A NCAC ~~7B .0216~~ 07B .0800 of this Chapter and local waterfront access plans. The Division of Coastal Management may provide some assistance in determining the location of regional and multi-regional sites.

(h) The primary purpose of the public access program is to provide funds to acquire or develop land for pedestrian access, including parking as authorized by G.S. 113A-134.3(c). Boating and fishing facilities may be funded, provided pedestrian access is the primary objective of the proposed project.

(i) Local governments are encouraged to plan for and develop ocean access areas that provide convenient access opportunities along the entire length of the shoreline within its jurisdiction. In preparing land use plan policies on public beach access pursuant to 15A NCAC ~~7B .0212(3)(B)(x)-07B .0702(d)(3)(A)(ii) and (iii)~~ of this Chapter, local governments are encouraged to consider the following guidelines:

- (1) Local/Neighborhood Access Sites-one - one per block in the community;
- (2) Regional Access Sites - one per locality or one per four miles, whichever yields the most public access;
- (3) Multi-regional Access Sites - one per barrier island or one per 10 miles whichever yields the most public access.

(j) In preparing land use plan policies on public waterfront access pursuant to 15A NCAC ~~7B .0212(3)(B)(x)-07B .0702(d)(3)(A)(ii) and (iii)~~ of this Chapter, local governments are encouraged to consider the following guidelines:

- (1) Local Access Sites - one per block;
- (2) Neighborhood Access Sites - one per 50 dwelling units;
- (3) Regional Access Sites - one per local government jurisdiction;
- (4) Multi-regional Access Sites - one per coastal county. Parking facilities for these projects shall be based on current and projected seasonal population estimates.

(k) Pursuant to G.S. 113A-134.3(a), local governments shall give priority to the acquisition of unbuildable lots for public access purposes.

(l) The construction of facilities other than parking, litter receptacles, and public access signs is not encouraged in inlet beach areas.

Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-227(a); 160A-314(a); 16 U.S.C. Sec. 1453.

15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS

(a) Coastal Waterfront access in the 20-county coastal area is a concern of local, state, regional and national importance. As such, the ~~NCCMP~~ Division of Coastal Management can provide some guidance as to location of facilities that are of multi-regional and regional significance. The local government, however, has the primary responsibility for identifying local,

neighborhood and regional accessways through its land use plan policies and local access plan.

- (1) A local policy in a land use plan sets the community objectives for access; a local government may determine that public access is not a pressing issue and thus develop a policy of private sector access provision and no public involvement. Similarly local governments may:
 - (i) identify numerous access needs and develop local policy to pursue access funding;
 - (ii) develop a local access plan; and
 - (iii) solicit access sites through corporate assistance.
- (2) A local access plan shall identify needs and opportunities, determine access and facility requirements, establish local standards, and develop specific project design plans or guidelines by appropriate site. A local plan shall consider both financial resource availability (such as grants, impact fees or hotel/motel tax revenues) and construction timing. It shall establish local priorities and devise a system for annual evaluation of the plan.
- (3) Local governments may also include provisions in local subdivision ordinances that require access for waterfront developments or require payment in lieu of access for non-water dependent subdivisions. ~~The principle here is that, as land is subdivided and more people become residents, access and other recreation demands will follow.~~
- (4) Dedicated street stub outs may be acceptable for accessways.

(b) ~~The NCCMP Division of Coastal Management has primary responsibility for administering the coastal access program. Public Beach and Coastal Waterfront Access Program. Annually, the~~ The Division of Coastal Management (DCM) ~~will~~ shall solicit for pre-application proposals from local governments and will select competitive projects for full application submittal. ~~A group of Projects from~~ these final applications ~~will~~ shall be selected for funding based on ~~guidelines~~ criteria in Rule ~~7M-0305~~ 07M .0307 of this Section and anticipated fund availability.

(c) ~~DCM~~ The Division of Coastal Management ~~will~~ shall ensure all projects funded through the ~~annual grant program~~ Public Beach and Coastal Waterfront Access Program are making ~~reasonable~~ progress throughout project implementation and ensure that completed projects are operated and maintained for access purposes.

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0307 ELIGIBLE APPLICANTS/GRANT SELECTION CRITERIA

Any local government in the 20 coastal county region having ocean beaches, estuarine or public trust waters within its jurisdiction may apply for access funds:

- (1) Eligible projects include:
 - (a) Land acquisition, including acquisition of unbuildable lots;
 - (b) Local Access Sites;
 - (c) Neighborhood Access Sites;
 - (d) Regional Access Sites;
 - (e) Multi-regional Access Sites;
 - (f) Urban waterfront development projects;
 - (g) Reconstruction or relocation of existing, damaged facilities; and
 - (h) Reconstruction or replacement of aging facilities.
- (2) The following general criteria ~~will~~ shall be used to select projects that may receive financial assistance. ~~These criteria assist the Division of Coastal Management in carrying out the goals of this program. Other factors may also be considered in the funding decision:~~
 - (a) Applicant demonstrates a need for the project due to a high demand for public access and limited opportunities;
 - (b) Project is identified in a local beach or waterfront access plan;
 - (c) Applicant has not received previous assistance from this grant program or the applicant has received assistance and demonstrated its ability to complete previous projects successfully with funds from this grant program;
 - (d) Applicant's commitment of matching funds exceeds the required local share of the total project cost provided in ~~Item (3)~~ Items (4) and (5) of this Rule;
 - (e) Project proposal includes multiple funding sources;
 - (f) The project location includes donated land deemed unbuildable due to regulations or physical limitations;
 - (g) Applicant has demonstrated its ability to complete previous projects successfully with funds from this grant program.
- (3) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Counties designated as Tier 1 and Tier 2 shall be considered economically distressed.
- (4) Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent

of the acquisition cost, except for Tier 1 and Tier 2 designated counties and their respective municipalities which shall have a contribution of at least 10 percent. At least one half of the local contribution shall be cash match, the remainder may be in-kind match.

- (3)(5) Local government contributions for access site improvements must-shall be at least 25 percent of the project ~~costs.~~ costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution ~~must-shall~~ be cash match; the remainder may be in-kind match.
- (6) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other state programs.
- (4)(7) Multi-phase projects and previous contingency projects ~~will~~ shall be considered on their own merits within the pool of applications being reviewed in that year.

Authority G.S. 113A-124; 113A-134.3.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to adopt the rule cited as 15A NCAC 11 .1106 and amend the rules cited as 15A NCAC 11 .1102, .1104 - .1105, and .1423.

Proposed Effective Date: July 1, 2007

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): If a public hearing is desired, you may request one by contacting Beverly Hall, Section Chief of the Radiation Protection Section as follows: Beverly O. Hall, Section Chief, 1645 Mail Service Center, Raleigh, NC 27699-1645, Phone: 919-571-4141.*

Reason for Proposed Action: *This is a republication of the proposed rule changes due to the need to complete the APA fiscal note process. The original notice was published on January 16, 2007, with a scheduled public hearing that was held on February 7, 2007. The proposed changes are designed to restructure the annual fees assessed radioactive material and accelerator licensees to cover the anticipated costs of inspection, education and training activities associated with possession of such licenses in the current post 9/11 risk-based environment, and current sensitivity of all radioactive material and high radiation producing accelerators. These changes will allow a proactive/preventative position against malicious use of radioactive material through pre-licensing and increased security inspections. To ensure the inspection program is effective will require verification through expansion of a statewide monitoring program and a vigilant enforcement program. Waste coordination is another important component*

supporting inspections, which will have to be expanded to help licensees through increased visits and resources in identifying proper alternatives for the disposition of unwanted radioactive material. Most importantly, these changes will help build a strong foundation of Agency/Licensee expectations through education and training in the mission of keeping NC citizens and the environment safe from the hazardous effects of radiation.

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted, in writing to the individual listed below. Objections may also be submitted during the public hearings conducted on these rules. Objections must include the specific rule citation for the objectionable rule and the nature of the objection. Objections must include the complete name and contact information for the individual submitting the objection. Objections will be accepted until April 30, 2007.*

Comments may be submitted to: *Beverly O. Hall, Section Chief, 1645 Mail Service Center, Raleigh, NC 27699-1645, phone (919) 571-4141, fax (919) 571-4148, email beverly.hall@ncmail.net*

Comment period ends: April 30, 2007

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** (15A NCAC 11 .1106)
- ☒ **Local** (15A NCAC 11 .1106)
- ☐ **Substantive** (\geq \$3,000,000)
- ☒ **None** (15A NCAC 11 .1102, .1104, .1105, .1423)

CHAPTER 11 – RADIATION PROTECTION

SECTION .1100 - FEES

15A NCAC 11 .1102 PAYMENT DUE

- (a) All fees established in this Section shall be due on the effective date of this Rule and on the first day of July of each subsequent year.
- (b) Notwithstanding Paragraph (a) of this Rule, when a new license or registration is issued by the agency after the first day of July of any year, the initial fee shall be due on the date of issuance of the license or registration.

(c) The initial fee in Paragraph (b) of this Rule shall be computed as follows:

- (1) When any new license or registration is issued before the first day of January of any year, the initial fee shall be the full amount specified in Rule .1105 or .1106 of this Section; and
- (2) When any new license or registration is issued on or after the first day of January of any year, the initial fee shall be one-half of the amount specified in Rule .1105 or .1106 of this Section.

(d) All fees received by the agency pursuant to provisions of this Section shall be nonrefundable.

(e) Each licensee or registrant shall pay all fees by check or money order made payable to "~~Division of Radiation Protection~~" "Radiation Protection Section" and mail such payment to: ~~Division of Radiation Protection, North Carolina Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687.~~ Radiation Protection Section, Division of Environmental Health, Department of Environment and Natural Resources, 1645 Mail Service Center, Raleigh, North Carolina 27699-1645. Such payment may be

delivered to the agency at its office located at 3825 Barrett Drive, Raleigh, North Carolina 27609-7221.

Authority G.S. 104E-9(a)(8); 104E-19(a).

15A NCAC 11 .1104 DELINQUENT AND UNCOLLECTIBLE FEES

(a) Payment of fees established in this Section shall be delinquent, if not received by the agency within 60 days after the due date specified in Paragraphs (a) and (b) of Rule .1102 of this Section.

(b) If a licensee or registrant remits a fee in the form of a check or other instrument which is uncollectible from the paying institution, the agency shall notify the licensee or registrant by certified mail and allow the licensee or registrant 15 days to correct the ~~matter.~~ matter, which includes payment of any fee charged to the agency by a banking institution.

(c) If payment of fees is uncollectible from the paying institution or not submitted to the agency by the delinquent date, the agency may institute appropriate legal action to collect.

Authority G.S. 104E-9(8); 104E-19(a).

15A NCAC 11 .1105 X-RAY FEE AMOUNTS

(a) Annual fees for persons registered pursuant to provisions of Section .0200 of this Chapter are as listed in the following table:

| Type of registered facility | Letters appearing in registration number | Facility plus first X-ray tube | Each additional X-ray Tube to a maximum of 40 additional X-ray tubes |
|-----------------------------|--|--------------------------------|--|
| Clinics | A | \$ 90.00 | \$ 16.25 |
| Chiropractors | C | \$ 90.00 | \$ 16.25 |
| Dentists | D | \$ 90.00 | \$ 16.25 |
| Educational | E | \$ 65.00 | \$ 13.00 |
| Government | G | \$ 65.00 | \$ 13.00 |
| Podiatrists | H | \$ 90.00 | \$ 16.25 |
| Industrial | I | \$ 90.00 | \$ 16.25 |
| Industrial Medical | IM | \$130.00 | \$ 22.75 |
| Health Departments | L | \$130.00 | \$ 22.75 |
| Hospitals | M | \$195.00 | \$ 29.25 |
| Physicians | P | \$ 90.00 | \$ 16.25 |
| Industrial Radiography | R | \$195.00 | \$ 29.25 |
| Services | S | \$130.00 | \$ 0.00 |
| Veterinarians | V | \$ 65.00 | \$ 13.00 |
| Other | Z | \$ 90.00 | \$ 16.25 |

(b) ~~Annual fees for persons licensed pursuant to provisions of Section .0300 of this Chapter are as listed in the following table:~~

| Type of Radioactive Material License | Annual Fee |
|---|-----------------------|
| Specific license of broad scope | |
| medical or academic | \$1,200.00 |
| other | \$ 425.00 |
| Specific license | |
| industrial radiography (with temporary subsites) | \$1,525.00 |
| industrial radiography (in plant only) | \$ 780.00 |

PROPOSED RULES

| | |
|--|----------------------|
| manufacture or distribution | \$ 425.00 |
| medical institution other than teletherapy | \$ 360.00 |
| medical private practice | \$ 260.00 |
| medical teletherapy with one teletherapy unit | \$ 300.00 |
| and | |
| each additional teletherapy unit | \$ 65.00 |
| industrial gauges | \$ 225.00 |
| moisture density gauges | \$ 100.00 |
| gas chromatographs | \$ 100.00 |
| educational institutions | \$ 360.00 |
| services/consultants | \$ 100.00 |
| other | \$ 160.00 |
| General licenses | |
| industrial gauges | \$ 100.00 |
| IN VITRO testing and others | \$ 100.00 |

(c) Annual fees for persons licensed pursuant to provisions of Section .0900 of this Chapter are as listed in the following table:

| Description of Fee | Annual Fee |
|--|----------------------|
| Facility with one accelerator | \$ 300.00 |
| each additional accelerator | \$ 65.00 |

~~(d)(b)~~ Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rules .0211 and .0345 of this Chapter are the same as that provided for in the applicable category specified in Paragraphs (a), (b), and (c) Paragraph (a) of this Rule. ~~Only those out-of-state persons granted reciprocal recognition for the purpose of industrial radiography, portable gauge use and use that involves intentional exposures to individuals for medical purposes are subject to the payment of the prescribed fees contained in this Rule.~~ Such fees are due when application for reciprocal recognition of out-of-state license or registration is made in the same manner as for a new license or registration as specified in Rule .1102.

Authority G.S. 104E-9(a)(8); 104E-19(a).

15A NCAC 11 .1106 RADIOACTIVE MATERIALS AND ACCELERATOR FEE AMOUNTS

(a) Annual fees for persons licensed pursuant to provisions of Section .0300 of this Chapter are as listed in the following table:

| Type of Radioactive Material License | Annual Fee |
|---|------------------------|
| <u>Specific license of broad scope</u> | |
| -Medical Broad | \$ 3,600.00 |
| -Academic Broad | \$ 2,500.00 |
| -Research and Development Broad | \$ 2,000.00 |
| <u>Specific license</u> | |
| -industrial radiography (with temporary subsites) | \$ 2,500.00 |
| -industrial radiography (in plant only) | \$ 2,000.00 |
| -medical institution other than teletherapy | \$ 2,000.00 |
| -medical private practice | \$ 650.00 |
| -mobile medical practice (home office) | \$ 1,200.00 |
| -mobile medical practice (per additional client location) | \$ 250.00 |
| -medical teletherapy | \$ 750.00 |
| -fixed industrial gauges | \$ 350.00 |
| -portable gauges | \$ 250.00 |
| -gas chromatographs | \$ 250.00 |
| -manufacture or distribute | \$ 1,500.00 |
| -wet shielded irradiator >10,000kCi | \$ 3,600.00 |
| -educational institutions | \$ 1,750.00 |
| -water remediation activities (home office) | \$ 1,200.00 |
| -water remediation activities (per additional client location) | \$ 250.00 |
| -services/consultants | \$ 250.00 |
| -other | \$ 250.00 |
| <u>General licenses</u> | |
| -licenses subject to annual registration requirements | \$ 250.00 |

-licenses not subject to annual registration requirements \$ 150.00

(b) Annual fees for persons licensed pursuant to provisions of Section .0900 of this Chapter are as listed in the following table:

| -Description of Fee | Annual Fee |
|------------------------------------|-------------|
| -Facility with accelerator unit(s) | \$ 1,500.00 |

(c) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rule .0345 of this Chapter are the same as that provided for in the applicable category specified in Paragraphs (a) and (b) of this Rule. Such fees are due when application for reciprocal recognition of out-of-state license or registration is made in the same manner as for a new license or registration as specified in Rule .1102 of this Chapter.

Authority G.S. 104E-9(a)(8); 104E-19(a).

SECTION .1400 - TANNING FACILITIES

15A NCAC 11 .1423 FEES AND PAYMENT

(a) This Rule establishes initial, annual and reinstatement fees for persons registered pursuant to the provisions of this Section to cover the anticipated costs of tanning equipment inspection and enforcement activities of the agency.

(b) Annual fees established in this Rule shall be due on the effective date of this Rule and on the first day of July of each subsequent year; reinstatement fees shall be paid prior to reinstatement.

(c) Notwithstanding Paragraph (b) of this Rule, when a new registration is issued by the agency after the first day of July of any year, the initial fee shall be due on the date of issuance of the registration.

(d) The initial fee in Paragraph (c) of this Rule shall be computed as follows:

- (1) When any new registration is issued before the first day of January of any year, the initial fee shall be the full amount specified in this Rule; and
- (2) When any new registration is issued on or after the first day of January of any year, the initial fee shall be one-half of the amount specified in this Rule.

(e) All fees received by the agency pursuant to provisions of this Rule shall be nonrefundable.

(f) Each registrant may pay all fees by cash, check or money order provided:

- (1) Checks or money orders shall be made payable to ~~"Division of Radiation Protection"~~, "Radiation Protection Section", and mailed to 1645 Mail Service Center, Raleigh, NC 27699-1645 or delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221; and

- (2) Cash payments shall be made only by appointment by calling the agency at 919/571-4141 and delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221.

(g) Within five days after the due dates established in Paragraphs (b) and (c) of this Rule, the agency shall mail to each registrant, who has not already submitted payment, a notice which indicates the due date, the amount of fees due, the delinquent date and the amount of the reinstatement fee if not paid by the delinquent date.

(h) Payment of fees established in this Rule shall be delinquent, if not received by the agency within 60 days after the due date specified in Paragraphs (b) and (c) of this Rule.

(i) If a registrant remits a fee in the form of a check or other instrument which is uncollectible from the paying institution, the agency shall notify the registrant by certified mail and allow the registrant 15 days to correct the ~~matter~~, matter, which includes payment of any fee charged to the agency by a banking institution.

(j) If payment of fees is uncollectible from the paying institution or not submitted to the agency by the delinquent date, the agency may institute legal action to collect.

(k) Annual fees for persons registered pursuant to provisions of this Section are as listed in the following table:

| Type of registered facility | Letters appearing in registration number | Facility plus first Piece of Tanning Equipment | Each additional Piece of Tanning Equipment |
|-----------------------------|--|--|--|
| Tanning Facility | B | \$100.00 | \$16.00 |
| Tanning Equipment Services | F | \$100.00 | NA |

(l) When fees become delinquent as specified in this Rule, in addition to any delinquent fee owed to the agency, the registrant shall pay to the agency a reinstatement fee of one hundred fifty dollars (\$150.00).

Authority G.S. 104E-9(a)(8); 104E-19(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 18A .1956.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: March 16, 2007

Time: 10:00 a.m.

Location: Room 1A 201, 2728 Capital Building, 2728 Capital Blvd, Raleigh, NC

Reason for Proposed Action: *Proposed rule amendments will provide a new modified septic tank system with standards of siting, design permitting, and monitoring/maintenance. This also will comply with the conditions of a contested case settlement agreement that directed the Division of Environmental Health to adopt rules specifically related to the use of sand lined trench systems. Also included in the rule amendment are spelling, formatting and grammatical corrections to the existing rule.*

Procedure by which a person can object to the agency on a proposed rule: *Public comments will be accepted in writing, by email and/or public hearing to Connie Pixley (connie.pixley@ncmial.net) OSWP Section, 1642 Mail Service Center, Raleigh, NC 27699-1642.*

Comments may be submitted to: *Connie Pixley, On-Site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, phone (919)715-3273, fax (919)715-3227, email connie.pixley@ncmial.net*

Comment period ends: April 30, 2007

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 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1956 MODIFICATIONS TO SEPTIC TANK SYSTEMS

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

- (1) **SHALLOW SYSTEMS:** Sites classified UNSUITABLE as to soil depth or soil wetness may be reclassified as PROVISIONALLY SUITABLE with respect to soil depth or soil wetness conditions by utilizing shallow placement of nitrification trenches in the naturally occurring soil. Shallow trenches may be used where at least 24 inches of naturally occurring soil are present above saprolite, rock, or soil wetness conditions and all other factors are PROVISIONALLY SUITABLE or SUITABLE. Shallow trenches shall be designed and constructed to meet the vertical separation requirements in Rule .1955(m) of this Section. The long-term acceptance rate shall be based on the most hydraulically limiting naturally occurring soil horizon within 24 inches of the ground surface or to a depth of one foot below the trench bottom, whichever is deeper. Soil cover above the original grade shall be placed at a uniform depth over the entire nitrification field and shall extend laterally five feet beyond the nitrification trench. ~~The soil cover shall be placed over a nitrification field only after proper preparation of the original ground surface.~~ The type and placement of soil cover shall be approved by the local health department.
- (2) **DRAINAGE AND RESTRICTIVE HORIZONS:** Sites classified UNSUITABLE as to soil wetness conditions or restrictive horizons may be reclassified PROVISIONALLY SUITABLE as to soil wetness conditions or restrictive horizons when:
 - (a) Soils are Soil Groups I or II with SUITABLE structure, and clay mineralogy;
 - (b) Restrictive horizons, if present, are less than three inches thick or less than 12 inches from the soil surface;
 - (c) Modifications can be made to meet the requirements in Rule .1955(m) of this Section for the separation between the water table and the

bottom of the nitrification trench at all times and when provisions are made for maintenance of the drainage systems;

- (d) Easements are recorded and have adequate width for egress and ingress for maintenance of drainage systems serving two or more lots; and
- (e) Maintenance of the drainage system is made a condition of any permit issued for the use or operation of a sanitary sewage ~~system; and system.~~
- (f) ~~Drainage may be used in other types of soil when the requirements of Rule .1948(d) in this Section are met.~~

Drainage may be used in other types of soil when the requirements of Rule .1948(d) in this Section are met.

- (3) **GRAVELLESS MODIFIED TRENCHES:** Modified nitrification trenches or lines, including large diameter pipe (greater than four inches I.D.), and specially designed porous block systems may be permitted by the local health ~~department.~~ department as follows:

- (a) **GRAVELLESS TRENCHES:** Gravelless nitrification trench systems may be substituted for conventional trench systems on any site found to be ~~suitable~~ SUITABLE or ~~provisionally suitable~~ PROVISIONALLY SUITABLE in accordance with Rules .1940 to .1948 of this Section to eliminate the need for gravel, minimize site disturbance, or for other site planning considerations. Gravelless nitrification trench systems shall not be used, however, where wastes contain high amounts of grease and oil, such as restaurants. Large diameter pipe systems and porous block systems may be permitted by the local health department as follows:

- (i) Large diameter pipe systems shall consist of eight-inch or 10-inch (inside diameter), corrugated, polyethylene tubing encased in a nylon, polyester, or nylon/polyester blend filter wrap installed in a nitrification trench, 12 or more inches wide and backfilled with soil classified as soil group I, II, or III. Nitrification area requirement shall be determined in accordance

with Rules .1955(b) and .1955(c), or in Rule .1956(6)(b), Table III(a) of this Section, when applicable, with eight-inch tubing considered equivalent to a two-foot-wide conventional trench and 10-inch tubing considered equivalent to a two and one-half-foot-wide conventional trench. The long-term acceptance rate shall not exceed 0.8 gallons per day per square foot. Tubing and fittings shall comply with the requirements of ASTM F-667, "Standard Specification for Large Diameter Corrugated Polyethylene Pipe and Fittings," which is hereby incorporated by reference including any subsequent amendments and editions. Copies of the standards may be inspected ~~in and copies obtained from~~ at the Division of Environmental Health, ~~P.O. Box 27687,~~ Raleigh, NC 27611-7687 at ~~no cost.~~ Central Office, located at 2728 Capital Blvd., Raleigh, NC, and copies may be downloaded from the internet at <http://www.astm.org>, or obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19438-2959. The corrugated tubing shall have two rows of holes, each hole between three-eighths and one-half-inch in diameter, located 120 degrees apart along the bottom half of the pipe (each 60 degrees from the bottom center line) and staggered so that one hole is present in the valley of each corrugation. The tubing shall be marked with a visible top location indicator, 120 degrees away from each row of holes. Filter wrap shall be spun, bonded, or spunlaced nylon, polyester, or

nylon/polyester blend nylon
filter wrap meeting the
following minimum
~~requirements:—requirements~~
in Table III(a):
Unit Weight: OZ/yd² = 1.0
Sheet Grab Tensile: MD—23
lbs.

~~Trapezoid Tear: MD—6.2
lbs.
XD—5.1 lbs.
Mullen Burst: PSI = 40
KPa = 276~~

Frazier Air Perm, CFM/ft²]
0.5 "H₂O: 500"

| <u>Table III(a): Minimum Filter Wrap Requirements for Large Diameter Pipe Systems</u> | |
|---|--|
| <u>PROPERTY</u> | <u>VALUE</u> |
| <u>Unit Weight</u> | <u>1.0 ounce per square yard</u> |
| <u>Sheet Grab Tensile Strength</u> | <u>Machine Direction: 23 pounds</u> |
| <u>Trapezoid Tear Strength</u> | <u>Machine Direction: 6.2 pounds</u> <u>Cross Direction: 5.1 pounds</u> |
| <u>Mullen Burst Strength</u> | <u>40 pounds per square inch or</u> <u>276 kilopascals</u> |
| <u>Frazier Air Permeability</u> | <u>500 cubic feet per minute per square foot at</u> <u>pressure differential of 0.5 inches of water</u> |

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

- (ii) or distribution device and making a mechanical joint in the nitrification trench.
- A Prefabricated, Permeable Block Panel System (PPBPS), ~~utilizing~~ utilizing both horizontal and vertical air chambers and ~~special construction constructed to~~ promote downline and horizontal distribution of effluent, may be used under the following conditions:
- (A) the soil and site criteria of this Section shall be met;
 - (B) in calculating the required linear footage for a PPBPS's nitrification field, the linear footage for the nitrification line as determined in Rule .1955 (b) and (c), or in Rule .1956 (6)(b), Table III(a) of this Section when applicable, shall be multiplied by 0.5 for a 16 inch PPBPS;
 - (C) installation of the PPBPS shall be in accordance with

- ~~these Rules~~ Rule
~~.1955~~ except:
- (I) the PPBPS trench shall be located not less than eight feet on centers;
 - (II) the installation shall be in accordance with the manufacturer's specifications; and
 - (III) the sidewalls of nitrification trenches placed in Group IV soils shall be raked to open pores which were damaged or sealed during excavation;
 - (D) where design sewage flow is more than 480 gallons per day, the system shall be pressure-dosed; and
 - (E) the long-term acceptance rate shall not exceed 0.8 gallons per day per square foot.
- (b) Other types of nitrification trenches or lines may be approved by the local health department on a site-specific basis in accordance with Rule .1969 of this Section.
- (4) INTERCEPTOR DRAINS: Sites classified as UNSUITABLE as to soil wetness conditions because of the presence of lateral water movement may be reclassified PROVISIONALLY SUITABLE as to soil wetness conditions when such water is intercepted and diverted to prevent saturation of the soil absorption system.
- (5) STEEP SLOPES: Stable slopes greater than 30 percent may be reclassified as PROVISIONALLY SUITABLE when:
- (a) The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least one foot below the bottom of the nitrification trench at the upslope side of the trench;
 - (b) Surface water runoff is diverted around the nitrification field if necessary to prevent scouring or erosion of the soil over the field; and
- (c) The finished grade over the nitrification field site is returned to the original topography and ~~adequately seeded,~~ seeded to establish a permanent vegetative cover, unless otherwise specified by the local health department.
- (6) SAPROLITE SYSTEM: Sites classified UNSUITABLE as to soil depth, with saprolite present, may be reclassified PROVISIONALLY SUITABLE as to soil depth ~~when the provisions of this Paragraph are met, when:~~
- (a) An investigation of the site using pits at locations specified by the local health department ~~shall be~~ is conducted. The following physical properties and characteristics shall be present in the two feet of saprolite below the proposed trench bottom:
 - (i) the saprolite texture ~~shall be~~ is sand, loamy sand, sandy loam, loam, or silt loam;
 - (ii) clay mineralogy ~~shall be~~ is suitable;
 - (iii) greater than two-thirds of the material ~~shall have~~ has a moist consistence ~~of that is~~ loose, very friable, friable, or firm;
 - (iv) the saprolite wet consistence ~~shall be~~ is nonsticky or slightly sticky and nonplastic or slightly plastic;
 - (v) the saprolite ~~shall be~~ is in an undisturbed, naturally occurring state; and
 - (vi) the saprolite ~~shall have~~ has no open and continuous joints, quartz veins, or fractures that are relic of parent rock to a depth of two feet below the proposed trench bottom.
 - (b) ~~Table III~~ Table III(b) ~~shall be~~ is used in determining the long-term acceptance ~~rate rate, for septic tank systems installed pursuant to Paragraph (6) of this Rule.~~ The long-term acceptance rate shall be based on the most hydraulically limiting, naturally occurring saprolite to a depth of two feet below trench bottom.

TABLE III

| SAPROLITE | SAPROLITE | LONG TERM |
|-----------|------------------|-----------------|
| GROUP | TEXTURAL CLASSES | ACCEPTANCE RATE |

gpd/ft²

| | | | | |
|----|------------|------------|-----|-----|
| I | Sands | Sand | 0.8 | 0.6 |
| | Loamy Sand | | 0.7 | 0.5 |
| II | Loams | Sandy Loam | 0.6 | 0.4 |
| | Loam | | 0.4 | 0.2 |
| | Silt Loam | | 0.3 | 0.1 |

Table III(b): Long-Term Acceptance Rates for Saprolite Systems

| <u>SAPROLITE GROUP</u> | <u>SAPROLITE TEXTURAL CLASS</u> | | <u>LONG-TERM ACCEPTANCE RATE</u> (gallons per day per square foot) |
|------------------------|---------------------------------|------------|---|
| I | Sands | Sand | 0.8 – 0.6 |
| | | Loamy Sand | 0.7 – 0.5 |
| II | Loams | Sandy Loam | 0.6 – 0.4 |
| | | Loam | 0.4 – 0.2 |
| | | Silt Loam | 0.3 – 0.1 |

If a low pressure pipe system is used, the long term acceptance rate in Table III(a) shall be reduced by one-half and the system shall be designed in accordance with Rule .1957(a) of this Section, except that Rule .1957 (a)(2)(B) and Rule .1957(a)(3) shall not apply. Saprolite textural classifications shall be determined from disturbed materials and determined by Rule .1941(a)(1) of this Section. Low-pressure distribution shall be used when the total length of nitrification lines exceeds 750 feet in a single system.

- (c) The design daily flow ~~shall~~ does not exceed 1000 gallons.
- (d) The nitrification field ~~shall be~~ is constructed using nitrification trenches with a maximum width of three feet and a maximum depth of three feet on the downslope side of the nitrification trench. The bottom of a nitrification trench shall be a minimum of two feet above rock or saprolite that does not meet the requirements of Subparagraph (6)(a) of this Rule. However, where SUITABLE or PROVISIONALLY SUITABLE soil underlies the trench bottom, this separation distance may be reduced by subtracting the actual soil depth beneath the trench bottom from 24 inches to establish the minimum separation distance from the trench bottom to rock.
- (e) The bottom of any nitrification trench ~~shall be~~ is a minimum of two feet above any wetness condition.
- (f) Surface and subsurface interceptor drains ~~shall be~~ are required on sites with more slowly permeable horizons above the usable saprolite to intercept laterally flowing waters or perched waters.

- (g) ~~Exceptions to the provisions of Rule .1950(a) found in Rule .1950 and .1951 of this Section shall not apply to systems installed pursuant to this Paragraph item [Rule .1956(6)].~~
- (h) ~~Other saprolite systems may be approved on a site specific basis in accordance with Rule .1948(d) of this Section.~~

Exceptions to the provisions of Rule .1950(a) found in Rule .1950 and .1951 of this Section shall not apply to systems installed pursuant to this Item [Rule .1956(6)]. Other saprolite systems may be approved on a site-specific basis in accordance with Rule .1948(d) of this Section.

- (7) SAND LINED TRENCH SYSTEM: Sites classified UNSUITABLE as to soil wetness, soil morphology, restrictive horizon or soil depth where a horizon with higher permeability underlies less permeable horizons, may be reclassified PROVISIONALLY SUITABLE as to soil wetness, soil morphology, restrictive horizon or soil depth (soil depth to parent material, not rock) when:

- (a) An investigation of the site using pits or auger borings at locations specified by the local health department is conducted. The following physical properties and characteristics shall be present:
 - (i) if the receiving permeable horizon is deeper than five feet below the natural grade, the effluent is to receive pretreatment to TS-I level prior to pressure dispersal in the sand lined trenches. If the receiving permeable horizon is encountered at depths of five feet or less

- below the natural grade, pretreatment to TS-I level and pressure dispersal is not required;
- (ii) the texture of the receiving permeable horizon is sand, loamy sand, sandy loam, loam, or silt loam;
- (iii) the structure of the receiving horizon is classified as SUITABLE or PROVISIONALLY SUITABLE;
- (iv) the moist consistence of the receiving permeable horizon is loose, very friable, friable, or firm; and
- (v) if the receiving permeable horizon has zones of heavier textured materials, these zones are discontinuous with an average thickness not exceeding 1/3 of the required thickness of the receiving permeable horizon.
- (b) The minimum thickness required of the receiving permeable horizon is dependent upon the texture of the receiving horizon as follows:
- (i) sand or loamy sand – 1 foot thick;
- (ii) sandy loam or loam – 2 feet thick; or
- (iii) silt loam – 3 feet thick.
- (c) Table III (c) is used in determining the long-term acceptance rate. The long-term acceptance rate shall be based on the most hydraulically limiting, naturally occurring soils overlying the permeable receiving layer.

| Table III(c): Long-Term Acceptance Rates for Sand Lined Trench Systems | | | |
|--|---|--|--|
| SOIL GROUP | TEXTURAL CLASSES | DISTRIBUTION OR PRETREATMENT CONDITION | LONG-TERM ACCEPTANCE RATE (gallons per day per square foot, on trench bottom area basis) |
| I | Sands (Sand, Loamy Sand) | Gravity Distribution | 0.7 – 0.9 |
| | | Pressure Dispersal | 0.8 – 1.2 |
| | | Pressure Dispersal and TS-I pretreatment | 0.9 – 1.4 |
| II | Coarse Loams (Sandy Loam, Loam) | Gravity Distribution | 0.5 – 0.7 |
| | | Pressure Dispersal | 0.6 – 0.8 |
| | | Pressure Dispersal and TS-I pretreatment | 0.7 – 1.0 |
| III | Fine Loams (Sandy Clay Loam, Silt Loam, Clay Loam, Silty Clay Loam, Silt) | Gravity Distribution | 0.2 - 0.4 |
| | | Pressure Dispersal | 0.3 – 0.6 |
| | | Pressure Dispersal and TS-I pretreatment | 0.4 – 0.8 |
| IV | Clays (Clay, Sandy Clay, Silty Clay) | Gravity Distribution | 0.1 – 0.2 |
| | | Pressure Dispersal | 0.15 – 0.3 |
| | | Pressure Dispersal and TS-I pretreatment | 0.2 – 0.4 |

If a low pressure pipe system is used, the system shall be designed in accordance with Rule .1957(a) of this Section, except that Rule .1957(a)(2)(B) and Rule .1957(a)(3) shall not apply and trenches shall be a maximum of three feet in width. Textural classifications of the overlying material shall be determined from disturbed materials and determined by Rule .1941(a)(1) of this Section. Pressure distribution shall be used when the total length of nitrification lines exceed 600 linear feet in a single system and pressure dispersal such as LPP or drip irrigation shall be used when the

total length of nitrification lines exceeds 1200 linear feet in a single system.

- (d) A Certified Operator or a Public Management Entity with a Certified Operator is required for all sand lined trench systems. A Public Management Entity with a Certified Operator shall be required for sand lined trench systems when drainage will be utilized to lower the water table on a site.
- (e) The sand lined trench system is classified as a type V system in accordance with Rule .1961 of this Section, except that the required

- inspection frequency shall be at least once per year by the certified operator and greater frequency for advanced pretreatment and pressure dispersal systems as required by Rule .1961, Rule .1969 or Rule .1970.
- (f) The design daily flow does not exceed 1000 gallons.
 - (g) The nitrification field is constructed using nitrification trenches with a maximum width of three feet. The bottom of the gravel portion of the sand lined trench shall be no deeper than 24 inches below finished grade.
 - (h) The sand lined trenches are constructed to extend into the permeable horizon. If the sand lined trenches are deeper than five feet below the natural grade, the effluent shall receive pretreatment to TS-I level prior to dispersal in the sand lined trench.
 - (i) Filter media used in the sand lined portion of the trench is sand or loamy sand in texture. If required by the local health department in the Construction Authorization, the installer shall provide written laboratory verification of the media textural classification and quality prior to the sand lined trench being installed.
 - (j) Drainage is required when the sand lined trench is used and soil wetness conditions are present that are not related to lateral water movement. Drainage shall extend into the permeable layer. Drainage shall be maintained on the site to provide for 18 inches of separation between the water table and the bottom of the gravel portion of the trench. This separation distance may be reduced to 12 inches if pressure dispersal is utilized, nine inches if advanced pretreatment meeting TS-I is utilized and six inches if both pressure dispersal and TS-I pretreatment are utilized.
 - (k) The drainage plan is prepared by a person or persons who are licensed or registered to consult, investigate, evaluate, plan or design wastewater systems, soil and rock characteristics, ground water hydrology, or drainage systems if required in G.S. 89C, 89E, 89F, or 90A Article 4. The drainage shall have an outlet accessed by gravity or by a designed pump

drainage system. The outlet location and elevation must be shown with relative water level elevations and drainfield site elevations labeled on the drainage plan.

- (l) Plans and specifications for a drainage system serving two or more lots are prepared in accordance with Rule .1938(c) of this Section.
- (m) Side ditches or surface swales in a U shape around the system are used to facilitate surface water removal. Swales shall be at least 18 inches deep and located at least 25 feet from the outer edge of the nitrification trenches.
- (n) The drainfield area is crowned at a minimum grade of one percent as measured from the centerline of the drainfield to the top of the bank of the side ditches or surface swales.
- (o) No depressions are allowed over the drainfield area, including no linear depressions shall be allowed over the trenches.

Exceptions to the provisions of Rule .1950(a) found in Rule .1950 and .1951 of this Section shall not apply to systems installed pursuant to this Item [Rule .1956(7)]. Other sand lined trench systems may be approved by the local health department on a site-specific basis in accordance with Rule .1948(d) of this Section.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSION

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Chiropractic Examiners intends to amend the rule cited as 21 NCAC 10 .0302 and adopt the rule cited as 21 NCAC 10 .0304.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: March 22, 2007

Time: 10:00 a.m.

Location: Office of the Board of Chiropractic Examiners, 174 Church St., Concord, NC 28025

Reason for Proposed Action:

21 NCAC 10 .0302 - The Board of Examiners proposes to adopt a new rule clarifying the requirements for advertising a

specialty. It is necessary to amend the existing advertising rule to harmonize with the new rule.

21 NCAC 10 .0304 – *This new rule is intended to protect consumers against false or misleading advertising by chiropractors. The rule prohibits a chiropractor from designating himself as a specialist unless he has completed post-graduate training in a recognized specialty and passed a comprehensive national examination.*

Procedure by which a person can object to the agency on a proposed rule: *Objections can be filed in writing and addressed to the N.C. Board of Chiropractic Examiners, Carol Hall, Executive Secretary, P.O. Box 312, Concord, NC 28026.*

Comments may be submitted to: *Dennis L. Hall, DC, P.O. Box 312, Concord, NC 28026*

Comment period ends: *April 30, 2007*

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

SECTION .0300 - RULES OF UNETHICAL CONDUCT

21 NCAC 10 .0302 ADVERTISING AND PUBLICITY

(a) General. Doctors of Chiropractic should exercise restraint in matters of advertising and publicity so as to maintain the dignity of chiropractic as a recognized profession.

(b) Identification. The terms by which a licentiate may identify himself professionally are listed in G.S. 90-154.2. Terms which do not clearly indicate that the licentiate is a chiropractor, such as "drugless physician" or "naturopath", shall not be used.

- (1) Signs. Small signs which do not offend the dignity of the profession may be placed on exterior doors, windows or walls of the licentiate's office or at entrances to the building in which his office is located.
- (2) Stationery. A licentiate may identify himself on his stationery and mailing literature using the terms permitted by this Rule.

(c) Prohibited Advertising. The Board of Examiners deems the following to be false or misleading advertising in violation of G.S. 90-154(b)(1):

- (1) Advertising which purports to guarantee a beneficial result from chiropractic treatment.
- (2) Advertising which promotes a treatment, therapy or service which the Board of Examiners has found to be unacceptable care.
- (3) Advertising in which the licentiate is identified as a specialist, unless he has completed all coursework and passed an examination in a post-graduate course of study offered by an institution approved by the Council on Chiropractic Education and has caused to be filed with the Board a copy of his post-graduate diploma or certificate; the licentiate has complied with the requirements of 21 NCAC 10 .0304.

Authority G.S. 90-142; 90-154.

21 NCAC 10 .0304 DESIGNATION OF SPECIALTIES

(a) Definitions. For purposes of this Rule, the following definitions shall apply:

- (1) Claim of Specialization: any use of the designations listed in this Rule or any representation stating or implying that, by virtue of additional training, a licentiate possesses greater expertise in any aspect of health care than is possessed by chiropractic physicians who have not had additional training. The mere recitation of academic degrees awarded to a licentiate does not constitute a claim of specialization.
- (2) Publication: includes but is not limited to representations made in a licentiate's advertising, whether printed or broadcast; written representations appearing on professional stationery, business cards, curriculum vitae or office signage; and oral representations made in judicial proceedings.

(b) Recognized Specialties. The Board of Examiners recognizes the following specialties: chiropractic orthopedics, chiropractic radiology and chiropractic neurology. Any published claim of specialization outside these subject areas or any published claim of specialization made by or at the behest of a licentiate who has not satisfied all applicable provisions of this Rule constitutes false or misleading advertising.

(c) Chiropractic Orthopedics. This specialty is designated by the terms "Diplomate of the American Board of Chiropractic Orthopedics" ("DABCO"), "Diplomate of the Academy of Chiropractic Orthopedics" ("DACO"), "Fellow of the Academy of Chiropractic Orthopedics" ("FACO") or "Chiropractic Orthopedist." In order to claim chiropractic orthopedics as a specialty, a licentiate shall first:

- (1) Complete a post-graduate course of study in orthopedics at least 300 hours in length and

offered by a college approved by the Council on Chiropractic Education; and

- (2) Pass all parts of the DABCO examination, or all parts of an examination deemed by the Board of Examiners to be the equivalent of the DABCO examination, and cause a copy of the DABCO diploma or its equivalent to be filed with the Board of Examiners.

(d) Chiropractic Radiology. This specialty is designated by the terms "Diplomate of the American Chiropractic Board of Radiology" ("DACBR") or "Chiropractic Radiologist." In order to claim chiropractic radiology as a specialty, a licentiate shall first:

- (1) Complete a post-graduate course of study in radiology at least 300 hours in length and offered by a college approved by the Council on Chiropractic Education; and
- (2) Pass all parts of the DACBR examination, or all parts of an examination deemed by the Board of Examiners to be the equivalent of the DACBR examination, and cause a copy of the

DACBR diploma or its equivalent to be filed with the Board of Examiners.

(e) Chiropractic Neurology. This specialty is designated by the terms "Diplomate of the American Chiropractic Neurology Board" ("DACNB") or "Chiropractic Neurologist." In order to claim chiropractic neurology as a specialty, a licentiate shall first:

- (1) Complete a post-graduate course of study in neurology at least 300 hours in length and offered by a college approved by the Council on Chiropractic Education; and
- (2) Pass all parts of the DACNB examination, or all parts of an examination deemed by the Board of Examiners to be the equivalent of the DACNB examination, and cause a copy of the DACNB diploma or its equivalent to be filed with the Board of Examiners.

Authority G.S. 90-142; 90-154.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on January 18, 2007

**REGISTER CITATION TO THE
NOTICE OF TEXT****AGRICULTURE, BOARD OF**Admission Regulations

02 NCAC 20B .0104 20:16 NCR

HOME INSPECTOR LICENSURE BOARDDefinitions

11 NCAC 08 .1101* 21:08 NCR

Purpose and Scope

11 NCAC 08 .1103 21:08 NCR

General Exclusions

11 NCAC 08 .1105* 21:08 NCR

Exterior

11 NCAC 08 .1107 21:08 NCR

Plumbing

11 NCAC 08 .1109 21:08 NCR

Electrical

11 NCAC 08 .1110 21:08 NCR

Heating

11 NCAC 08 .1111 21:08 NCR

Air conditioning

11 NCAC 08 .1112* 21:08 NCR

Interiors

11 NCAC 08 .1113 21:08 NCR

Insulation and Ventilation

11 NCAC 08 .1114 21:08 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSIONRequired Annual In-Service Training Topics

12 NCAC 09E .0102 21:05 NCR

Minimum training Specifications: Annual In-Service Training

12 NCAC 09E .0105 21:05 NCR

Sanctions

12 NCAC 09F .0106* 21:05 NCR

LABOR, DEPARTMENT OFFall Protection

13 NCAC 07F .0605* 21:07 NCR

Definitions

13 NCAC 20 .0101* 21:07 NCR

Current Employees

13 NCAC 20 .0302 21:07 NCR

Prospective Employees

13 NCAC 20 .0303 21:07 NCR

COASTAL RESOURCES COMMISSIONTechnical Standards for Beach Fill Projects

15A NCAC 07H .0312* 21:03 NCR

EDUCATION, STATE BOARD OFDispute Resolution Process for Homeless Students

16 NCAC 06H .0112* 21:06 NCR

MEDICAL BOARD

APPROVED RULES

| | | | | | |
|---|----|------|-----|--------|-----------|
| <u>Declaratory Ruling</u> | 21 | NCAC | 32A | .0107 | 21:05 NCR |
| <u>Request for Declaratory Ruling</u> | 21 | NCAC | 32A | .0111* | 21:05 NCR |
| <u>Disposition of Request</u> | 21 | NCAC | 32A | .0112* | 21:05 NCR |
| <u>Procedure for Declaratory Ruling</u> | 21 | NCAC | 32A | .0113* | 21:05 NCR |

PHARMACY, BOARD OF

| | | | | | |
|---|----|------|----|--------|-----------|
| <u>Definitions</u> | 21 | NCAC | 46 | .1317* | 21:04 NCR |
| <u>Right to Refuse a Prescription</u> | 21 | NCAC | 46 | .1801 | 21:04 NCR |
| <u>Availability of Records</u> | 21 | NCAC | 46 | .2607* | 21:04 NCR |
| <u>Storage of Devices and Medical Equipment</u> | 21 | NCAC | 46 | .2612 | 21:04 NCR |

APPRAISAL BOARD

| | | | | | |
|---|----|------|-----|--------|-----------|
| <u>Qualifications for Trainee Registration</u> | 21 | NCAC | 57A | .0201* | 21:06 NCR |
| <u>Certified Residential Real Estate Appraiser Course Requir...</u> | 21 | NCAC | 57B | .0102* | 21:06 NCR |
| <u>Certified General Real Estate Appraiser Course Requirements</u> | 21 | NCAC | 57B | .0103* | 21:06 NCR |

STATE PERSONNEL COMMISSION

| | | | | | |
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| <u>Exempt Priority Consideration-Policy and Scope</u> | 25 | NCAC | 01H | .1001* | 21:02 NCR |
|---|----|------|-----|--------|-----------|

TITLE 02 – DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES**02 NCAC 20B .0104 ADMISSION RULES**

(a) All persons entering the North Carolina State Fair grounds must pay the established admission fee, except persons holding worker's permits. One-time-only admissions may be issued to those persons who are employed by the Fair or are asked to appear on the grounds by the Fair management for a specific purpose, relative to the operation of the fair.

(b) The gates of the North Carolina State Fair shall be open to visitors from 9:00 a.m. until midnight each day of the fair. Exhibit buildings shall be open from 9:00 a.m. to 9:45 p.m. daily.

(c) The State Fair Manager may operate a pass-out system at one or more of the outside gates. Persons exiting through these gates may, upon request, have their hand or vehicle stamped for readmittance through the same gate without additional charge. Readmittance must occur before 10:00 p.m. on the same day as pass-out or the hand stamp shall not be honored.

(d) Outside gate admission prices are as follows:

- | | | |
|-----|---------------------------------------|--------|
| (1) | adult/child, 13 years of age and over | \$7.00 |
| (2) | child, 6 through 12 years of age | \$2.00 |
| (3) | senior citizen, 65 and over | Free |
| (4) | child, under 6 years of age | Free |

(e) Outside gate admission prices for advance ticket sales are as follows:

- | | | |
|-----|--|--------|
| (1) | adult/child, 13 years of age and over | \$5.00 |
| (2) | child, 6 through 12 years of age | \$1.00 |
| (3) | senior citizen, 65 and over | Free |
| (4) | child, under 6 years of age | Free |
| (5) | adult group sales purchasing a minimum of 40 tickets | \$4.75 |

History Note: Authority G.S. 106-503;

Eff. February 1, 1976;

Amended Eff. February 1, 2007; July 1, 2000; October 1, 1993; June 1, 1989; July 1, 1985; April 1, 1984.

TITLE 11 – DEPARTMENT OF INSURANCE**11 NCAC 08 .1101 DEFINITIONS**

The following definitions apply to this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.

- (2) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
- (3) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.
- (4) "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
- (5) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
- (6) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.
- (7) "Describe" means report in writing a system or component by its type, or other inspected characteristics, to distinguish it from other systems or components used for the same purpose.
- (8) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance
- (9) "Enter" means to go into an area to inspect all visible components.
- (10) "Functional drainage" means a drain that empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.
- (11) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.
- (12) "Habitable space" means a space in a building for living, sleeping, eating or cooking. "Habitable space" does not mean a bathroom, toilet room, closet, or any space used or designed for storage.
- (13) "Inspect" means to make a visual examination.
- (14) "Installed" means attached or connected such that an item requires tools for removal.
- (15) "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch.
- (16) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.
- (17) "On-site water supply quantity" means the rate of flow of on-site well water.
- (18) "Operate" means to cause systems or equipment to function.
- (19) "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (20) "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.
- (21) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight.
- (22) "Representative number" means, for multiple identical components such as windows and electrical outlets, one such component per room; and, for multiple identical exterior components, one such component on each side of the building.
- (23) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.
- (24) "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.
- (25) "Solid fuel heating device" means any wood, coal, fossil, or other similar organic fuel burning device, including fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.
- (26) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).
- (27) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.
- (28) "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.
- (29) "Under floor crawl space" means the area within the confines of the foundation and

between the ground and the underside of the lowest floor structural component.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005; May 1, 2003.

11 NCAC 08 .1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with an understanding of the property conditions, as inspected at the time of the home inspection.

(b) Home inspectors shall:

- (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
 - (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
 - (B) Describe what services shall be provided and their cost; and
 - (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
- (2) Inspect readily visible and readily accessible installed systems and components listed in this Section; and
- (3) Submit a written report to the client that shall:
 - (A) Describe those systems and components required to be described in Rules .1106 through .1115 of this Section;
 - (B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
 - (C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
 - (D) State whether the condition reported requires repair or subsequent observation, or warrants further investigation by a specialist; and
 - (E) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.

(c) This Section does not limit home inspectors from:

- (1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
- (2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

(d) Written reports required by this Rule for pre-purchase home inspections of three or more systems shall include a separate section labeled "Summary" that includes any system or component that:

- (1) does not function as intended or adversely affects the habitability of the dwelling; or
- (2) warrants further investigation by a specialist or requires subsequent observation.

This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or enhance the function or efficiency of the home. This summary shall contain the following statements: "This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the complete report."

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005; May 1, 2003; July 1, 2000.

11 NCAC 08 .1105 GENERAL EXCLUSIONS

(a) Home inspectors are not required to report on:

- (1) Life expectancy of any component or system;
- (2) The causes of the need for a repair;
- (3) The methods, materials, and costs of corrections;
- (4) The suitability of the property for any specialized use;
- (5) Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions;
- (6) The market value of the property or its marketability;
- (7) The advisability or inadvisability of purchase of the property;
- (8) Any component or system that was not inspected;
- (9) The presence or absence of pests such as wood damaging organisms, rodents, or insects; or
- (10) Cosmetic damage, underground items, or items not permanently installed.

(b) Home inspectors are not required to:

- (1) Offer warranties or guarantees of any kind;
- (2) Calculate the strength, adequacy, or efficiency of any system or component;
- (3) Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health

- or safety of the home inspector or other persons;
- (4) Operate any system or component that is shut down or otherwise inoperable;
- (5) Operate any system or component that does not respond to normal operating controls;
- (6) Move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
- (7) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including toxins, carcinogens, noise, contaminants in the building or in soil, water, and air;
- (8) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
- (9) Predict future condition, including failure of components;
- (10) Project operating costs of components;
- (11) Evaluate acoustical characteristics of any system or component;
- (12) Inspect special equipment or accessories that are not listed as components to be inspected in this Section; or
- (13) Disturb insulation, except as required in Rule .1114 of this Section.

(c) Home inspectors shall not:

- (1) Offer or perform any act or service contrary to law; or
- (2) Offer or perform engineering, architectural, plumbing, electrical or any other job function requiring an occupational license in the jurisdiction where the inspection is taking place, unless the home inspector holds a valid occupational license, in which case the home inspector shall inform the client that the home inspector is so licensed, and therefore qualified to go beyond this Section and perform additional inspections beyond those within the scope of the Standards of Practice.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005; May 1, 2003.

11 NCAC 08 .1107 EXTERIOR

(a) The home inspector shall inspect:

- (1) Wall cladding, flashings, and trim;
- (2) Entryway doors and a representative number of windows;
- (3) Garage door operators;
- (4) Decks, balconies, stoops, steps, areaways, porches and applicable railings;
- (5) Eaves, soffits, and fascias;

- (6) Driveways, patios, walkways, and retaining walls; and
- (7) Vegetation, grading, and drainage with respect only to their effect on the condition of the building.

(b) The home inspector shall:

- (1) Describe wall cladding materials;
- (2) Operate all entryway doors;
- (3) Operate garage doors manually or by using permanently installed controls for any garage door operator;
- (4) Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and
- (5) Probe exterior wood components where deterioration is suspected.

(c) The home inspector is not required to inspect:

- (1) Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
- (2) Fences;
- (3) For the presence of safety glazing in doors and windows;
- (4) Garage door operator remote control transmitters;
- (5) Geological conditions;
- (6) Soil conditions;
- (7) Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); except as otherwise provided in 11 NCAC 08 .1109(d)(5)(F);
- (8) Detached buildings or structures; or
- (9) For the presence or condition of buried fuel storage tanks.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005; July 1, 2000.

11 NCAC 08 .1109 PLUMBING

(a) The home inspector shall inspect:

- (1) Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections;
- (2) Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage;
- (3) Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents;

- (4) Fuel storage and distribution systems including: interior fuel storage equipment, supply piping, venting, and supports; leaks; and
- (5) Sump pumps.
- (b) The home inspector shall describe:
 - (1) Water supply and distribution piping materials;
 - (2) Drain, waste, and vent piping materials;
 - (3) Water heating equipment, including fuel or power source, storage capacity, and location; and
 - (4) The location of any main water supply shutoff device.
- (c) The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.
- (d) The home inspector is not required to:
 - (1) State the effectiveness of anti-siphon devices;
 - (2) Determine whether water supply and waste disposal systems are public or private;
 - (3) Operate automatic safety controls;
 - (4) Operate any valve except water closet flush valves, fixture faucets, and hose faucets;
 - (5) Inspect:
 - (A) Water conditioning systems;
 - (B) Fire and lawn sprinkler systems;
 - (C) On-site water supply quantity and quality;
 - (D) On-site waste disposal systems;
 - (E) Foundation irrigation systems;
 - (F) Bathroom spas, except as to functional flow and functional drainage;
 - (G) Swimming pools;
 - (H) Solar water heating equipment; or
 - (6) Inspect the system for proper sizing, design, or use of proper materials.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005.

11 NCAC 08 .1110 ELECTRICAL

- (a) The home inspector shall inspect:
 - (1) Service entrance conductors;
 - (2) Service equipment, grounding equipment, main overcurrent device, and main and distribution panels;
 - (3) Amperage and voltage ratings of the service;
 - (4) Branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities;
 - (5) The operation of a representative number of installed ceiling fans, lighting fixtures,

- switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
- (6) The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
- (7) The operation of ground fault circuit interrupters; and
- (8) Smoke detectors.
- (b) The home inspector shall describe:
 - (1) Service amperage and voltage;
 - (2) Service entry conductor materials;
 - (3) The service type as being overhead or underground; and
 - (4) The location of main and distribution panels.
- (c) The home inspector shall report the presence of any readily accessible single strand aluminum branch circuit wiring.
- (d) The home inspector shall report on the presence or absence of smoke detectors, and operate their test function, if accessible, except when detectors are part of a central alarm system.
- (e) The home inspector is not required to:
 - (1) Insert any tool, probe, or testing device inside the panels;
 - (2) Test or operate any overcurrent device except ground fault circuit interrupters;
 - (3) Dismantle any electrical device or control other than to remove the covers of the main and auxiliary distribution panels; or
 - (4) Inspect:
 - (A) Low voltage systems;
 - (B) Security system devices, heat detectors, or carbon monoxide detectors;
 - (C) Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system; or
 - (D) Built-in vacuum equipment.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005.

11 NCAC 08 .1111 HEATING

- (a) The home inspector shall inspect permanently installed heating systems including:
 - (1) Heating equipment;
 - (2) Normal operating controls;
 - (3) Automatic safety controls;
 - (4) Chimneys, flues, and vents, where readily visible;
 - (5) Solid fuel heating devices;
 - (6) Heat distribution systems including fans, pumps, ducts and piping, with supports,

insulation, air filters, registers, radiators, fan coil units, convectors; and

- (7) The presence or absence of an installed heat source for each habitable space.

(b) The home inspector shall describe:

- (1) Energy source; and
- (2) Heating equipment and distribution type.

(c) The home inspector shall operate the systems using normal operating controls.

(d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

(e) The home inspector is not required to:

- (1) Operate heating systems when weather conditions or other circumstances may cause equipment damage;
- (2) Operate automatic safety controls;
- (3) Ignite or extinguish solid fuel fires;
- (4) Ignite a pilot light; or
- (5) Inspect:
 - (A) The interior of flues;
 - (B) Fireplace insert flue connections;
 - (C) Heat exchangers;
 - (D) Humidifiers;
 - (E) Electronic air filters;
 - (F) The uniformity or adequacy of heat supply to the various rooms; or
 - (G) Solar space heating equipment.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005.

11 NCAC 08 .1112 AIR CONDITIONING

(a) The home inspector shall inspect:

- (1) Central air conditioning and through-the-wall installed cooling systems including:
 - (A) Cooling and air handling equipment; and
 - (B) Normal operating controls.
- (2) Distribution systems including:
 - (A) Fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, fan-coil units; and
 - (B) The presence or absence of an installed cooling source for each habitable space.

(b) The home inspector shall describe:

- (1) Energy sources; and
- (2) Cooling equipment type.

(c) The home inspector shall operate the systems using normal operating controls.

(d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

(e) The home inspector is not required to:

- (1) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
- (2) Inspect window air conditioners; or
- (3) Inspect the uniformity or adequacy of cool-air supply to the various rooms.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005; May 1, 2003.

11 NCAC 08 .1113 INTERIORS

(a) The home inspector shall inspect:

- (1) Walls, ceiling, and floors;
- (2) Steps, stairways, balconies, and railings;
- (3) Counters and a representative number of built-in cabinets; and
- (4) A representative number of doors and windows.

(b) The home inspector shall:

- (1) Operate a representative number of windows and interior doors; and
- (2) Report signs of water penetration into the building or signs of abnormal or harmful condensation on building components.

(c) The home inspector is not required to inspect:

- (1) Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
- (2) Carpeting; or
- (3) Draperies, blinds, or other window treatments.

History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2007; April 1, 2005; May 1, 2003.

11 NCAC 08 .1114 INSULATION AND VENTILATION

(a) The home inspector shall inspect:

- (1) Insulation and vapor retarders in unfinished spaces;
- (2) Ventilation of attics and foundation areas;
- (3) Kitchen, bathroom, and laundry venting systems; and
- (4) The operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control.

(b) The home inspector shall describe:

- (1) Insulation in unfinished spaces; and
- (2) The absence of insulation in unfinished space at conditioned surfaces.

(c) The home inspector is not required to report on:

- (1) Concealed insulation and vapor retarders; or
- (2) Venting equipment that is integral with household appliances.
- (d) The home inspector shall:
 - (1) Move insulation where readily visible evidence indicates the possibility of a problem; and
 - (2) Move floor insulation where plumbing drain/waste pipes penetrate floors, adjacent to earth-filled stoops or porches, and at exterior doors.

*History Note: Authority G.S. 143-151.49;
 Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;
 Temporary Adoption Eff. October 24, 1996;
 Eff. July 1, 1998;
 Amended Eff. February 1, 2007; April 1, 2005; May 1, 2003.*

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

- (1) Firearms Training and Qualification (4);
- (2) Legal Update: Case Law (2);
- (3) Domestic Violence (2);
- (4) Juvenile Minority Sensitivity: What's Hot/What's Not (2);
- (5) Ethics: On Duty or Off Duty (2);
- (6) Interacting with Special Populations (4); and
- (7) Department Topics of Choice (8).

*History Note: Authority G.S. 17C-6; 17C-10;
 Eff. July 1, 1989;
 Amended Eff. January 1, 2005;
 Temporary Amendment Eff. January 1, 2005;
 Amended Eff. February 1, 2007; January 1, 2006.*

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

The following specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) Firearms:
 - (a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials.
- (b) Safety:
 - (i) range rules and regulations;
 - (ii) handling of a firearm;
 - (iii) malfunctions.
- (c) Review of Basic Marksmanship Fundamentals:

- (i) grip, stance, breath control and trigger squeeze;
- (ii) sight and alignment/sight picture;
- (iii) nomenclature.
- (d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602;

- (2) Legal Update: Case Law (2);
- (3) Domestic Violence (2);
- (4) Juvenile Minority Sensitivity: What's Hot/What's Not (2);
- (5) Ethics: On Duty or Off Duty (2);
- (6) Interacting with Special Populations (4); and
- (7) Department Topics of Choice (8).

The In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:
 North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

*History Note: Authority G.S. 17C-6; 17C-10;
 Eff. July 1, 1989;
 Amended Eff. January 1, 2005; November 1, 1998;
 Temporary Amendment Eff. January 1, 2005;
 Amended Eff. February 1, 2007; January 1, 2006.*

12 NCAC 09F .0106 SANCTIONS

- (a) The Commission shall suspend an approved course when the Commission finds that the course has failed to meet or maintain the required standards for approval.
- (b) The Commission shall deny or suspend the certification of instructor status when the Commission finds that the instructor:
 - (1) has failed to meet or maintain the required course and instruction standards approved by the Commission as set forth in 12 NCAC 09F .0102;

- (2) has failed to submit modification of courses or change in instructor status;
- (3) has submitted any non-sufficient funds check;
- (4) has falsified any successful completion of an approved course;
- (5) has distributed any certificate provided by the Commission without the named permittee undertaking the approved course from that instructor;
- (6) has taught any "Concealed Carry Handgun Training Program" course or approved certification while the instructor's certification was suspended by the Commission; or
- (7) is ineligible to receive and possess a firearm under Federal or North Carolina State Law.

(c) Instructors who have lost certified status subject to Subparagraphs (1), (2), or (3) of Paragraph (b) of this Rule may reapply for certification upon documentation of compliance after one year has elapsed from the date of suspension of the instructor's certification by the Commission. Instructors who have lost certified status subject to Subparagraphs (4), (5), (6), or (7) of Paragraph (b) of this Rule may have their certification suspended or permanently revoked by the Commission.

History Note: Authority G.S. 14-415.12; 14-415.13; Temporary Adoption Eff. November 1, 1995; Eff. May 1, 1996; Amended Eff. February 1, 2007; September 1, 2005; May 1, 2004.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 07F .0605 FALL PROTECTION

(a) General. 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. 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; and
- (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; and
- (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; and
- (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 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 employed for less than 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) Obtain verification from the third-party rescue team or service that it is

- able to respond to a rescue summons in a timely manner;
- (B) Obtain verification from the third-party rescue team or service that it is proficient with rescue-related tasks and 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 with 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 as it deems necessary; and
- (E) Inform 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.

History Note: Authority G.S. 95-131;
Eff. September 2, 2005;
Temporary Amendment Eff. October 31, 2006;
Amended Eff. February 1, 2007.

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 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.

*History Note: Authority G.S. 95-231; 95-232; 95-234;
 Eff. April 1, 2001;
 Temporary Amendment Eff. January 16, 2002;
 Amended Eff. July 1, 2003;
 Temporary Amendment Eff. November 30, 2006;
 Amended Eff. February 1, 2007.*

13 NCAC 20 .0302 CURRENT EMPLOYEES
13 NCAC 20 .0303 PROSPECTIVE EMPLOYEES

*History Note: Authority G.S. 95-232; 95-234;
 Eff. April 1, 2001;
 Temporary Repeal Eff. November 30, 2006;
 Repealed Eff. February 1, 2007.*

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

**15A NCAC 07H .0312 TECHNICAL STANDARDS FOR
 BEACH FILL PROJECTS**

Emplacement of sediment along the oceanfront shoreline shall be referred to in this Rule as beach fill. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following methodology:
 - (a) Characterization of the recipient beach shall not be required for the placement of sediment directly from and completely confined to a federally or state maintained navigation channel;
 - (b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
 - (c) Shore-perpendicular topographic and bathymetric surveying of the recipient beach shall be conducted to determine the beach profile. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project area.

Each transect shall extend from the dune crest seaward to a depth of 20 feet (6.1 meters) below sea level. Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Elevation data for all transects shall be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);

- (d) No less than 13 sediment samples shall be taken along each beach profile transect. At least one sample shall be taken from each of the following morphodynamic zones where present: dune, dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from six feet (1.8 meters) below sea level to 20 feet (6.1 meters) below sea level. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
- (e) For the purpose of this Rule, sediment grain size categories shall be defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than two millimeters), "granular" (greater than or equal to two millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;
- (f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach shall be the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
- (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples along each transect defined in Sub-Item (1)(d) of this Rule. The value

- that characterizes the carbonate content of the recipient beach shall be a grand mean calculated by summing the percentage by weight calcium carbonate for each transect and dividing by the total number of transects;
- (h) The total number of sediments and shell material greater than three inches (76millimeters) in diameter, observable on the surface of the beach between mean low water (MLW) and the dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area shall be considered a representative sample of the entire project area and referred to as the "background" value; and
 - (i) Beaches that have received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management.
- (2) The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
- (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
 - (b) The characterization of borrow sites shall include sediment characterization data provided by the Division of Coastal Management;
 - (c) Geophysical imaging of the seafloor at each submarine borrow site shall provide 100 percent coverage and use survey-grade swath sonar in accordance with current US Army Corps of Engineers standards for navigation and dredging. All final hydrographic data shall be tide- and motion-corrected and referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83) and conform to standards for accuracy, quality control and quality assurance as set forth either by the US Army Corps of Engineers, the National Oceanic and Atmospheric Administration, or the International Hydrographic Organization;
 - (d) Geophysical imaging of the subsurface shall be used to characterize each borrow site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Survey grids shall incorporate at least one tie point per survey line. Subsurface geophysical imaging shall not be required for federally or state maintained navigation channels. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions, be tide- and motion-corrected, and be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);
 - (e) Sediment sampling of borrow sites shall use a vertical sampling device no less than three inches (76 millimeters) in diameter. Characterization of each borrow site shall use no less than 10 evenly spaced cores or one core per 10 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to federally or state maintained navigation channels shall use no less than five evenly spaced vertical samples per channel or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater, and penetrate to a depth equal to or greater than permitted dredge depth. All sediment samples shall be integrated with geophysical data to constrain the horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;
 - (f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories

- defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography; and
- (g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core.
- (3) The Division of Coastal Management shall determine sediment compatibility according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a federally or state maintained navigation channel shall be considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
- (b) Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule;
- (c) Sediment used solely to re-establish State-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor shall not be considered a beach fill project under this Rule;
- (d) All material other than sediment and shell associated with the morphodynamic zones defined in Sub-Item (1)(d) of this Rule shall not be considered compatible;
- (e) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;
- (f) The average percentage by weight of granular sediment (greater than or equal to two millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus five percent;
- (g) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
- (h) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
- (i) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- (a) Sediment excavation depth from a federally or state maintained navigation channel shall not exceed the permitted dredge depth of the channel;
- (b) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;
- (c) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during times designated by the Division of Coastal Management in consultation with other State and Federal agencies; and
- (d) Sediment and shell material with a diameter greater than three inches (76 millimeters) shall be considered incompatible if it has been placed on the beach during the beach fill project, is observed between mean low water (MLW) and the dune toe, and is in excess of twice the background value of material of the same size along any 50,000-square-foot (4,645 square meter) section of beach.

History Note: Authority G.S. 113A -102(b)(1); 113A-103(5)a; 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124; 113-229; Eff. February 1, 2007.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

**16 NCAC 06H .0112 DISPUTE RESOLUTION
PROCESS FOR HOMELESS STUDENTS**

(a) As used in this Rule:

- (1) The terms "homeless," "homeless child," and "homeless student" shall mean the same as the term "homeless children and youth" as defined by 42 U.S.C. § 11434a(2). These terms shall also be deemed to include the term "unaccompanied youth."
- (2) The term "unaccompanied youth" shall mean the same as defined by 42 U.S.C. § 11434a(6).

(b) Each LEA shall appoint a liaison for homeless students. The LEA shall train the LEA liaison to carry out and mediate the dispute resolution process as expeditiously as possible and to ensure that each school and the LEA meets the requirements of the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The LEA liaison shall also ensure that each unaccompanied youth and any student who meets the definition of "homeless children and youth" as defined by 42 U.S.C. § 11434a(2) is enrolled immediately in the school pending resolution of the dispute. The burden shall be on the school or LEA to show that the student is not a homeless student or unaccompanied youth.

(c) Each LEA shall develop and implement a process for parents, guardians, or unaccompanied youth who have complaints about enrollment to file an appeal to the LEA liaison upon registering, or attempting to register, at the school. Enrollment shall be deemed to include attending classes and participating fully in school activities. The appeal process shall provide that:

- (1) faculty and staff of the school who know about the complaint must refer the child, youth, parent, or guardian to the LEA liaison;
- (2) the LEA liaison shall expeditiously carry out the dispute resolution process;
- (3) pending resolution of any complaint between the school or LEA and the parent, guardian, or unaccompanied youth over school enrollment, the LEA shall enroll the child or youth immediately in the school in which the child or youth seeks enrollment;
- (4) the LEA shall provide the student with all the services for which the student is eligible and shall permit the student to participate fully in school activities while the dispute is being resolved;
- (5) the LEA shall provide the parent, guardian, or unaccompanied youth who makes a complaint to the LEA liaison with a written statement of the rights and procedures, in language the

parent, guardian, or unaccompanied youth can understand, that informs them of:

- (A) contact information including telephone number and address of the LEA liaison and of the State coordinator for homeless education, with a brief description of their roles;
 - (B) the right to initiate the dispute resolution process either orally or in writing;
 - (C) a simple form that parents, guardians, or unaccompanied youth can complete and submit to the LEA liaison to initiate the dispute resolution process;
 - (D) a step-by-step description of how to dispute the school's decision;
 - (E) notice of the right to enroll immediately in the school of choice or remain in the school of origin with transportation provided pending resolution of the dispute;
 - (F) notice that immediate enrollment includes full participation in all school activities; and
 - (G) notice of the right to obtain assistance of advocates or attorneys.
- (6) the LEA shall provide the parent, guardian, or unaccompanied youth with the name and contact information of the State coordinator for homeless education; and
 - (7) the LEA shall inform the parent, guardian, or unaccompanied youth about the right to appeal any decision regarding the student's enrollment to the State coordinator.

(d) Each LEA shall include in the dispute resolution process the following components:

- (1) The LEA shall allow the parent, guardian, or unaccompanied youth to initiate the dispute resolution process at the school at which enrollment is sought or at the LEA liaison's office.
- (2) The LEA shall inform the parent, guardian, or unaccompanied youth of the right to provide supporting written or oral documentation.
- (3) The LEA shall inform the parent, guardian, or unaccompanied youth of the right to seek the assistance of advocates or attorneys.
- (4) The LEA shall provide the parent, guardian, or unaccompanied youth with a written statement of the final LEA decision.
- (5) The LEA shall inform the parent, guardian, or unaccompanied youth of the right to appeal the final LEA decision to the State coordinator.

(e) The Superintendent of Public Instruction shall designate a State coordinator for homeless education.

(f) Any parent, guardian, or unaccompanied youth who is not satisfied with the final LEA decision regarding enrollment may appeal the decision to the State coordinator. In addition, any

interested person who believes that grounds for an appeal exist may present an oral or written appeal to the State coordinator, including:

- (1) the name, address, and telephone number of the person filing the appeal;
- (2) the relationship or connection of the person to the child in question;
- (3) the name of the school system and the specific school in question;
- (4) the federal requirement alleged to have been violated;
- (5) how the requirement has been violated; and
- (6) the relief the person is seeking.

(g) If the State coordinator receives an appeal that is not complete, the coordinator shall contact the person making the appeal, explain the deficiency, and offer the person the opportunity to complete the appeal.

(h) Upon request of the State coordinator, the LEA liaison shall provide the State coordinator with the record of the complaint and the LEA's actions. If the matter involves more than one LEA, then the LEA liaisons shall cooperate to provide the State coordinator with a complete record. In either event, the liaison or liaisons shall provide the complete record within five school days following the State coordinator's request.

(i) The LEA shall provide the State coordinator with any information that the State coordinator requests regarding the issues presented in the appeal.

(j) The State coordinator shall provide the LEA and the parent, guardian, or unaccompanied youth with the opportunity to respond to the LEA decision and to provide any additional evidence they deem relevant.

(k) The State Coordinator shall issue a final written decision to the parent, guardian, or unaccompanied youth and the LEA involved within 10 school days following receipt of the complete appeal.

(l) The State coordinator's decision shall include:

- (1) a summary of the issue appealed;
- (2) the federal requirement at issue; and
- (3) a description of the State coordinator's decision in plain language.

(m) Nothing contained in this Rule shall prohibit the State coordinator from investigating whether the parent, guardian, or unaccompanied youth knowingly and voluntarily entered into any agreement affecting their rights under McKinney-Vento Homeless Education Assistance Improvements Act of 2001. If the coordinator determines that the parent, guardian, or unaccompanied youth did not knowingly and voluntarily enter into the agreement, then the coordinator may void the agreement and enter a decision consistent with the applicable facts and law.

History Note: Authority G.S. 115C-366(a2); N.C. Constitution, Article IX, s. 5; 42 U.S.C. § 11432; Eff. February 2, 2007.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32A .0107 DECLARATORY RULINGS

History Note: Authority G.S. 150B-17; Eff. February 1, 1976; Amended Eff. May 1, 1989; November 1, 1985; Repealed Eff. February 1, 2007.

21 NCAC 32A .0111 REQUEST FOR DECLARATORY RULING

(a) All requests for declaratory rulings shall be written and mailed to the Board at 1203 Front Street, Raleigh, North Carolina 27609. The envelope containing the request shall bear the notation: "REQUEST FOR DECLARATORY RULING".

(b) Each Request for Declaratory Ruling must include the following information:

- (1) the name and address of the person requesting the ruling;
- (2) the statute or rule to which the request relates;
- (3) a concise statement of the manner in which the requesting person is affected by the statute or rule or its potential application to that person;
- (4) a statement whether an oral hearing is desired and, if so, the reason therefore.

History Note: Authority G.S. 150B-4; Eff. February 1, 2007.

21 NCAC 32A .0112 DISPOSITION OF REQUEST

(a) Upon receipt of a Request for Declaratory Ruling, the Board shall determine whether a ruling is appropriate under the facts stated.

(b) When the Board determines that the issuance of a declaratory ruling is inappropriate, the Board shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request.

(c) The Board shall decline to issue a declaratory ruling where:

- (1) there has been a similar controlling factual determination made by the Board in a contested case;
- (2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to adoption of the rule; or
- (3) the subject-matter of the request is involved in pending litigation in any state or federal court in North Carolina;
- (4) the petitioner fails to show that the circumstances are so changed since the adoption of the statute or rule that a ruling is warranted.

History Note: Authority G.S. 150B-4; Eff. February 1, 2007.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

21 NCAC 32A .0113 PROCEDURE FOR DECLARATORY RULING

Prior to issuing a declaratory ruling, the Board shall give notice of the declaratory ruling proceedings to any person(s) it deems appropriate and shall direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted. The proceedings may consist of written submissions, an oral hearing, or other proceedings.

*History Note: Authority G.S. 150B-4;
Eff. February 1, 2007.*

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1317 DEFINITIONS

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

- (1) Ambulation Assistance Equipment. Devices that aid in walking, excluding canes, crutches, and walkers.
- (2) Approved School or College of Pharmacy. A school or college of pharmacy accredited by the American Council on Pharmaceutical Education, or a foreign school with a professional pharmacy degree program of at least five years approved by the Board.
- (3) Auxiliary Drug Inventory. A secure, segregated, supplementary source for drugs to be used solely for the purpose of providing adequate drug availability when the pharmacy is closed or the pharmacist is unavailable.
- (4) Board. As defined in G.S. 90-85.3(b).
- (5) Certified technician. A technician who has passed a pharmacy technician certification board exam, or its equivalent, that has been approved by the Board according to the rules in this Chapter.
- (6) Consultant Pharmacist. A licensed pharmacist who, in collaboration with the supervising physician and nurse practitioner or assistant to the physician, develops a retrospective drug utilization review program which:
 - (a) reviews the appropriateness of the choice of medication(s) for the patient and the patient's therapeutic regimen, including choice of medication, dose, frequency, and route of administration;
 - (b) identifies and resolves therapeutic duplication in the patient's medication regimen; and
 - (c) considers patient-specific medication contraindications.

The consultant pharmacist holds himself available for consultation in person, by telephone, or by other means of direct communication at all times when drugs are dispensed.

- (7) Diagnostic equipment. Equipment used to record physiological information while a person goes about normal daily living or while asleep in order to document a disease process. Early pregnancy tests (EPTs), thermometers, glucose meters, and cholesterol equipment are not included as diagnostic equipment.
- (8) Drug review or Pharmaceutical care assessment. An onsite review of a patient's or resident's record by a licensed pharmacist that involves interpretation and evaluation of the drug therapy and other pharmaceutical care services to achieve intended medication outcomes and minimize negative effects of drug therapy.
- (9) Duplicate as used in G.S. 90-85.24. Any license, permit, or registration issued or reissued by the Board which is identical to a previously issued license, permit, or registration, including a permit reissued due to a change in pharmacist-manager.
- (10) Emergency Drugs. Those drugs whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of unforeseen adverse changes in a patient's health or well-being.
- (11) Employee. A person who is or would be considered an employee under the North Carolina Workers' Compensation Act. This definition applies to locations both within and outside of this State holding pharmacy or device and medical equipment permits and without regard to the number of persons employed by the permit holder.
- (12) Executive Director. The Secretary-Treasurer and Executive Director of the Board.
- (13) Graduate of an Approved School or College of Pharmacy. A person who has received an undergraduate professional degree in pharmacy from an approved school or college of pharmacy, or a person who has graduated from a foreign professional school of pharmacy and has successfully completed the Foreign Pharmacy Graduate Equivalency Examination offered by the National Association of Boards of Pharmacy and the Test of English as a Foreign Language.
- (14) HMES. Home medical equipment supplier.
- (15) Health Care Facility Pharmacy. A pharmacy maintained in a hospital, clinic, nursing home, rest home, sanitarium, non-federal governmental institution, industrial health facility, or other like health service under the supervision of a pharmacist; or the central area in a hospital, clinic, or other health care facility where drugs are procured, stored, processed, or issued, or where pharmaceutical services are performed.

- (16) Indulgence in the Use of Drugs. The use of narcotic drugs or other drugs affecting the central nervous system or the use of intoxicating beverages to an extent as to deprive the user of reasonable self-control or the ability to exercise such judgment as might reasonably be expected of an average prudent person.
- (17) Internet Pharmacy.
- (a) A pharmacy that maintains an Internet web site for the purpose of selling or distributing prescription drugs; or
- (b) A pharmacy that uses the internet, either itself, or through agreement with a third party, to communicate with or obtain information from patients; uses such communication or information, in whole or in part, to solicit, fill or refill prescriptions; or uses such communication or information, in whole or in part, to otherwise engage in the practice of pharmacy.
- Notwithstanding Sub-items (a) and (b) above, a pharmacy shall not be deemed an Internet pharmacy if it maintains an Internet web site for the following purposes only:
- (i) Mere advertisements that do not attempt to facilitate, directly or through agreement with a third party, an actual transaction involving a prescription drug;
- (ii) To allow a patient to communicate a request for a refill of a legitimate prescription originally filled by the pharmacy that maintains the Internet web site;
- (iii) To allow a customer to research drug interactions and clinical pharmacology information; or
- (iv) To allow a patient to send an electronic mail message to a pharmacist licensed in North Carolina.
- (18) Limited Service Pharmacy Permit. A pharmacy permit issued by the Board to an applicant that wishes to render in an institutional setting pharmaceutical services not limited to scope and kind but to time and conditions under which such services are rendered.
- (19) Medication Therapy Management Services and Related Functions. Included in the practice of pharmacy as part of monitoring, recording and reporting drug therapy and device usage.
- (20) Medication Administration Record. A record of drugs administered to a patient.
- (21) Medication Order. An order for a prescription drug or other medication or a device for a patient from a person authorized by law to prescribe medications.
- (22) Mobility equipment. Devices that aid a person in self-movement, other than walking, including manual or power wheelchairs and scooters.
- (23) Oxygen and respiratory care equipment. Equipment or devices used to administer oxygen or other legend drugs, maintain viable airways or monitor cardio-respiratory conditions or events, including compressed medical gases; oxygen concentrators; liquid oxygen; nebulizers; compressors; aerosol therapy devices; portable suction machines; nasal continuous positive airway pressure (CPAP) machines; Bi-phasic positive pressure devices (BiPAP); infant monitors, such as apnea monitors and cardio-respiratory monitors; positive and negative pressure mechanical ventilators; and pulse oximeters.
- (24) Patient Medication Profile. A list of all prescribed medications for a patient.
- (25) Pharmacist. Any person within the definition set forth in G.S. 90-85.3(p), including any druggist.
- (26) Pharmacist-Manager. The person who accepts responsibility for the operation of a pharmacy in conformance with all statutes and rules pertinent to the practice of pharmacy and distribution of drugs by signing the permit application, its renewal or addenda thereto.
- (27) Pharmacy. Any place within the definition set forth in G.S. 90-85.3(q), including any apothecary or drugstore.
- (28) Pharmacy Intern. Any person who is registered with the Board under the internship program of the Board to acquire pharmacy experience or enrolled in approved academic internship programs. A pharmacy intern working under a pharmacist preceptor or supervising pharmacist may, while under supervision, perform all acts constituting the practice of pharmacy.
- (29) Place of residence. Any place used as an individual's temporary or permanent home.
- (30) President. The President of the Board.
- (31) Rehabilitation environmental control equipment. Equipment or devices which permit a person with disabilities to control his or her immediate surroundings.
- (32) Rehabilitation Services. Services and equipment required to maintain or improve

functional status and general health as prescribed by the physician which are uniquely specified for each individual's lifestyle. The people involved in this process include the patient, caregiver, physician, therapist, rehabilitation equipment supplier and others who impact on the individual's life style and endeavors.

- (33) Signature. A written or electronic signature or computerized identification code.
- (34) Two Years College Work. Attendance at a college accredited by an accrediting agency recognized by the United States Department of Education for two academic years of not less than eight and one-half months each and the completion of work for credit leading to a baccalaureate degree or its equivalent and that would permit the student to advance to the next class.
- (35) Undergraduate Professional Degree in Pharmacy. A B.S. or Pharm. D. degree.
- (36) Vice-President. The Vice-President of the Board.

History Note: Authority G.S. 90-85.3; 90-85.6; 90-85.8; 90-85.13; 90-85.14; 90-85.15; 90-85.21; 90-85.38; 90-85.40; Eff. May 1, 1989; Amended Eff. February 1, 2007; March 1, 2004; April 1, 1999; May 1, 1997; September 1, 1995; September 1, 1993; October 1, 1990; January 1, 1990.

21 NCAC 46 .1801 RIGHT TO REFUSE A PRESCRIPTION

(a) A pharmacist or device and medical equipment dispenser may refuse to fill or refill a prescription order, if, in his professional judgment, it would be harmful to the recipient, is not in the recipient's best interest or if there is a question as to its validity.

(b) A pharmacist shall not fill or refill a prescription order if the pharmacist actually knows or reasonably should know that the order was issued without a physical examination of the patient and in the absence of a prior prescriber-patient relationship, unless:

- (1) the prescription order was issued for the patient by a psychiatrist;
- (2) the prescription order was issued for the patient after discussion of the patient status with a treating psychologist, therapist, or physician;
- (3) the prescription order was ordered by a physician for flu vaccinations for groups of patients or members of the public;
- (4) the prescription order was for prophylactic purposes, such as the ordering of antibiotics by a pediatrician for members of a child's family when the child has a positive strep test;
- (5) the prescription order was an emergency order for medication related to pregnancy prevention; or

- (6) the prescription order was an order for medications to be taken by groups traveling to foreign countries.

History Note: Authority G.S. 90-85.6; 90-85.32; Eff. April 1, 1983; Amended Eff. February 1, 2007; March 1, 2004; April 1, 2003; September 1, 1995.

21 NCAC 46 .2607 AVAILABILITY OF RECORDS

All records required to be kept by statute or rule shall be available to Board inspectors or agents as provided in Rule .1803 of this Chapter. All records, including prescription orders, equipment information, and patient counseling documentation, shall be archived in a readily retrievable manner and open for review, copying or seizure by the Board or its designated employees within 48 hours of a request for inspection for a period of three years.

History Note: Authority G.S. 90-85.3(e),(r); 90-85.6; 90-85.22; Eff. October 1, 1990; Amended Eff. February 1, 2007.

21 NCAC 46 .2612 STORAGE OF DEVICES AND MEDICAL EQUIPMENT

(a) Devices and medical equipment shall be stored at the location holding the pharmacy or device and medical equipment permit or a location that is within 50 miles of the permitted location. Devices and medical equipment shall not be stored on residential property.

(b) A device and medical equipment storage site not holding a pharmacy or device and medical equipment permit shall not provide any devices, medical equipment, or services directly to patients.

(c) Device and medical equipment storage sites shall be subject to inspection by the Board.

History Note: Authority G.S. 90-85.6; 90-85.22; 90-85.32; Eff. March 1, 2004; Amended Eff. February 1, 2007.

CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

21 NCAC 57A .0201 QUALIFICATIONS FOR TRAINEE REGISTRATION, APPRAISER LICENSURE AND CERTIFICATION

(a) Applicants for trainee registration, licensure as a licensed residential real estate appraiser and certification as a certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 as further set forth in this Section, provided however that registration as a trainee or licensure as a licensed residential real estate appraiser is not prerequisite for certification as a certified residential or general real estate appraiser. All precertification or precertification education must have been obtained in a classroom setting. No credit will be

given for courses taken by any other method, such as correspondence school courses or computer based courses.

(b) Applicants for trainee registration shall have completed 90 hours of education in the areas of Introduction to Real Estate Appraisal, Valuation Principles and Practices, Applied Residential Property Valuation, and the Uniform Standards of Professional Appraisal Practice (USPAP) or appraisal education found by the Board to be equivalent to such courses.

(c) Applicants for licensure as a licensed residential real estate appraiser shall have completed 90 hours of education as set forth in Subparagraph (b) of this Rule, and shall have obtained at least 2,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of 18 calendar months. Applicants must have actively engaged in real estate appraising for at least 18 months prior to the date application is made.

(d) Applicants for certification as a certified residential real estate appraiser shall have completed those courses required for registration as a trainee or licensure as a licensed residential real estate appraiser or equivalent education and a course in Introduction to Income Property Appraisal consisting of at least 30 classroom hours of instruction or equivalent education and the 15 hour National USPAP course. The applicant must also have obtained at least 2,500 hours of appraisal experience over a minimum period of two calendar years and within the five-year period immediately preceding the date application is made. Applicants must have been actively engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

(e) Applicants for certification as a certified general real estate appraiser shall have completed those courses required for certification as a certified residential real estate appraiser or equivalent education and courses in Advanced Income Capitalization Procedures and Applied Income Property Valuation each consisting of at least 30 classroom hours of instruction or equivalent education, and the 15 hour National USPAP course. The applicant must also have obtained at least 3,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been actively engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of complex properties or of improved properties in which the income approach was utilized in the appraisal process.

(f) Applicants for licensure or certification must submit a complete copy of their appraisal log and may be required to provide to the Board copies of appraisal reports in support of experience credit. In order for an appraisal to be given experience credit, it must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

(g) When a trainee becomes a licensed or certified real estate appraiser or when a licensed real estate appraiser becomes a

certified real estate appraiser, his previous registration or licensure shall be immediately canceled by the Board. When a certified residential real estate appraiser becomes certified as a general real estate appraiser, his previous certification shall be immediately canceled by the Board.

(h) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee will be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a registration, license or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

(i) An applicant may request that his or her application be withdrawn at any time before final action is taken by the Appraisal Board on the application.

(j) If an application is withdrawn, cancelled or denied, the applicant must wait six months from the date the application is withdrawn, cancelled or denied to file a new application.

(k) If an applicant has a current open complaint before the North Carolina Appraisal Board or an appraiser licensing board from any other state, or if the applicant has pending criminal charges in this or any state, the application will be accepted but no further action will be taken on the application until the complaint or criminal charges are resolved. For the purposes of this Section, criminal charges do not include speeding tickets or traffic infractions.

History Note: Authority G.S. 93E-1-6(a); 93E-1-10

Eff. July 1, 1994

Amended Eff. March 1, 2007; April 1, 2006, July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57B .0102 CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rule .0101 of this Section, an applicant for certification as a certified residential real estate appraiser shall complete a minimum of 30 hours in Introduction to Income Property Appraisal (G-1). This course must be taken after the applicant's successful completion of the precursing courses specified in Rule .0101 of this Section. Credit for this course must be earned from a Board-approved course sponsor or school.

(b) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed by the Board as a licensed residential real estate appraiser must have completed all required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is currently registered by the Board as a trainee or who is currently licensed by the Board as a licensed residential real estate appraiser must have completed the required course in Introduction to Income Property Appraisal (G-1) within the five-year period immediately preceding the date application is made to the Board.

History Note: Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10;

Eff. July 1, 1994;

Amended Eff. March 1, 2007; July 1, 2003; August 1, 2002.

21 NCAC 57B .0103 CERTIFIED GENERAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rules .0101 and .0102 of this Section, an application for certification as a certified general real estate appraiser is required to complete the following precertification courses, each involving a minimum of 30 classroom hours:

- (1) Advanced Income Capitalization (G-2); and
- (2) Applied Income Property Valuation (G-3).

These courses must be commenced and completed after the applicant's successful completion of the courses specified in Rules .0101 and .0102 of this Section. Income Property Appraisal (G-1) shall be a prerequisite for Advanced Income Capitalization (G-2), and Advanced Income Capitalization (G-2), shall be a prerequisite to Applied Income property Valuation (G-3). Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed by the Board as a licensed residential or certified residential real estate appraiser must have completed all the required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is currently registered by the Board as a trainee or who is not currently licensed by the Board as a licensed residential or certified residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure or certification within the five-year period immediately preceding the date application is made to the Board.

History Note: Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10;

Eff. July 1, 1994;

Amended Eff. March 1, 2007; July 1, 2003; August 1, 2002.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01H .1001 EXEMPT PRIORITY CONSIDERATION – POLICY AND SCOPE

(a) The rules in this Section H.1000 apply to employees removed from:

- (1) Exempt policymaking positions for reasons other than just cause;
- (2) Exempt managerial positions for reasons other than just cause but not because the employee's selection violated G.S. 126-14.2; and
- (3) Exempt managerial positions because the employee's selection violated G.S. 126-14.2.

(b) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an exempt policymaking position, who is removed from an exempt

policymaking position for reasons other than just cause, shall receive a one-time priority. This priority shall be exercised by the employee within one year following the date of the employee's separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available non-exempt position for which the employee has applied and is qualified when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt policymaking position unless an offer has been made to, and accepted by, a person qualified under 25 NCAC 01H .1005 or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Personnel Act.

(c) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an exempt managerial position, who is removed from an exempt managerial position for reasons other than just cause but not because the employee's selection violated G.S. 126-14.2, shall receive a one-time reemployment priority, to be exercised by the employee within one year following the date of the employee's separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available non-exempt position for which the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt managerial position unless an offer has been made to, and accepted by, a person qualified under 25 NCAC 01H .1005, or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Personnel Act.

(d) A career State employee with less than 10 years of service who was removed from an exempt managerial position because the employee's selection violated G. S. 126-14.2 shall receive a one-time reemployment priority, to be exercised by the employee within one year following the date of the employee's separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available non-exempt position for which the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent position held prior to placement in the exempt managerial position unless an offer has been made to, and accepted by, a person qualified under 25 NCAC 01H .1005, or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Personnel Act.

(e) The priority considerations described in Paragraph (a), (b) and (c) of this Rule shall expire when a formal offer is extended for employment in the position for which the employee has applied regardless of the position's salary grade (or salary grade equivalency) if the employee has notified the agency in writing that the employee wishes to exercise priority consideration.

(f) If an eligible exempt employee applies for and accepts a position through the regular, non-priority selection process, which is at a salary grade (or salary grade equivalency) below that held in the most recent subject position, that person shall

retain the one-time priority for higher level positions for the remainder of the 12-month period.

(g) If an employee does not receive notice as described in 25 NCAC 01H .0630(b), the employee remains subject to the State Personnel Act until 10 working days after the employee receives written notification of the exempt status. If an otherwise eligible employee is removed from the position designated as exempt, the employee has priority consideration to a position at the same

salary grade (or salary grade equivalency) as the most recent subject position.

History Note: Authority G.S. 126-1.1; 126-5;

Eff. March 1, 1987;

Amended Eff. June 1, 1994; June 1, 1992; November 1, 1988;

Recodified from 25 NCAC 01D .0512 Eff. December 29, 2003;

Amended Eff. February 1, 2007.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday February 15, 2007 & March 15, 2007, 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

March 15, 2007
May 17, 2007

April 19, 2007
June 21, 2007

Note: The following minutes have not yet been approved as final by the RRC and are subject to change until they are approved. They will be reviewed, corrected if necessary, and approved at the next monthly meeting of the RRC. If you have any questions or corrections concerning the minutes or action taken by the RRC please contact: Joe DeLuca at 919-715-8655, or Bobby Bryan at 919-733-0928.

RULES REVIEW COMMISSION

February 15, 2007

MINUTES

The Rules Review Commission met on Thursday, February 15, 2007, in the Cabinet Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jeff Gray, Jennie Hayman, Thomas Hilliard, John Lewis, Mary Shuping, Robert Saunders, John Tart, and Judson Welborn.

Staff members present were: Joe DeLuca, Commission Counsel; Bobby Bryan, Commission Counsel; Lisa Johnson and Barbara Townsend, Administrative Assistants.

The following people attended the meeting:

| | |
|-------------------|-----------------------------------|
| Susan Ryan | Division of Medical Assistance |
| Angela Floyd | Division of Medical Assistance |
| Andy Wilson | Division of Medical Assistance |
| Glenda Artis | Division of Medical Assistance |
| Brent W. Stephens | NC Bar Elder Law Section |
| Thomas Allen | DENR/DAQ |
| Dana French | Department of Justice |
| Tracy Hayes | Department of Justice |
| Julie Edwards | Office of Administrative Hearings |
| Dana Sholes | Office of Administrative Hearings |
| Mary Bethel | AARP |
| Bill Wilson | AARP |
| Peggy Oliver | Office of State Personnel |
| Susan Dail | Division of Social Services |
| Ann Wall | Secretary of State |
| Kris Horton | Division of Medical Assistance |
| Teresa Smith | Division of Medical Assistance |
| Gayle Holder | Secretary of State |

| | |
|----------------------|---------------------------------------|
| Shannon Crane | Division of Aging and Adult Services |
| Curtis Venable | Pisgah Legal Services |
| Molly Masich | Office of Administrative Hearings |
| Mark Benton | DHHS/DMA Senior Deputy Director |
| Sam Clark | Health Care Facilities Association |
| Belinda Smith | Department of Justice |
| Karen Cochrane-Brown | Legislative Research Staff |
| Jonathan Womer | Office of State Budget and Management |

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Ms. Hayman presiding. She reminded the Commission that all members have a duty to avoid conflicts of interest and the appearances of conflict as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the January 18, 2007 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

10A NCAC 21B .0314(Temporary Rule): DHHS/Medical Assistance – No action was taken.

Prior to the review of the Medical Board rule and the Pharmacy Board rules by the RRC Commissioner Lewis recused himself and did not participate in any discussion or vote concerning these rules because he is a member of the N.C. Medical Board. Commissioner Saunders recused himself and did not participate in any discussion or vote concerning these rules because his law firm represents the Pharmacy Board. Their written explanation is part of the record of the meeting.

10A NCAC 21B .0314: DHHS – Medical Assistance – There has been no reponse from the agency to the objection to the temporary rule. The permanent rule to replace it is scheduled for review later in the meeting.

21 NCAC 32T .0101: Medical Board – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 46 .1601; .1608; .2613; .3101: Pharmacy Board – No action was taken.

23 NCAC 3A .0113: Board of Community Colleges - No action was taken. It is anticipated that the objection to this rule will be considered at the next meeting of the Board.

25 NCAC 1H .0631; .0635: State Personnel Commission - The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

Prior to the review of the Hearing Aid Dealers & Fitters Board rule Commissioner Shuping recused herself and did not participate in any discussion or vote concerning this rule because the law firm for which she works, Allen & Pinnix, P.A., is counsel to the Hearing Aid Dealers & Fitters Board.

Prior to the review of the rule for the Division of Medical Assistance Chairman Hayman recused herself because Poyner & Spruill, her husband's firm, represents an interested person who opposes the rule. Commissioner Shuping presided over the review, discussion, and vote concerning this rule.

Their written explanation is part of the record of the meeting.

10A NCAC 21B .0314: DHHS – Medical Assistance - The Commission objected to the rule due ambiguity. In (e)(1), it is not clear whether the alternative sources of income available to the individual means to the individual personally, or also to the individual's spouse or some third party representative. It is also not clear if "are available" means available at the time of application or at some earlier time. In (e)(2), it is not clear who is responsible for providing the information required by this sub-paragraph. It is not clear if the responsibility lies with the individual or with the person who transferred the asset.

At the conclusion of the review of the Medical Assistance rules the chair recessed the meeting for a short break at 11:30 a.m. and called it back into session at 11:35 a.m.

Ms. Hayman chaired the remainder of the meeting.

10A NCAC 89C .0103: DHHS – Vocational Rehabilitation Services - The Commission objected to the rule due lack of statutory authority and ambiguity. In (j)(1), it is not clear what is meant by “the Division’s established benchmark rate.” There is no authority cited for setting such a rate outside rulemaking. In (j)(3), it is not clear what the “state approved cost of living standards” are. There is no authority cited for setting them outside of rulemaking.

10A NCAC 89D .0101: DHHS – Vocational Rehabilitation Services - The Commission objected to this rule due lack of statutory authority and ambiguity. It is not clear what standards the Division will use in approving entities that accredit providers of community rehabilitation program services. There is no authority cited for establishing them outside rulemaking.

10A NCAC 89D .0204: DHHS – Vocational Rehabilitation Services - The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a)(2), it is not clear what the Division’s “established benchmark rate” is. There is no authority cited to set rates outside rulemaking. In (a)(5), it is not clear how staff are to “demonstrate competency” in performing the primary job functions. In (a)(6), it is not clear what constitutes “consistent” failure. In (b)(7)(D), it is not clear what is the “Division determined expenditure level”. There is no authority cited for determining it outside rulemaking. In (b)(7)(E), it is not clear what outcome levels have been determined by the Division. There is no authority cited to set them outside rulemaking. In (b)(7)(F), it is not clear what standards the Division Regional Director is to use in deciding whether to send a letter of support. In (b)(7)(G), it is not clear when the Division will agree to move the vendor to performance based funding. In (b)(10), it is not clear what standards the Division will use in pre-approving subcontracts. In (c)(1)(A) and (B), it is not clear what standards the Division will use in approving accrediting entities. There is no authority cited for setting those standards outside rulemaking. In (c)(1)(B), it is not clear what is meant by “national accreditation” and if this is different from “accreditation” as otherwise used. In (c)(5)(D), it is not clear what is meant by “regular inspections and consultations”. It is also not clear who are “persons with expertise”. In (c)(6)(A), it is not clear what constitutes “fair and equitable wages,” or what are the “minimum expectations for working hours and conditions”. In (c)(7)(B), it is not clear when professional liability insurance would be required. It is also not clear how much insurance is adequate to cover all potential liability. In (c)(10)(A), it is not clear what is meant by “a standard of sound business practices”. In (c)(12)(D), it is not clear what is meant by “staffings,” nor how often is “periodic”. In (c)(13)(A), it is not clear what standards are used in approving methods to identify results. There is no authority cited to set standards outside rule making. In (i), it is not clear what schedule has been established by the Division. There is no authority cited for establishing the schedule outside rulemaking. In (l)(1), it is not clear what the standards for approval of corrective action plans are. In (m), it is not clear what constitutes “cause”.

12 NCAC 11 .0105: Alarm Systems Licensing Board – This rule was withdrawn by the agency prior to the meeting and re-submitted for consideration at the April meeting.

18 NCAC 07B .0107: Secretary of State - The Commission objected to this rule due to ambiguity. In (c) it is unlikely that the average citizen subject to these rules would understand what constitutes “changes in any other circumstances or information which may affect the notary’s qualifications for a notarial commission or provide grounds for denying an application.” Even the reference to G.S. 10B-5(d) does not help since that just provides the various grounds that the Secretary may use to deny an application. This rule seeks the underlying facts that would provide those grounds.

18 NCAC 07B .0902: Secretary of State - The Commission objected to this rule due to ambiguity. In (c)(1) and (2) it is unclear what constitutes “false” or “misleading” information. There is a mandatory requirement to deny an application based on providing false information but it becomes discretionary if it is only misleading information. It is not clear whether incomplete or missing information, for example, would be classified as simply misleading or would be classified as actually false.

COMMISSION PROCEDURES AND OTHER BUSINESS

Commissioner Saunders expressed and explained his concerns about agencies using the temporary rule process to avoid delay from 10 letters.

New Business:

The Commission briefly discussed its policies and procedures. At the suggestion of Commissioner Saunders Ms. Hayman appointed a committee to review and discuss RRC rules, policies and procedures and possibly submit for discussion new or revised draft RRC rules along with any new or revised non-binding policies, procedures, or explanations. The members of the Committee are Mary Shuping, Jeff Gray and Jennie Hayman.

The meeting adjourned at 12:36 p.m.

RULES REVIEW COMMISSION

The next scheduled meeting of the Commission is Thursday, March 15, 2007 at 10:00 a.m. The meeting will be held in the Division of Community Assistance Conference Room B on the second floor of the Methodist Building.

Respectfully submitted,
Dana Sholes

LIST OF APPROVED PERMANENT RULES
February 15, 2007 Meeting**SOCIAL SERVICES COMMISSION**

Nature and Purpose of State Adult Day Care Fund 10A NCAC 06T .0201

HHS - VOCATIONAL REHABILITATION SERVICES

Vendor Compliance 10A NCAC 89C .0402

Eligibility and Most Significant Disability 10A NCAC 89C .0502

BUILDING CODE COUNCIL

2006 Building Code Special Inspections 1704 (060612 Item B1) 11 NCAC 08

2006 Administrative Code Special Inspections 107.5 (06051... 11 NCAC 08

ENVIRONMENTAL MANAGEMENT COMMISSION

Broad River Basin 15A NCAC 02B .0306

Applicability 15A NCAC 02D .0902

Compliance Schedules for Sources In Noncompliant Areas 15A NCAC 02D .0909

Applicability 15A NCAC 02D .1402

Compliance Schedules 15A NCAC 02D .1403

SECRETARY OF STATE, DEPARTMENT OF

Notary Public Division 18 NCAC 07A .0101

Appointment of Notaries Public 18 NCAC 07A .0202

Disposition of Commissions 18 NCAC 07A .0204

Fee 18 NCAC 07A .0205

Requirements of Commissions 18 NCAC 07A .0206

Revocation of Commissions 18 NCAC 07A .0207

Certificates of Authority 18 NCAC 07A .0208

Approved Course of Study 18 NCAC 07A .0301

Instructors 18 NCAC 07A .0302

Approved Manual 18 NCAC 07A .0303

Scope 18 NCAC 07B .0101

Definitions 18 NCAC 07B .0102

Location, Hours and Contact Information 18 NCAC 07B .0103

Forms 18 NCAC 07B .0104

Fees 18 NCAC 07B .0105

Waiver 18 NCAC 07B .0106

General 18 NCAC 07B .0201

| | | |
|---|----|----------------|
| <u>Initial Commission</u> | 18 | NCAC 07B .0301 |
| <u>Timing of Filing of Initial Application</u> | 18 | NCAC 07B .0302 |
| <u>Reappointment</u> | 18 | NCAC 07B .0401 |
| <u>Reappointment Test</u> | 18 | NCAC 07B .0402 |
| <u>Application After Reappointment Denial Based on Failing Test</u> | 18 | NCAC 07B .0403 |
| <u>Appointment and Issuance of Commissioning Certificate</u> | 18 | NCAC 07B .0501 |
| <u>Commissioning Certificate Date</u> | 18 | NCAC 07B .0502 |
| <u>Oath of Office and Delivery of Commissioning Certificate</u> | 18 | NCAC 07B .0503 |
| <u>Reappointment if Oath not Taken Within 45 Days</u> | 18 | NCAC 07B .0504 |
| <u>Term of Office</u> | 18 | NCAC 07B .0505 |
| <u>Factors Considered in Disciplinary Actions</u> | 18 | NCAC 07B .0901 |
| <u>Executed Document Violations</u> | 18 | NCAC 07B .0903 |
| <u>Complete and Lawful Notarial Act Violations</u> | 18 | NCAC 07B .0904 |
| <u>Other Violations</u> | 18 | NCAC 07B .0905 |
| <u>Minimum Sanction</u> | 18 | NCAC 07B .0906 |
| <u>Appeal Procedures</u> | 18 | NCAC 07B .0907 |
| <u>Public Information</u> | 18 | NCAC 07B .1001 |

HEARING AID DEALERS AND FITTERS BOARD

| | | |
|---------------------|----|----------------|
| <u>Fee Schedule</u> | 21 | NCAC 22B .0603 |
|---------------------|----|----------------|

MEDICAL BOARD

| | | |
|---|----|----------------|
| <u>Clinical Pharmacist Practitioner</u> | 21 | NCAC 32T .0101 |
|---|----|----------------|

COMMUNITY COLLEGES, BOARD OF

| | | |
|-------------------------------|----|----------------|
| <u>Faculty</u> | 23 | NCAC 02C .0202 |
| <u>Establishing Pay Rates</u> | 23 | NCAC 02D .0101 |

STATE PERSONNEL COMMISSION

| | | |
|--|----|----------------|
| <u>Posting and Announcement of Vacancies</u> | 25 | NCAC 01H .0631 |
| <u>Minimum Qualifications</u> | 25 | NCAC 01H .0635 |

AGENDA
RULES REVIEW COMMISSION
Thursday, March 15, 2007, 10:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. DHHS/Medical Assistance – 10A NCAC 21B .0314 (Bryan)
 - B. DHHS/Medical Assistance (Temporary rule) – 10A NCAC 21B .0314 (Bryan)
 - C. DHHS/Vocational Rehabilitation Services – 10A NCAC 89C .0103; (Bryan)
 - D. DHHS/Vocational Rehabilitation Services – 10A NCAC 89D .0101; .0204 (Bryan)
 - E. Secretary of State – 18 NCAC 07B .0107; .0902 (Deluca)

- F. Pharmacy Board – 21 NCAC 46 .1601; .1608; .2613; .3101 (Bryan)
 - G. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)
 - IV. Review of Log of Permanent Rule filings for RRC review filed between January 23 and February 20, 2007 (attached)
 - V. Review of Temporary Rules (If Any)
 - VI. Commission Business
 - Report from committee concerning RRC rules and other policies
 - Next meeting: April 19, 2007
-

Commission Review
Log of Permanent Rule Filings
January 23, 2007 through February 20, 2007

ADMINISTRATION, DEPARTMENT OF

The rules in Chapter 41 are from the State Energy Office.

The rules in Subchapter 41D concern the energy policy act credit and banking selling program including general provisions (.0100); credit banking and selling program provisions (.0200); proceeds and distribution (.0300); and reports (.0400).

| | | | | |
|---|----|------|-----|-------|
| <u>Purpose and Organization</u> | 01 | NCAC | 41D | .0101 |
| Adopt/* | | | | |
| <u>Definitions</u> | 01 | NCAC | 41D | .0102 |
| Adopt/* | | | | |
| <u>Program</u> | 01 | NCAC | 41D | .0201 |
| Adopt/* | | | | |
| <u>Banking</u> | 01 | NCAC | 41D | .0202 |
| Adopt/* | | | | |
| <u>Selling</u> | 01 | NCAC | 41D | .0203 |
| Adopt/* | | | | |
| <u>Proceeds and Distribution</u> | 01 | NCAC | 41D | .0301 |
| Adopt/* | | | | |
| <u>Alternative Fuel Revolving Fund</u> | 01 | NCAC | 41D | .0302 |
| Adopt/* | | | | |
| <u>The Alternative Fuel Revolving Fund Criteria</u> | 01 | NCAC | 41D | .0303 |
| Adopt/* | | | | |
| <u>Fund Disbursements</u> | 01 | NCAC | 41D | .0304 |
| Adopt/* | | | | |
| <u>Reports</u> | 01 | NCAC | 41D | .0401 |
| Adopt/* | | | | |

BANKS, OFFICE OF THE COMMISSIONER

The rules in Subchapter 3C concern banks including organization and chartering (.0100); branches and limited service facilities (.0200); change of location (.0300); consolidation of banks (.0400); work week (.0500); examination of banks (.0600); reports required by commissioners of banks (.0700); miscellaneous reports and approvals (.0800); operations (.0900); loan administration and leasing (.1000); capital (.1100); deposits (.1200); bank personnel (.1300); legal reserve (.1400); automation and data processing (.1500); fees (.1600); nonresident banks (.1700); and courier service (.1800).

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|-----------------------------------|----|------|-----|-------|
| <u>Examining Committee Report</u> | 04 | NCAC | 03C | .0701 |
| Repeal/* | | | | |

| | | | | |
|--|----|------|-----|-------|
| <u>Reports of Condition and Income</u> | 04 | NCAC | 03C | .0702 |
| Repeal/* | | | | |
| <u>Publisher's Copy Report of Condition</u> | 04 | NCAC | 03C | .0703 |
| Repeal/* | | | | |
| <u>Loan Documentation</u> | 04 | NCAC | 03C | .1001 |
| Amend/* | | | | |
| <u>Leasing of Personal Property</u> | 04 | NCAC | 03C | .1002 |
| Amend/* | | | | |
| <u>Definitions: Issuance of Capital Notes and Debentures</u> | 04 | NCAC | 03C | .1101 |
| Repeal/* | | | | |
| <u>Capital Debentures and Notes</u> | 04 | NCAC | 03C | .1102 |
| Repeal/* | | | | |
| <u>Annual Vacation</u> | 04 | NCAC | 03C | .1301 |
| Repeal/* | | | | |

USS NORTH CAROLINA BATTLESHIP COMMISSION

The rules in Chapter 5 are from the USS NC Battleship Commission and include rulemaking and adjudication (.0100); and specific use regulations (.0200).

| | | | | |
|---------------------------|----|------|----|-------|
| <u>Hours of Operation</u> | 07 | NCAC | 05 | .0202 |
| Amend/* | | | | |
| <u>Admission Prices</u> | 07 | NCAC | 05 | .0203 |
| Amend/* | | | | |

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Chapter 1 contains rules from the Office of the Secretary.

Subchapter 1G concerns the North Carolina New Organizations Vision Award (NC NOVA).

| | | | | |
|--|-----|------|-----|-------|
| <u>Scope</u> | 10A | NCAC | 01G | .0101 |
| Adopt/* | | | | |
| <u>Application for NC NOVA Special Licensure Designation</u> | 10A | NCAC | 01G | .0102 |
| Adopt/* | | | | |

HHS-FACILITY SERVICES

The rules in Chapter 14 concern services provided by the Division of Facility Services. The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); criteria and standards for gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and criteria and standards for hospice inpatient facilities and hospice residential care facilities (.4000).

| | | | | |
|------------------------------|-----|------|-----|-------|
| <u>Performance Standards</u> | 10A | NCAC | 14C | .2103 |
| Amend/* | | | | |

| | | | | |
|--------------------|-----|------|-----|-------|
| <u>Definitions</u> | 10A | NCAC | 14C | .3301 |
| Amend/* | | | | |

DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE

The rules in Chapter 17 concern the Deaf and Hard of Hearing.

The rules in Subchapter 17A concern rulemaking proceedings.

| | | | | |
|---|-----|------|-----|-------|
| <u>Petitions</u> | 10A | NCAC | 17A | .0101 |
| Repeal/* | | | | |
| <u>Notice</u> | 10A | NCAC | 17A | .0102 |
| Repeal/* | | | | |
| <u>Hearing Officer</u> | 10A | NCAC | 17A | .0103 |
| Repeal/* | | | | |
| <u>Hearings</u> | 10A | NCAC | 17A | .0104 |
| Repeal/* | | | | |
| <u>Statement of Reasons for and Against Rulemaking Decision</u> | 10A | NCAC | 17A | .0105 |
| Repeal/* | | | | |
| <u>Record of Rulemaking Proceedings</u> | 10A | NCAC | 17A | .0106 |
| Repeal/* | | | | |
| <u>Fees</u> | 10A | NCAC | 17A | .0107 |
| Repeal/* | | | | |
| <u>Declaratory Rulings</u> | 10A | NCAC | 17A | .0108 |
| Repeal/* | | | | |
| <u>Contested Cases</u> | 10A | NCAC | 17A | .0109 |
| Repeal/* | | | | |

The rules in Subchapter 17B concern administration including general (.0100); and regional resource centers (.0200).

| | | | | |
|--|-----|------|-----|-------|
| <u>Relationship to the Department of Health and Human Services</u> | 10A | NCAC | 17B | .0101 |
| Repeal/* | | | | |
| <u>Function and Responsibilities</u> | 10A | NCAC | 17B | .0201 |
| Amend/* | | | | |

The rules in Subchapter 17C concern services available including North Carolina interpreter classification system (.0100); and interpreter services (.0200).

| | | | | |
|--|-----|------|-----|-------|
| <u>Maintenance of Classification Records</u> | 10A | NCAC | 17C | .0101 |
| Amend/* | | | | |
| <u>Reciprocity</u> | 10A | NCAC | 17C | .0102 |
| Repeal/* | | | | |
| <u>Applicability</u> | 10A | NCAC | 17C | .0103 |
| Amend/* | | | | |
| <u>Definitions</u> | 10A | NCAC | 17C | .0104 |
| Amend/* | | | | |
| <u>Eligibility</u> | 10A | NCAC | 17C | .0105 |
| Repeal/* | | | | |
| <u>Application</u> | 10A | NCAC | 17C | .0106 |
| Repeal/* | | | | |
| <u>Classification Team and Evaluators</u> | 10A | NCAC | 17C | .0107 |
| Repeal/* | | | | |

RULES REVIEW COMMISSION

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|---|-----|------|-----|-------|
| <u>Classification</u> | 10A | NCAC | 17C | .0108 |
| Amend/* | | | | |
| <u>Review and Appeal of Classification Decisions</u> | 10A | NCAC | 17C | .0109 |
| Repeal/* | | | | |
| <u>Change of Name or Address of Classification Holders</u> | 10A | NCAC | 17C | .0110 |
| Repeal/* | | | | |
| <u>Eligibility</u> | 10A | NCAC | 17C | .0201 |
| Adopt/* | | | | |
| <u>Contracted Interpreter Services</u> | 10A | NCAC | 17C | .0202 |
| Adopt/* | | | | |
| <u>Licensure of Interpreters</u> | 10A | NCAC | 17C | .0203 |
| Adopt/* | | | | |
| <u>Interpreter Services: Judicial, Legislative and Administr...</u> | 10A | NCAC | 17C | .0204 |
| Adopt/* | | | | |
| <u>Interpreter Application: Judicial Legislative and Adminis...</u> | 10A | NCAC | 17C | .0205 |
| Adopt/* | | | | |

The rules in Subchapter 17D concern interpreter directory and development including interpreter services (.0100); and communications services programs (.0200).

| | | | | |
|---|-----|------|-----|-------|
| <u>Eligibility</u> | 10A | NCAC | 17D | .0101 |
| Repeal/ | | | | |
| <u>Contracted Interpreter Services</u> | 10A | NCAC | 17D | .0102 |
| Repeal/* | | | | |
| <u>Certification of Interpreters</u> | 10A | NCAC | 17D | .0103 |
| Repeal/* | | | | |
| <u>Interpreter Services: Judicial: Leg. and Admin. Proc.</u> | 10A | NCAC | 17D | .0104 |
| Repeal/* | | | | |
| <u>Interpreter Application: Judicial: Leg. and Admin. Proc.</u> | 10A | NCAC | 17D | .0105 |
| Repeal/* | | | | |
| <u>Definitions</u> | 10A | NCAC | 17D | .0202 |
| Amend/* | | | | |
| <u>Division Responsibilities</u> | 10A | NCAC | 17D | .0203 |
| Amend/* | | | | |
| <u>Information Concerning the Program</u> | 10A | NCAC | 17D | .0204 |
| Amend/* | | | | |
| <u>Application Information and Procedures</u> | 10A | NCAC | 17D | .0205 |
| Amend/* | | | | |
| <u>Eligibility</u> | 10A | NCAC | 17D | .0206 |
| Amend/* | | | | |
| <u>Certification of Impairment</u> | 10A | NCAC | 17D | .0207 |
| Amend/* | | | | |
| <u>Age Requirements</u> | 10A | NCAC | 17D | .0208 |
| Amend/* | | | | |
| <u>Residency Requirements</u> | 10A | NCAC | 17D | .0209 |
| Amend/* | | | | |
| <u>Financial Eligibility</u> | 10A | NCAC | 17D | .0210 |
| Amend/* | | | | |
| <u>Eligibility for Reapplication</u> | 10A | NCAC | 17D | .0211 |
| Amend/* | | | | |
| <u>Provision of Equipment Sets</u> | 10A | NCAC | 17D | .0212 |
| Amend/* | | | | |

| | | | | |
|--|-----|------|-----|-------|
| <u>Ownership: Lease: Liabilities</u> Amend/* | 10A | NCAC | 17D | .0213 |
| <u>Telephone Bills: Maintenance: Reporting Loss, Damage, or ...</u> Amend/* | 10A | NCAC | 17D | .0214 |
| <u>Relocation or Death or Recipients</u> Amend/* | 10A | NCAC | 17D | .0215 |
| <u>Administration</u> Adopt/* | 10A | NCAC | 17D | .0219 |
| <u>Maintenance of Equipment Records</u> Adopt/* | 10A | NCAC | 17D | .0220 |
| <u>Rights/Consumer Appeals</u> Adopt/* | 10A | NCAC | 17D | .0221 |
| <u>Purpose</u> Adopt/* | 10A | NCAC | 17D | .0301 |
| <u>Source of Equipment</u> Adopt/* | 10A | NCAC | 17D | .0302 |
| <u>Eligibility Requirements</u> Adopt/* | 10A | NCAC | 17D | .0303 |
| <u>Loan Period, Lease, and Liabilities</u> Adopt/* | 10A | NCAC | 17D | .0304 |
| <u>Maintenance: Reporting Loss, Damage, or Theft</u> Adopt/* | 10A | NCAC | 17D | .0305 |

DHHS - MENTAL HEALTH

The rules in Chapter 29 concern mental health services.

The rules in Subchapter 29A concern services for eligible assaultive and violent children and adolescents.

| | | | | |
|---|-----|------|-----|-------|
| <u>Scope</u> Repeal/* | 10A | NCAC | 29A | .0101 |
| <u>Definitions</u> Repeal/* | 10A | NCAC | 29A | .0102 |
| <u>Criteria For Admissions</u> Repeal/* | 10A | NCAC | 29A | .0103 |
| <u>Application for Admission</u> Repeal/* | 10A | NCAC | 29A | .0104 |
| <u>Priority for Admission</u> Repeal/* | 10A | NCAC | 29A | .0105 |
| <u>Maximum Number of Class Members to be Served</u> Repeal/* | 10A | NCAC | 29A | .0106 |
| <u>Funds for Assaultive Children</u> Repeal/* | 10A | NCAC | 29A | .0107 |
| <u>Scope</u> Repeal/* | 10A | NCAC | 29A | .0108 |
| <u>Definitions</u> Repeal/* | 10A | NCAC | 29A | .0109 |
| <u>General Provisions</u> Repeal/* | 10A | NCAC | 29A | .0110 |
| <u>Eligibility Criteria</u> Repeal/* | 10A | NCAC | 29A | .0111 |
| <u>Emotional, Mental or Neurological Handicap Defined</u> | 10A | NCAC | 29A | .0112 |

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|---|-----|------|-----|-------|
| Repeal/* | | | | |
| <u>Violent or Assaultive Behavior Defined</u> | 10A | NCAC | 29A | .0113 |
| Repeal/* | | | | |
| <u>Determination that State has not Provided Appropriate Tre...</u> | 10A | NCAC | 29A | .0114 |
| Repeal/* | | | | |
| <u>Application for Designation as Youth Behavioral Services ...</u> | 10A | NCAC | 29A | .0115 |
| Repeal/* | | | | |
| <u>Determination of Eligibility</u> | 10A | NCAC | 29A | .0116 |
| Repeal/* | | | | |
| <u>Re-review of Eligibility Decisions</u> | 10A | NCAC | 29A | .0117 |
| Repeal/* | | | | |
| <u>Needs Assessment</u> | 10A | NCAC | 29A | .0118 |
| Repeal/* | | | | |
| <u>Service Planning</u> | 10A | NCAC | 29A | .0119 |
| Repeal/* | | | | |
| <u>Provision of Services</u> | 10A | NCAC | 29A | .0120 |
| Repeal/* | | | | |
| <u>Area Program Requirements</u> | 10A | NCAC | 29A | .0121 |
| Repeal/* | | | | |
| <u>Division Requirements</u> | 10A | NCAC | 29A | .0122 |
| Repeal/* | | | | |
| <u>Prior Notice of Decision</u> | 10A | NCAC | 29A | .0123 |
| Repeal/* | | | | |
| <u>Mediation</u> | 10A | NCAC | 29A | .0124 |
| Repeal/* | | | | |
| <u>Contested Case Hearings</u> | 10A | NCAC | 29A | .0125 |
| Repeal/* | | | | |
| <u>Administrative Review by Review Officer</u> | 10A | NCAC | 29A | .0126 |
| Repeal/* | | | | |
| <u>Evaluation Reports</u> | 10A | NCAC | 29A | .0127 |
| Repeal/* | | | | |

The rules in Subchapter 29B concern Thomas S. Services.

| | | | | |
|---|-----|------|-----|-------|
| <u>Thomas S. Community Services</u> | 10A | NCAC | 29B | .0101 |
| Repeal/* | | | | |
| <u>Scope</u> | 10A | NCAC | 29B | .0102 |
| Repeal/* | | | | |
| <u>Definitions</u> | 10A | NCAC | 29B | .0103 |
| Repeal/* | | | | |
| <u>Reporting Requirements</u> | 10A | NCAC | 29B | .0104 |
| Repeal/* | | | | |
| <u>Death Review Requirements</u> | 10A | NCAC | 29B | .0105 |
| Repeal/* | | | | |
| <u>Thomas S. Mortality Review Committee</u> | 10A | NCAC | 29B | .0106 |
| Repeal/* | | | | |

The rules in Subchapter 29D are miscellaneous rules including Carolina alternatives (.0100); single portal of entry and exit designation (.0200); designation of area mental health: mental retardation and substance abuse authorities and catchment areas (.0300); therapeutic homes for children and adolescents (.0400); Butner ordinances (.0500); substance abuse assessments for individuals charged with or convicted of driving while impaired(dwi) (.0600); procedures for amending rules (.0700); and

community relations (.0800).

| | | | | |
|-------------------------------|-----|------|-----|-------|
| <u>Scope</u> | 10A | NCAC | 29D | .0201 |
| Repeal/* | | | | |
| <u>Explanation of Terms</u> | 10A | NCAC | 29D | .0202 |
| Repeal/* | | | | |
| <u>Designation Procedures</u> | 10A | NCAC | 29D | .0203 |
| Repeal/* | | | | |

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

The rules in Chapter 41 are Health and Epidemiology rules.

The rules in Subchapter 41B concern injury control including definitions (.0100); blood alcohol test regulations (.0200); breath alcohol test regulations (.0300); controlled drinking programs (.0400); and alcohol screening test devices (.0500).

| | | | | |
|--|-----|------|-----|-------|
| <u>Application for Initial Permit</u> | 10A | NCAC | 41B | .0301 |
| Amend/* | | | | |
| <u>Limitation of Permit</u> | 10A | NCAC | 41B | .0302 |
| Amend/* | | | | |
| <u>Conditions for Renewal of Permit</u> | 10A | NCAC | 41B | .0304 |
| Amend/* | | | | |
| <u>Qualifications of Maintenance Personnel</u> | 10A | NCAC | 41B | .0309 |
| Amend/* | | | | |
| <u>Breath-Testing Instruments: Reporting of Sequential Tests</u> | 10A | NCAC | 41B | .0313 |
| Amend/* | | | | |
| <u>Screening Test for Alcohol Concentration</u> | 10A | NCAC | 41B | .0501 |
| Amend/* | | | | |
| <u>Approval: Alcohol Screening Test Devices: Use</u> | 10A | NCAC | 41B | .0502 |
| Amend/* | | | | |

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 43 are from the Department of Health and Human Services and concern personal health.

The rules in Subchapter 43D concern WIC/Nutrition including definitions (.0100); WIC program general information (.0200); selection of local WIC agencies (.0300); eligibility for WIC program participation (.0400); WIC program food package (.0500); WIC program nutrition education (.0600); WIC program food distribution system (.0700); WIC program administrative appeals (.0800); WIC program participant fair hearings (.0900); consultation services (.1000); and maternal and child health block grant nutrition program (.1200).

| | | | | |
|-------------------------------|-----|------|-----|-------|
| <u>Definitions</u> | 10A | NCAC | 43D | .0202 |
| Amend/* | | | | |
| <u>Authorized WIC Vendors</u> | 10A | NCAC | 43D | .0706 |
| Amend/* | | | | |

CODE OFFICIALS QUALIFICATION BOARD

The rules in Chapter 8 are the engineering and building codes including the approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200);

home inspector continuing education (.1300); and Manufactured Housing Board continuing education (.1400).

| | | | | |
|--|----|------|----|-------|
| <u>Continuing Education Requirements</u> | 11 | NCAC | 08 | .0713 |
| Amend/* | | | | |
| <u>Approved Courses</u> | 11 | NCAC | 08 | .0720 |
| Amend/* | | | | |

INSURANCE, DEPARTMENT OF

The rules in Chapter 11 are from the Department of Insurance and concern financial evaluation of insurance companies.

The rules in Subchapter 11F are actuarial rules including general provisions (.0100); health insurance minimum reserve standards (.0200); actuarial opinion and memorandum (.0300); commissioner's reserve valuation method (.0400); new annuity valuation mortality tables (.0500); recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and non-forfeiture benefits (.0600); determining minimum reserve liabilities for credit life insurance (.0700); and preferred class structure mortality table (.0800).

| | | | | |
|---|----|------|-----|-------|
| <u>Model Regulation Permitting the Recognition of Preferred ...</u> | 11 | NCAC | 11F | .0801 |
| Adopt/* | | | | |

LABOR, DEPARTMENT OF

The rules in Chapter 12 concern wage and hour including general provision (.0100); subminimum wages (.0200); wages (.0300); youth employment (.0400); jurisdiction and exemptions (.0500); investigation and enforcement (.0600); civil money penalties (.0700); and recordkeeping (.0800).

| | | | | |
|---------------------------------------|----|------|----|-------|
| <u>Complaints</u> | 13 | NCAC | 12 | .0601 |
| Amend/* | | | | |
| <u>Exceptions to Civil Penalty</u> | 13 | NCAC | 12 | .0703 |
| Amend/* | | | | |
| <u>Notification at Time of Hiring</u> | 13 | NCAC | 12 | .0804 |
| Amend/* | | | | |

The rules in Chapter 15 pertain to elevators and amusement devices and include general provisions (.0100); various industry codes and standards (.0200); elevators and related equipment (.0300); amusement devices (.0400); penalties (.0500); forms (.0600); and fees (.0700).

| | | | | |
|---|----|------|----|-------|
| <u>Amusement Device Inspection Fee Schedule</u> | 13 | NCAC | 15 | .0703 |
| Amend/* | | | | |

CRIME CONTROL AND PUBLIC SAFETY

The rules in Chapter 8 concern the State Highway Patrol.

The rules in Subchapter 09H concern enforcement regulations including enforcement actions (.0100); civil disturbances (.0200); wrecker service (.0300); traffic accident (.0400); patrol escorts and relays (.0500); use of patrol cars and aircraft (.0600); use of physical force: firearms (.0700); persons in custody (.0800); information to news media (.0900); leaving assigned duty station (.1000).

| | | | | |
|--|-----|------|-----|-------|
| <u>Definitions</u> | 14A | NCAC | 09H | .0308 |
| Amend/* | | | | |
| <u>Securing Vehicles When Operator is Arrested</u> | 14A | NCAC | 09H | .0310 |
| Amend/* | | | | |
| <u>Vehicles Transported and Stored Over Objection of Owner</u> | 14A | NCAC | 09H | .0311 |

| | | | | |
|--|-----|------|-----|-------|
| Amend/ <u>Transporting and Storing Vehicles</u> | 14A | NCAC | 09H | .0313 |
| Amend/* | | | | |
| <u>Notification</u> | 14A | NCAC | 09H | .0314 |
| Amend/* | | | | |
| <u>Release of Vehicles</u> | 14A | NCAC | 09H | .0315 |
| Amend/* | | | | |
| <u>Vehicle Inventory</u> | 14A | NCAC | 09H | .0316 |
| Amend/* | | | | |
| <u>Reimbursement of Wrecker Operators</u> | 14A | NCAC | 09H | .0317 |
| Amend/* | | | | |
| <u>Rotation, Zone, Contract, and Deviation from System</u> | 14A | NCAC | 09H | .0320 |
| Amend/* | | | | |
| <u>Rotation Wrecker Service Regulations</u> | 14A | NCAC | 09H | .0321 |
| Amend/* | | | | |
| <u>Recording Wrecker Requests/Incidents</u> | 14A | NCAC | 09H | .0322 |
| Amend/* | | | | |
| <u>Sanctions for Violations</u> | 14A | NCAC | 09H | .0323 |
| Amend/* | | | | |
| <u>Hearing Procedures</u> | 14A | NCAC | 09H | .0324 |
| Amend/* | | | | |

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters, (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); general permit for authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); general permits for construction of freestanding moorings in established waters and public trust areas (.2200); general permits for replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); general permit for placement of riprap for wetland protection in estuarine and public trust waters (.2400); emergency general permit, to be initiated at the discretion of the secretary of the Department of Environment and Natural Resources for replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms, provided all replacement, reconstruction and maintenance excavation activities conform to all current standards (.2500); general permit for construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

| | | | | |
|---|-----|------|-----|-------|
| <u>General Use Standards for Ocean Hazard Areas</u> | 15A | NCAC | 07H | .0306 |
| Amend/* | | | | |

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 13 are from the Commission for Health Services and cover hazardous and solid waste management, inactive hazardous substances, and waste disposal sites.

Identification and Listing of Hazardous Wastes - Part 261 15A NCAC 13A .0106
Amend/*

GENERAL CONTRACTORS, LICENSING BOARD FOR

The rules of the Licensing Board for General Contractors include the board's organization (.0100); licensing requirements (.0200); application procedures (.0300); examinations (.0400); licenses (.0500); disciplinary procedures (.0700); contested cases (.0800); and home-owners recovery fund (.0900).

Definitions 21 NCAC 12 .0901
Amend/*

Filing Deadline and Service 21 NCAC 12 .0904
Amend/*

Processing of Application 21 NCAC 12 .0906
Amend/*

MEDICAL BOARD

The rules in Chapter 32 are from the Board of Medical Examiners.

The rules in Subchapter 32M concern approval of nurse practitioners (.0100).

Disciplinary Action 21 NCAC 32M .0112
Amend/*

NURSING, BOARD OF

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

Disciplinary Action 21 NCAC 36 .0812
Amend/*

PHARMACY, BOARD OF

The rules in Chapter 46 are from the Board of Pharmacy and cover organization of the Board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

Examination 21 NCAC 46 .1505
Amend/*

Partial Examination 21 NCAC 46 .1507
Amend/*

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <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.
Selina Brooks
Melissa Owens Lassiter
Don Overby

Beecher R. Gray
A. B. Elkins II
Joe Webster

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|--|------------------------|------------|-----------------------------|---|
| <u>ALCOHOL BEVERAGE CONTROL COMMISSION</u> | | | | |
| 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 | |
| ABC Commission v. T/A Minit Shop | 06 ABC 0862 | Morrison | 10/17/06 | |
| ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club | 06 ABC 1262 | Gray | 01/04/07 | |
| ABC Commission v. Kenneth A. Jones, T/A Ken One Stop | 06 ABC 1368 | Gray | 12/04/06 | |
| <u>CRIME VICTIMS COMPENSATION</u> | | | | |
| 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 | |
| Torrey Charles v. Crime Victims Compensation Commission | 06 CPS 0051 | Chess | 09/21/06 | |
| Charles Leon Champion v. Crime Victims Compensation Commission | 06 CPS 0155 | Elkins | 06/08/06 | |
| Teresa M. Marley v. Crime Victims Compensation Commission | 03 CPS 0185 | Elkins | 01/19/07 | |
| Dantevius L. Bland v. Crime Victims Compensation Commission | 06 CPS 0654 | Elkins | 11/15/06 | |
| 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 | Elkins | 09/06/06 | |
| Danny Thoms v. Victim Compensation | 06 CPS 1237 | Overby | 12/04/06 | |
| James A. Hillman v. Crime Victims Compensation Commission | 06 CPS 1339 | Wade | 12/08/06 | |
| Jacqueline D. Dupree v. Crime Victims Compensation | 06 CPS 1360 | Overby | 12/15/06 | |
| Pervis R. Owens Sr v. OAH, Crime Victims Compensation Commission | 06 CPS 1492 | Morrison | 09/28/06 | |
| Brian Curlee v. Crime Victims Compensation Commission | 06 CPS 1677 | Wade | 12/13/06 | |
| A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions . | | | | |
| <u>DEPARTMENT OF AGRICULTURE</u> | | | | |
| Shaond Muse Bey v. Dept. of Agriculture | 06 DAG 0985 | Morrison | 08/16/06 | |
| Clara Church v. Dept. of Agriculture and Consumer Services | 06 DAG 1422 | Wade | 12/11/06 | |
| <u>DEPARTMENT OF CULTURAL RESOURCES</u> | | | | |
| William H. Miller v. Cultural Resources, State Historic Preservation | 05 DCR 0439 | Mann | 07/03/06 | |
| <u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u> | | | | |
| Andrea Green, Parent, on behalf of her Minor Child, Andrew Price | 01 DHR 2149 | Gray | 06/29/06 | |
| Charles N. Long v. DHHS, Wake County Human Services | 02 DHR 0932 | Lassiter | 12/21/06 | |
| Michael Eugene Dalton v. DHHS, DFS | 02 DHR 1456 | Lassiter | 10/06/06 | |

CONTESTED CASE DECISIONS

| | | | | |
|---|-------------|----------|----------|---------------|
| Marquelle's Enrichment Center for Edith James and Wilhelmenia Bridges v. Div. Child Development Regulatory Services Section | 02 DHR 1537 | Gray | 08/21/06 | |
| Afusat Daodu v. DHHS, DFS | 03 DHR 1489 | Lassiter | 12/08/06 | |
| Michael Eugene Dalton v. DHHS, DFS | 04 DHR 0288 | Lassiter | 10/06/06 | |
| George Onebati NY Angena v. DHHS, DFS, Health Care Personnel Registry | 04 DHR 0764 | Wade | 12/27/06 | |
| Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS | 04 DHR 1513 | Lassiter | 06/14/06 | |
| Michael Eugene Dalton v. DHHS, DFS | 04 DHR 1662 | Lassiter | 10/06/06 | |
| Rebecca Hamilton, Beck's Play and Learn v. DHHS, Div. of Child Development | 04 DHR 1866 | Lassiter | 10/02/06 | |
| 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 Inernation, 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 | |
| Anthony Wayne Sando v. DHHS | 05 DHR 0465 | Gray | 11/14/06 | |
| 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 | |
| Carolyn W. Cooper, Happy Days Child Care v. Div. of Child Development | 05 DHR 1255 | Lassiter | 09/12/06 | |
| Shari Ann Torain v. DHHS | 05 DHR 1317 | Elkins | 06/08/06 | |
| Delfina Harris v. DHHS, DFS | 05 DHR 1344 | Wade | 10/11/06 | |
| Patrick Francis Diamond v. DHHS | 05 DHR 1356 | Gray | 12/14/06 | |
| County of Buncombe & NC Radiation Therapy Management Services, Inc. d/b/a 21 st Century Oncology v. DHHS, DFS, Certificate of Need Section, & Asheville Hematology and Oncology Associates, P.A. | 05 DHR 1369 | Gray | 05/26/06 | 21:01 NCR 115 |
| 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 | |
| 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 | |
| Brookside Montessori School v. DHHS, Div. of Child Development | 05 DHR 1465 | Gray | 06/28/06 | |
| Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical , Center v. DHHS, DFS, Certificate of Need Section | 05 DHR 1490 | Lassiter | 05/31/06 | |
| 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 | |
| Shannon Woodell Glidewell v. DHHS, DFS | 05 DHR 1514 | Gray | 09/29/06 | |
| Kamaria Smith v. DHHS, DFS, Nurse Aid Registry | 05 DHR 1547 | Mann | 12/22/06 | |
| LaBrenda Perry Bennett v. Health Care Personnel Registry | 05 DHR 1579 | Morrison | 07/13/06 | |
| Carolina Kids Academy, Inc v. DHHS, Division of Child Development | 05 DHR 1906 | Morrison | 11/03/06 | |
| 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 | |
| Bertha Graham v. DHHS, DFS, Health Care Personnel Registry | 05 DHR 2040 | McCotter | 06/08/06 | |
| Jeanette Clark v. State Board of Nursing, Raleigh, NC | 05 DHR 2076 | Gray | 07/10/06 | |
| Yavonka Renee Vann v. DHHS, DFS | 05 DHR 2108 | Gray | 07/12/06 | |
| Janet Johnson v. Health Care Personnel Registry | 05 DHR 2127 | Gray | 08/15/06 | |
| Zion Hill Ame Zion Church, Child Development Center v. DHHS, Div. of Child Development | 05 DHR 2184 | Gray | 07/12/06 | |
| Steven Thomas Safrut v. DHHS | 05 DHR 2191 | Mann | 06/20/06 | |
| Rosa Currie v. DHHS | 05 DHR 2204 | Elkins | 09/26/06 | |
| Ruben Perez v. DHHS, Div. of Public Health Women and Children's Health Section | 05 DHR 2225 | Lassiter | 05/10/06 | |
| Hospice & Palliative Care Charlotte Region v. DHHS, DFS, CON Section, Licensure and Certification Section and Liberty Home Care II, LLC | 06 DHR 0018 | Elkins | 09/28/06 | |
| Hospice & Palliative Care Charlotte Region v. DHHS, DFS, CON Section and DHHS, DFS, Licensure and Certification Section | 06 DHR 0022 | Elkins | 09/14/06 | 21:07 NCR 674 |
| Keith L. Mallory Jr., v. DHHS, DFS | 06 DHR 0023 | Wade | 12/27/06 | |
| Jacqueline Hall v. DHHS, Div. of Child Development | 06 DHR 0025 | Lassiter | 08/31/06 | |
| Joshua B. Worley, by and through his Guardian as Litem, Bertha Gail Levi v. DHHS, Div. of Medical Assistance | 06 DHR 0033 | Mann | 09/11/06 | |
| Helen A. Robinson, Administrator for New Life Early Childhood Development Center v. DHHS, Div. of Child Development | 06 DHR 0171 | Wade | 12/29/06 | |
| Richard Wayne Baird v. DHHS, DMA | 06 DHR 0177 | Gray | 06/15/06 | |
| Rosemary Nwanko v. DHHS, DFS, Mental Health Licensure and Certification Section | 06 DHR 0186 | Gray | 07/12/06 | |
| JoAnn Baldwin v. DHHS, DFS, Child and Adult Care Food Program | 06 DHR 0208 | Wade | 06/27/06 | |
| Joyce Moore v. DHHS | 06 DHR 0212 | Morrison | 08/15/06 | |
| Jansala Walker v. Healthcare Personnel Registry | 06 DHR 0213 | Wade | 06/07/06 | |
| Bobby Locklear v. DHHS, DFS, Adult Licensure Section | 06 DHR 0215 | Mann | 06/20/06 | |

CONTESTED CASE DECISIONS

| | | | |
|--|-------------|----------|----------|
| Linwood B. Cameron d/b/a New Millennium Management Services v. DFS | 06 DHR 0218 | Elkins | 06/08/06 |
| Selvia Chapel Child Care Center ID# 74000208, Bishop A. H. Hartsfield v. DHHS, Div. of Child Development | 06 DHR 0268 | Gray | 08/21/06 |
| Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program | 06 DHR 0271 | Gray | 05/17/06 |
| Jack Williamson v. Div. of Medical Assistance Third Party Recovery | 06 DHR 0300 | Chess | 08/04/06 |
| Shawqi Abdalla Ibtisam Omar v. OAH | 06 DHR 0332 | Gray | 07/10/06 |
| Daniel Marshall v. DHHS | 06 DHR 0340 | Wade | 06/27/06 |
| Katie Morris v. DHHS | 06 DHR 0344 | Gray | 08/21/06 |
| Michael Glenn Shell v. Board of Health Care Workers Registry, DHHS | 06 DHR 0358 | Elkins | 07/31/06 |
| Angel Allman v. Div. of Medical Assistance Medical Policy | 06 DHR 0370 | Wade | 08/09/06 |
| Tammie L. Greene v. DHHS, Div. of Medical Assistance | 06 DHR 0386 | Chess | 07/25/06 |
| Carol Denny v. DHHS | 06 DHR 0395 | Mann | 09/05/06 |
| Myrna Diane Bunns v. DHHS, Division of Child Development | 06 DHR 0399 | Gray | 06/19/06 |
| Joseph Randy Creech v. Dix, DHHS | 06 DHR 0416 | Mann | 09/06/06 |
| Annette Alexander v. DHHS | 06 DHR 0471 | Elkins | 06/23/06 |
| Bernice Norman v. Wash Co. Dept. of Social Services | 06 DHR 0472 | Elkins | 06/23/06 |
| Daisey Fish v. Dorthea Dix Hospital | 06 DHR 0473 | Morrison | 08/02/06 |
| Delisa Jean Scott v. DHHS, DFS | 06 DHR 0475 | Elkins | 06/23/06 |
| Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program | 06 DHR 0488 | Gray | 05/17/06 |
| Myrna A. Batson v. Broughton Hospital | 06 DHR 0503 | Gray | 07/12/06 |
| Digna A. Marte v. DHHS, Div. of Medical Assistance | 06 DHR 0551 | Mann | 07/21/06 |
| Carolyn W. Cooper, Happy Days Child Care Center v. Div. of Child Development, DHHS | 06 DHR 0565 | Lassiter | 08/01/06 |
| Eric Becton v. DHHS | 06 DHR 0594 | Elkins | 06/23/06 |
| Bibian Nwanguma v. Health Care Personnel Registry | 06 DHR 0651 | Wade | 08/14/06 |
| Grace A. Wright v. Wake County Health and Human Services, Program Interg Program Dept. | 06 DHR 0670 | Wade | 01/04/07 |
| Abid Ali d/b/a Durham Food Mart v. DHHS, Division of Public Health, Women and Children's Health Section | 06 DHR 0686 | Morrison | 12/15/06 |
| Regina A McLean v. DHHS, Citizen Affairs/Administration | 06 DHR 0691 | Gray | 06/27/06 |
| Regina A. Mclean v. Human Health Client Assistant Program | 06 DHR 0692 | Gray | 07/20/06 |
| Christy Laws v. DHHS | 06 DHR 0698 | Elkins | 09/07/06 |
| Kara Elmore v. DHHS, DFS | 06 DHR 0702 | Gray | 08/23/06 |
| James Soules v. DHHS | 06 DHR 0718 | Gray | 08/01/06 |
| DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect | 06 DHR 0720 | Lassiter | 06/14/06 |
| Angela M. Rhodes v. New Hanover County DSS | 06 DHR 0730 | Mann | 09/05/06 |
| Full Potential, LLC v. DHHS | 06 DHR 0781 | Gray | 07/21/06 |
| Little Town Learning Center, Inc., By Angela Beacham v. DHHS, Div. of Public Health, Child and Adult Care Food Program | 06 DHR 0786 | Morrison | 10/05/06 |
| Alberta Denise Murphy v. DHHS and Registry | 06 DHR 0788 | Elkins | 09/07/06 |
| Bettie B. Woods v. Gardian Ad Litem, Angela Phillips, Lincoln County DSS/Catawba BAL | 06 DHR 0830 | Gray | 06/28/06 |
| Rockingham County Department of Social Services v. Medicaid/Value Options | 06 DHR 0839 | Lassiter | 08/01/06 |
| Denise Little v. Catawba County LME, John Hardy, Director Consultant Deanna Hoxworth | 06 DHR 0860 | Lassiter | 06/23/06 |
| Edna Cray - Kid's Academy v. DHHS, Div. of Public Health Child and Adult Care Food Program | 06 DHR 0887 | Gray | 06/13/06 |
| Barbara J. Younce v. DHHS, DFS | 06 DHR 0927 | Gray | 12/05/06 |
| Norman Lavel Bracey, Jr., v. Social Services (Medicaid) | 06 DHR 0955 | Gray | 07/21/06 |
| Elaine Weidman v. DHHS, DFS, Health Care Personnel Registry | 06 DHR 1032 | Gray | 10/25/06 |
| Ariel Horowitz, Minor, by her Parents David Horowitz and Rosalind Heiko v. Div. of Medical Assistance, MH/DD/SAS and DHHS | 06 DHR 1064 | Lassiter | 08/21/06 |
| Keira T. Williams v. Wake County Dept. of Social Services | 06 DHR 1067 | Lassiter | 07/06/06 |
| Brentwood Child Care Center (92001147) v. DCD/Child Abuse Neglect Unit | 06 DHR 1100 | Lassiter | 10/12/06 |
| Angela Fay Carraway v. DHHS | 06 DHR 1105 | Morrison | 08/21/06 |
| Ivory Jade Alson v. Wake Co. Dept. of Social Services | 06 DHR 1106 | Lassiter | 07/10/06 |
| Play and Learn Childcare, Mary Ellen Helton v. DHHS, Div. of Public Health, Child and Adult Care Food Program | 06 DHR 1108 | Gray | 07/24/06 |
| RTTS, Inc v. DHHS, DFS, Mental Health Licensure and Cert. Section | 06 DHR 1127 | Lassiter | 10/02/06 |
| Rhonda Bumgarner v. DHHS, Div. of Medical Assistance | 06 DHR 1162 | Gray | 09/14/06 |
| Zabrina Johnson v. DHHS | 06 DHR 1170 | Gray | 10/09/06 |
| Leea Holt, Tari Guevara v. Div. of Child Development, DHHS | 06 DHR 1181 | Morrison | 10/13/06 |
| Reno Judd/Noreen Currie v. DHHS | 06 DHR 1183 | Gray | 10/26/06 |
| New Directions II, Tamara Perry v. DHHS, DFS, Mental Health Licensure & Certification Section | 06 DHR 1199 | Overby | 11/22/06 |
| New Directions II Lane House, Tama Perry v. DHHS, DFS Mental Health Licensure & Certification Section | 06 DHR 1200 | Overby | 11/22/06 |
| Beverly M. West v. DHHS | 06 DHR 1238 | Wade | 09/26/06 |
| Hospice and Palliative Care Center of Alamance-Caswell, LLC v. DHHS, DFS, CON Section, Licensure and Certification Section and Community Home Care of Vance County, Inc. d/b/a Community Home Care and Hospice | 06 DHR 1247 | Elkins | 12/15/06 |
| Hospice and Palliative Care Center of Alamance-Caswell, LLC v. DHHS | 06 DHR 1248 | Elkins | 12/15/06 |

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| DFS, Licensure and Certification Section, CON Section and Liberty Home Care, LLC | | | |
| Sherri Groves v. Div. of Child Development | 06 DHR 1252 | Gray | 09/14/06 |
| Graceland Food Mart, James C. McGirt, Owner v. DHHS | 06 DHR 1266 | Elkins | 09/22/06 |
| April Ivelisse Truitt v. DHHS | 06 DHR 1288 | Elkins | 12/12/06 |
| Willie P. Little v. Medicaid | 06 DHR 1315 | Gray | 11/09/06 |
| Debra Brown v. DHHS | 06 DHR 1323 | Gray | 11/27/06 |
| Grandma's House Night Care, Shirley Brown v. Jeff Gaster, Dept. of Child Development | 06 DHR 1331 | Overby | 11/27/06 |
| Mary Jane Rutledge v. NCOAH | 06 DHR 1332 | Gray | 09/12/06 |
| Rebecca G Banks v. Dept. of Social Services, Crystal Jackson | 06 DHR 1333 | Overby | 11/28/06 |
| Jamie Deyton for Crystal Cooper v. DHHS, Div. of MH/DD/SAS Customer Service Section | 06 DHR 1357 | Webster | 12/15/06 |
| Scott Andrew Broadway v. DHHS (Medicaid) | 06 DHR 1395 | Gray | 11/13/06 |
| Kyle Collier, a minor, by his mother and legal guardian, Orbie Etheridge v. DHHS | 06 DHR 1412 | Morrison | 12/22/06 |
| Betty Betts v. Division of Medical Assistance | 06 DHR 1449 | Morrison | 11/02/06 |
| Rita Perterson v. OAH | 06 DHR 1456 | Wade | 12/13/06 |
| Phyllis Hale for daughter Haley Hale v. OAH | 06 DHR 1467 | Elkins | 12/11/06 |
| Lots of Love Child Development Center v. DHHS | 06 DHR 1471 | Lassiter | 12/15/06 |
| Rodney Winstead Jr v. DHHS | 06 DHR 1475 | Morrison | 10/26/06 |
| Aunt Alice Daycare Center, Alice Camara v. DHHS, Nutrition Program | 06 DHR 1490 | Lassiter | 10/13/06 |
| Mr. Timmy K Pless, Barry Moore, Advocate v. DHHS, Div. of Medical Assistance | 06 DHR 1500 | Wade | 12/13/06 |
| LaShawn Hardy v. Health Care Personnel Registry | 06 DHR 1501 | Overby | 01/04/07 |
| Connie Lee Yates v. DHHS | 06 DHR 1558 | Morrison | 09/27/06 |
| Valyncia J. London v. DHHS | 06 DHR 1601 | Lassiter | 11/13/06 |
| Rose Marie (Allala) Sevorwell v. Wake County & Johnston County, DHHS | 06 DHR 1623 | Gray | 11/09/06 |
| Uniquely Supported, Inc, Shawn Kuhl (provide appropriate supervision) | 06 DHR 1634 | Lassiter | 12/04/06 |
| Julian Jones v. EDS – Prior Approval | 06 DHR 1679 | Gray | 12/20/06 |
| Natasha Renee McNeely v. Western Carolina Center, J Iverson Riddle Development Center | 06 DHR 1682 | Lassiter | 10/31/06 |
| Tishea Talley v. Nurse Registry | 06 DHR 1724 | Overby | 11/22/06 |
| Diane Jenkins-Mother/Gaurdian for Erzal Carl Johnson v. DHHS, Div. of Mental Health Developmental Disabilities and Substance Abuse | 06 DHR 1784 | Lassiter | 01/24/07 |
| Linda Lea, Grace Manor v. Lincensure Section | 06 DHR 1789 | Lassiter | 01/24/07 |
| Polley Clinic of Dermatology & Dermatological Surgery PA | 06 DHR 1939 | Gray | 01/08/07 |
| Medical Mobility Center v. Div. of Medical Medicaid Program | 06 DHR 2034 | Gray | 12/14/06 |
| Kim Michelle Sinclair, Kim Sinclair (Jasmine) v. DHHS | 06 DHR 2117 | Overby | 01/11/07 |
| Shanon B. Kesler (mother), Cassie L. Kesler (daughter) v. Social Services | 06 DHR 2170 | Overby | 01/25/07 |
| Teresa B. Morton, v. Santana T. Deberry and Drexdal Pratt, Chief of OEMS, Office of Emergency Medical Services | 06 DHR 2180 | Webster | 02/08/07 |

DEPARTMENT OF ADMINISTRATION

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| Corporate Express Office Products, Inc. v. NC Division of Purchase and Contract, & Office Depot, Inc. | 06 DOA 0112 | Gray | 05/17/06 | 21:01 NCR | 163 |
| Hershel Sarraf, Oro Avanti, Inc. v. DOA, Div. of Purchase and Contract | 06 DOA 0646 | Wade | 09/20/06 | | |

DEPARTMENT OF CORRECTIONS

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| Michael Eugene Hunt v. DOC | 06 DOC 0498 | Gray | 06/20/06 | | |
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DEPARTMENT OF JUSTICE

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| Steven Forrest Brubaker v. NC Criminal Justice Education and Training Standards Commission | 05 DOJ 1405 | Elkins | 05/31/06 | 21:01 NCR | 158 |
| Jeffrey Michael Quinn v. Criminal Justice Training Standards Comm. | 05 DOJ 1406 | Elkins | 08/04/06 | | |
| Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm. | 05 DOJ 1520 | Wade | 08/28/06 | | |
| Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm. | 05 DOJ 1521 | Wade | 08/28/06 | | |
| Todd Franklin Wyke v. Criminal Justice Education and Training Standards Commission | 05 DOJ 2223 | Lassiter | 09/15/06 | | |
| Michael Edward Sutton v. NC Criminal Justice Education & Training Standards Commission | 06 DOJ 0012 | Morrison | 05/09/06 | | |
| Philip Lee Holdaway v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 0069 | DeLuca | 08/04/06 | | |
| Anthony Lee Davis v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 0070 | Gray | 08/26/06 | | |
| Bobbie Jo Bullins v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 0071 | Lassiter | 12/13/06 | | |
| Todd Franklin Wyke v. DOJ, Company Police Program | 06 DOJ 0146 | Lassiter | 09/15/06 | | |
| Scotty Eugene Robinson v. Sheriffs' Education and Training Standards Commission | 06 DOJ 0200 | Mann | 12/08/06 | | |
| Angela Renee Lail v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 0228 | Gray | 08/06/06 | 21:06 NCR | 514 |
| James Woodrow Jacobs v. Sheriffs' Education and Training Standards Commission | 06 DOJ 0229 | Gray | 07/12/06 | | |
| Virble Leake, Jr. v. Private Protective Services Board | 06 DOJ 0397 | Morrison | 10/05/06 | | |
| Jason Matthew Lish v. Criminal Justice Education and Training Standards Commission | 06 DOJ 0579 | Wade | 09/12/06 | | |
| Matthew Vicente Saylor v. Criminal Justice Education and Training Standards Commission | 06 DOJ 0597 | Wade | 12/27/06 | | |

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| Christopher Brian Mingia v. Criminal Justice Education and Training Standards Commission | 06 DOJ 0598 | Wade | 09/12/06 |
| Thomas M. Combs v. DOJ, Company Police Program | 06 DOJ 0640 | Elkins | 10/16/06 |
| Russell Lee Weaver v. Criminal Justice Education and Training Standards Commission | 06 DOJ 0662 | Gray | 01/03/07 |
| Christopher S. Cummings v. DOJ, Company Police Program | 06 DOJ 0696 | Gray | 08/11/06 |
| Allison M. Burdette v. Company Police Program | 06 DOJ 0733 | Wade | 08/11/06 |
| Amber Lee Baldwin v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 0814 | Gray | 06/26/06 |
| Reginald Warren v. Criminal Justice Education and Training Standards Commission | 06 DOJ 0880 | Gray | 09/08/06 |
| Betty Perry v. Criminal Justice Education and Training Standards Comm. | 06 DOJ 0881 | Lassiter | 09/20/06 |
| Danny Kaye Barham and NC Detective Agency, Inc v. Private Protective Services Board | 06 DOJ 0870 | Morrison | 08/07/06 |
| David L. Willams v. Private Protective Services Board | 06 DOJ 0876 | Morrison | 07/18/06 |
| Donna G. Redding v. Private Protective Services Board | 06 DOJ 0877 | Morrison | 08/01/06 |
| Joseph O. Smiley v. Private Protective Services Board | 06 DOJ 0878 | Morrison | 08/01/06 |
| Sean Thomas Roberts v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 1061 | Elkins | 11/30/06 |
| William Eugene Lemke v. Sheriffs' Education and Training Standards Commission | 06 DOJ 1293 | Overby | 11/28/06 |
| Amy Pearl King v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 1295 | Lassiter | 10/10/06 |
| Frankey Denese White v. Sheriffs' Education and Training Standards Commission | 06 DOJ 1297 | Gray | 11/03/06 |
| John Robert Fedyszyn v. Alarm Systems Licensing Board | 06 DOJ 1345 | Wade | 12/27/06 |
| Jerry Lynn Cheek v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 1496 | Elkins | 12/11/06 |
| Quintin G. Burnett v. Criminal Justice Education and Training Standards Commission | 06 DOJ 1646 | Gray | 12/20/06 |
| James Phillip Daniel v. Sheriffs' Education and Training Standards Comm. | 06 DOJ 1743 | Gray | 01/08/07 |
| Ronnie Lee Blount v. Criminal Justice Education and Training Standards Commission | 06 DOJ 1749 | Gray | 01/18/07 |
| Annette Lassiter Joyner v. Sheriffs' Education and Training Standards Commission | 06 DOJ 1750 | Gray | 01/08/07 |
| Joshua Michael Richardson v. Sheriffs' Education and Training Standards Commission | 06 DOJ 1788 | Gray | 01/08/07 |
| Katrina Moore Bowden v. Sheriffs' Education and Training Standards Commission | 06 DOJ 1919 | Gray | 01/18/07 |

DEPARTMENT OF STATE TREASURER

| | | | |
|---|-------------|--------|----------|
| Phyllis Dianne Smith v. Department of State Treasurer Retirement Systems Division | 05 DST 1378 | Wade | 12/27/06 |
| Percy E. Myers v. Retirement Systems Division, LGERS, | 06 DST 0048 | Chess | 05/31/06 |
| Larry D. Beck v. Local Governmental Employees' Retirement System, a Corporation, et al | 06 DST 0366 | Overby | 01/03/07 |
| Mary B. Spencer v. State Treasurer, Retirement Systems Division | 06 DST 0534 | Chess | 11/09/06 |
| Harry Whisnat v. Teachers' and State Employees' Retirement System of NC, A Corporation, Board of Trustees of the Teachers' and State Employees' Retirement System of NC, A body politic and Corporate, DOT, Retirement Systems Div. and the State of NC | 06 DST 0591 | Gray | 09/19/06 |
| Robin C. Fish v. Department of Treasurer Retirement Systems Division | 06 DST 1353 | Overby | 01/11/07 |

EDUCATION, STATE BOARD OF

| | | | |
|--|-------------|----------|----------|
| Darrell Wayne Purcell v. State Board of Education | 05 EDC 1861 | Morrison | 10/11/06 |
| Elizabeth Ann Mical v. Department of Public Instruction | 05 EDC 1962 | Morrison | 08/04/06 |
| Margaret Frances Handest v. Dept. of Public Instruction, Center for Recruitment and Retention | 05 EDC 2057 | Morrison | 10/11/06 |
| Linda Ellis v. Dept. of Public Instruction – National Board – Certification | 06 EDC 0002 | Morrison | 10/12/06 |
| Monica Robertson v. Department of Public Instruction | 06 EDC 0359 | Morrison | 08/02/06 |
| Gail G. Brooks v. Department of Public Instruction | 06 EDC 0437 | Morrison | 08/07/06 |
| Reginald Powe v. Public Schools of North Carolina, State Board of Educ. Department of Public Instruction, Superintendent's Ethics Advisory Committee | 06 EDC 1116 | Elkins | 10/03/06 |
| Charlie L. Richardson v. Department of Public Instruction Licensure Section | 06 EDC 1131 | Gray | 11/03/06 |
| Brenda H. Cox v. Center for Recruitment & Retention National Board for Professional Teaching Standards, Dept. of Public Instruction | 06 EDC 1546 | Elkins | 12/11/06 |
| Catherine (Cathy) Rush v. State Board of Education, Dept. of Public Instruction | 06 EDC 1622 | Gray | 11/09/06 |
| Melissa Thomas v. State Board of Education | 06 EDC 1667 | Gray | 01/29/07 |
| Katrina Walker v. DPI | 06 EDC 1804 | Gray | 01/29/07 |
| Jeffrey Wayne McClain v. Wake Co. Public School System | 06 EDC 2042 | Elkins | 01/05/07 |
| James Aaron Swafford v. DPI | 06 EDC 2175 | Elkins | 01/17/07 |

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

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| Howard L. Hardy v. Co. of Craven Department of Health | 00 EHR 0803 | Gray | 06/26/06 |
| Wheatly Oil Company, Inc v. DENR, Div. of Waste Management | 03 EHR 0030 | Gray | 08/04/06 |
| Auddies, Inc v. DENR | 03 EHR 1312 | Lassiter | 10/18/06 |
| Joe L. Wilson v. DENR | 03 EHR 1641 | Gray | 10/09/06 |
| Ronald L. Preston v. Davidson County Health Department | 03 EHR 2329 | Gray | 08/24/06 |

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| Auddies, Inc v. DENR | 04 EHR 0103 | Lassiter | 10/18/06 | |
| Sandra M. Netting v. DENR | 04 EHR 1768 | Gray | 09/29/06 | |
| County of Davidson v. DENR, Div. of Air Quality | 04 EHR 0362 | Wade | 09/01/06 | |
| Coastland Corporation, James E. Johnson, Jr., Pres v. Pamlico County Health Department, Environmental Health | 04 EHR 0842 | Lassiter | 10/31/06 | |
| Partners Recycling, Inc v. DENR | 04 EHR 1503 | Wade | 12/15/06 | |
| Laney Oil Company, Inc, UST# 04-049P, UST# 04-050P v DENR | 05 EHR 0135 | Gray | 06/20/06 | |
| Anton Tomassetti v. DENR, Div. of Air Quality | 05 EHR 0321 | Gray | 06/12/06 | |
| Raymond S. Carpenter v. DENR | 05 EHR 2009 | Bryan | 08/28/06 | |
| John Graham v. DENR, Div. of Air Quality | 05 EHR 2029 | Gray | 05/08/06 | |
| Samuel Buck Kiser v. DENR, Div. of Waste Management | 05 EHR 2120 | Chess | 07/25/06 | 21:06 NCR 519 |
| Christopher S. Anderson, Jan HP Anderson v. Ashe County Health Dept. | 06 EHR 0558 | Elkins | 07/31/06 | |
| Heyward Ledford, Wolfpen Associates, Inc. v. DENR | 06 EHR 0679 | Gray | 06/12/06 | |
| Parnell-Kinlaw Group, Inc v. DENR, Div. of Land Quality | 06 EHR 0743 | Mann | 09/26/06 | |
| William & Valerie Brodie v. DENR/Division of Coastal Management and Town of Carolina Beach | 06 EHR 0910 | Mann | 11/08/06 | |
| Robin R. Moore v. DENR, Div. of Waste Management | 06 EHR 0986 | Lassiter | 11/07/06 | |
| Danny Ray Thorpe v. Brunswick Co. Health Dept., Environmental Health Department | 06 EHR 1041 | Gray | 08/07/06 | |
| David Edgar Hine v. DENR, Div of Waste Management, Solid Waste Section | 06 EHR 1044 | Mann | 12/15/06 | |
| Dianne D. Vereen v. Brunswick Co. Health Department | 06 EHR 1126 | Elkins | 09/27/06 | |
| Princeton Recreational Park v. DENR | 06 EHR 1196 | Wade | 12/13/06 | |
| American Canoe Association, ET.AL v. DENR and DM Farms of Rosehill LLC | 06 EHR 1254 | Overby | 01/02/07 | |
| C.F. Little and Patsy H. Little v. DENR | 06 EHR 1340 | Lassiter | 09/22/06 | |
| Fall Creek Land Co Lot#201 Yellowtop Mountain Estates | 06 EHR 1436 | Wade | 12/27/06 | |
| Cliff S. Barnes v. EMC | 06 EHR 1450 | Wade | 12/08/06 | |
| Joe Walter Sprouse and Talitha LeeAnn Bradburn Sprouse v. The Buncombe County Health Center, Environmental Health Division | 06 EHR 1472 | Lassiter | 01/24/07 | |
| John P. Leonard, Agent for Magnolia Pointe LP v. County of Durham Engineering Department | 06 EHR 1568 | Gray | 10/13/06 | |
| Alvin R. Newell and Barbara A. Newell v. Haywood Co. Health Dept. Environmental Health | 06 EHR 1652 | Lassiter | 01/24/07 | |
| <u>DEPARTMENT OF INSURANCE</u> | | | | |
| Robert Bryan Bender and James V. Bender, Jr. and Wife, Sheron Bender v. Teachers' and State Employees' Comprehensive Major Medical Plan | 05 INS 0067 | Lassiter | 10/06/06 | |
| Heidi L. Roth v. Teachers' and State Employees' Comprehensive Major Medical Plan | 05 INS 1779 | Lassiter | 10/19/06 | |
| James D. Kelly Jr. v. State Health Plan | 06 INS 0013 | Morrison | 08/07/06 | 21:06 NCR 524 |
| Daniel C. Johnson v. Teachers' and State Employees' Comprehensive Major Medical Plan | 06 INS 0353 | Morrison | 07/03/06 | |
| Donna Jones/Mark Jones v. Teachers' and State Employees' Comprehensive Major Medical Plan | 06 INS 0779 | Wade | 12/29/06 | |
| Rebecca P. Murray v. George C. Stokes, Executive Administrator N.C. State Health Plan | 06 INS 0864 | Elkins | 12/21/06 | |
| Harry F. Reynolds v. Teachers' and State Employees' Comprehensive Major Medical Plan | 06 INS 1348 | Morrison | 12/22/06 | |
| <u>OFFICE OF STATE PERSONNEL</u> | | | | |
| Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway Patrol, and Brian Beatty, Secretary CC & PS | 02 OSP 0392 | Gray | 06/15/06 | |
| Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway Patrol, and Brian Beatty, Secretary CC & PS | 02 OSP 1036 | Gray | 06/15/06 | |
| Georgia Warren v. DOT | 02 OSP 1911 | Wade | 08/08/06 | |
| Georgia Warren v. DOT | 02 OSP 2179 | Wade | 08/08/06 | |
| Emily Flores v. College of Agriculture and Life Sciences NC State | 04 OSP 1518 | Lassiter | 10/13/06 | |
| Isaiah Green, Jr v. DMV | 05 OSP 0500 | Morrison | 11/02/06 | |
| C.W. McAdams v. DMV | 05 OSP 0626 | Morrison | 11/02/06 | |
| Charles H. Boykin, Jr. v. Halifax County Health Dept. | 05 OSP 0851 | Gray | 09/15/06 | |
| Tiffany Bowick-Richardson v. Fayetteville State University | 05 OSP 0901 | Lassiter | 08/23/06 | |
| Hank L. Silverthorne v. DOT, Bridge Maintenance (Division One) | 05 OSP 0291 | Gray | 05/11/06 | |
| Jeffrey Michael Quinn v. Dept. of Crime Control and Public Safety, State Highway Patrol | 05 OSP 1012 | Elkins | 08/04/06 | 21:06 NCR 527 |
| Deena Ward v. Columbus Co. Dept. of Social Services | 05 OSP 1017 | Lassiter | 06/23/06 | |
| Alma Chinita Trotter v. DHHS, Public Health Department | 05 OSP 1183 | Chess | 06/01/06 | |
| Clayton Richardson v. Winston-Salem State University | 05 OSP 1343 | Mann | 01/09/07 | |
| Tonita Derr Dawkins v. DOC, Alexander Correctional Institution | 05 OSP 1449 | Gray | 07/27/06 | |
| Thomas H. Jones v. NC State Highway Patrol, Dept. of Crime Control | 05 OSP 1495 | Chess | 05/17/06 | |

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| & Public Safety | | | | |
| W. Frank Etheridge v. DOA, State Capital Police | 05 OSP 1771 | Lassiter | 08/03/06 | 21:06 NCR 536 |
| Sandra Harris v. DOT | 05 OSP 1886 | Lassiter | 07/13/06 | |
| Marisa Lail Setzer v. Department of Public Instruction | 05 OSP 1963 | Morrison | 08/02/06 | |
| Melissa H. Bailey v. DOT | 05 OSP 2119 | Wade | 06/28/06 | |
| Michael D. Bognanowicz v. NC Wildlife Resources Commission | 05 OSP 2024 | Bryan | 05/18/06 | |
| | | | | |
| Malcolm Shelton Davis v. DHHS | 06 OSP 0015 | Smith | 09/12/06 | |
| Kamaria Smith v. DHHS | 06 OSP 0130 | Mann | 06/06/06 | |
| Lisa A. Forbes v. Dorothea Dix Hospital | 06 OSP 0134 | Gray | 03/29/06 | |
| Lisa A. Forbes v. Dorothea Dix Hospital | 06 OSP 0135 | Gray | 03/29/06 | |
| Sharon B. Matthews v. DOT, DMV | 06 OSP 0207 | Elkins | 10/23/06 | |
| Lelia J. Bailey v. Winston-Salem State University | 06 OSP 0211 | Chess | 09/06/06 | |
| Reginald Powe v. Public Schools of NC State Board of Education, Dept of Public Instruction | 06 OSP 0238 | Lassiter | 05/09/06 | |
| Nita Bass v. Craven County Department of Social Services | 06 OSP 0346 | Lassiter | 09/12/06 | |
| Lisa Green v. DOC | 06 OSP 0379 | Lassiter | 06/02/06 | |
| James Walter Gibson v. DOT | 06 OSP 0543 | Gray | 05/19/06 | |
| Caria Faulk v. Columbus Co. Dept. of Social Services | 06 OSP 0546 | Lassiter | 07/06/06 | |
| Todd R. Holbrook v. DOT, DMV | 06 OSP 0644 | Gray | 12/13/06 | |
| Thomasina Burrows v. DHHS, Div. of Vocational Rehabilitation Services/ Independent Living Program | 06 OSP 0665 | Elkins | 11/06/06 | |
| Robin D. Long v. UNC Greensboro | 06 OSP 0684 | Lassiter | 06/27/06 | |
| Reginald Hargrave v. Lexington City Schools | 06 OSP 0669 | Lassiter | 11/02/06 | |
| Rena Coltraine McLeod v. Guilford Co. Dept. of Public Health | 06 OSP 0703 | Wade | 06/28/06 | |
| Jan-Lee Wells v. Fayetteville Sate | 06 OSP 0731 | Gray | 08/10/06 | |
| Katrina Pittman v. DHHS, Division of Vocational Rehabilitation Services | 06 OSP 0768 | Wade | 12/27/06 | |
| Timothy Scott Reynolds v. Morrison Correctional Institution | 06 OSP 0803 | Lassiter | 07/26/06 | |
| Geraldine Blackston-Ramos v. Maurice Boswell, Mary Washun, Cynthia Chamblee, Phyllis Sharpe, Dennis Davis, Bill McNeal, Wake County Public Schools/Human Resource Department/Preventive Services/ Partnership for Educational Success | 06 OSP 0831 | Morrison | 07/12/06 | |
| Rick Van Kerkhove v. DOC | 06 OSP 0851 | Gray | 08/25/06 | |
| Odessa D. Gwynn v. Caswell County Senior Center | 06 OSP 0863 | Wade | 08/26/06 | |
| Walter Giese v. Onslow County Board of Health | 06 OSP 0989 | Gray | 01/22/07 | |
| Connie W. Williams v. DOC, Division of Prisons | 06 OSP 1028 | Morrison | 12/28/06 | |
| Juliana W. Smith v. Alamance-Caswell Area Mental Health, Developmental Disabilities, and Substance Abuse Authority | 06 OSP 1059 | Lassiter | 08/09/06 | |
| Dr. Mirian W. McIntosh v. Durham Co. Health Department | 06 OSP 1060 | Lassiter | 08/09/06 | |
| Maria Olea-Lingg v. UNC-Health Care | 06 OSP 1143 | Lassiter | 10/12/06 | |
| Alonzo Vann v. DOT | 06 OSP 1145 | Wade | 12/29/06 | |
| Hattie Miller v. DOA, Food and Drug Protection Division | 06 OSP 1278 | Gray | 02/06/07 | |
| Tamra M. Burroughs v. Div. of Services for the Deaf and Hard of Hearing | 06 OSP 1280 | Elkins | 09/07/06 | |
| Melvin Daniels v. DOC | 06 OSP 1299 | Elkins | 12/11/06 | |
| Calvin D. Ellis v. Fayetteville State University | 06 OSP 1336 | Wade | 12/08/06 | |
| James D. Abrams v. Craven Co. DOT | 06 OSP 1358 | Gray | 10/13/06 | |
| Douise Morris v. DOC | 06 OSP 1409 | Gray | 11/21/06 | |
| Claudette Johnson v. NCSU Dining | 06 OSP 1509 | Gray | 12/07/06 | |
| Wendy Anderson v. Agricultural and Technical State University | 06 OSP 1562 | Elkins | 01/05/07 | |
| Melvin Sutton v. DOT | 06 OSP 1657 | Gray | 11/21/06 | |
| Sandra S. Denmark v. Dorothea Dix Hospital, DHHS | 06 OSP 1685 | Gray | 01/16/07 | |
| James Ray Merrill v. Broughton Hospital | 06 OSP 1767 | Lassiter | 12/13/06 | |
| Brenda Stroud v. DST | 06 OSP 1722 | Gray | 01/18/07 | |
| Darian Lee Hybl v. Halifax Community College (HCC) | 06 OSP 1773 | Gray | 12/14/06 | |
| Tabitha McAdoo v. UNCW | 06 OSP 1881 | Morrison | 12/29/06 | |
| Todd Williams v. Appalachian State University | 06 OSP 1895 | Overby | 02/05/07 | |

SECRETARY OF STATE

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| Regina H. Autry v. SOS | 05 SOS 1774 | Chess | 11/28/06 |
| Tisha L. Jones v. Dept. of Secretary of State | 05 SOS 1987 | Gray | 05/19/06 |
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| Temeka A. Brooks v. Dept of Secretary of State | 06 SOS 0276 | Mann | 05/26/06 |
| Laksha England v. Dept. of SOS | 06 SOS 0630 | Mann | 09/13/06 |
| Brendalyn D. Blackmon v. Dept. of Secretary of State | 06 SOS 0701 | Wade | 08/11/06 |
| Jennifer Carol Daniels v. Dept. of SOS | 06 SOS 1167 | Lassiter | 10/12/06 |
| Gerald Haskins v. SOS, Notary Division | 06 SOS 1605 | Gray | 01/03/07 |

UNC HOSPITALS

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| Linda Sisco v. UNC Hospitals | 05 UNC 0781 | Gray | 05/09/06 |
| Karen H. Moore v. UNC Hospitals | 06 UNC 0351 | Elkins | 06/08/06 |
| Krista Singletary v. UNC Hospitals | 06 UNC 0468 | Mann | 10/12/06 |
| Larry E. Rogers v. UNC Hospitals | 06 UNC 0697 | Elkins | 07/31/06 |
| Cynthia Lodestro v. UNC Hospitals | 06 UNC 0707 | Wade | 08/11/06 |
| Margaret Branham v. UNC Hospitals | 06 UNC 0903 | Elkins | 09/07/06 |
| Ta-Wanda & David Wilson v. UNC Hospitals | 06 UNC 1084 | Lassiter | 09/12/06 |
| Angel C. Carey v. UNC Hospitals | 06 UNC 1146 | Lassiter | 09/07/06 |
| Ricky Hayes v. UNC-CH | 06 UNC 1426 | Overby | 12/01/06 |
| Bonnie G. Cheek v. UNC-CH | 06 UNC 1561 | Gray | 12/14/06 |