

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 05 • Pages 284 - 356

September 4, 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
424 North Blount Street
Raleigh, North Carolina 27601-2817
(919) 733-2678
(919) 733-3462 FAX

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367
Dana Vojtko, Publications Coordinator dana.vojtko@ncmail.net (919) 733-2679
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-2696
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 733-3361

Rule Review and Legal Issues

Rules Review Commission
1307 Glenwood Ave., Suite 159
Raleigh, North Carolina 27605
(919) 733-2721
(919) 733-9415 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
(919) 807-4700
(919) 733-0640 FAX

contact: Nathan Knuffman, Economist III nathan.Knuffman@ncmail.net (919)807-4728
Jonathan Womer, Asst. State Budget Officer jonathan.womer@ncmail.net (919)807-4737

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
(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
Raleigh, North Carolina 27603
(919) 715-2893

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-4000

contact: Anita Watkins awatkins@ncmlm.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.

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 121 NORTH CAROLINA FILM COUNCIL

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

Section 1. Establishment.

The North Carolina Film Council is hereby established.

Section 2. Duties.

The Council shall have the following duties and functions:

- a. Advise the Governor on matters that would enhance the likelihood of the film industry choosing North Carolina for filmmaking.
- b. Advise the Secretary of Commerce and the Film Division in the Department of Commerce on film-making activities within North Carolina.
- c. Serve as a forum for film-making concerns and recommendations relating to the film industry in North Carolina that would include, but not be all inclusive of, the following:
 1. Assist in updating and maintaining a database registry of locations within North Carolina that would be potential sites for filmmaking;
 2. Develop the financial capability of North Carolina to support projects with local financing of the film industry;
 3. Develop a support network for production activities relating to the film industry;
 4. Assist in updating and maintaining a manual for the use of local governments and municipalities detailing supportive activities that would facilitate filmmaking in their communities;

5. Assist in the support and coordination of the activities of local film commissions in North Carolina;
6. Provide advice on projects directly assigned by the Governor to the Council;
7. Assist with recruitment of the film industry to select North Carolina sites for filmmaking; and
8. Assist in the preparation of an annual report on the economic impact of the film-making industry in North Carolina, along with recommendations to increase the filmmaking activities within North Carolina.

Section 3. Membership.

The Council shall consist of no more than 25 voting members who shall be appointed by the Governor including:

- a. representatives of the film industry within the state representing acting, production, directing, producing, and film studio management;
- b. representatives of state or local government; and
- c. citizens' at-large members.

Section 4. Terms of Membership.

All members shall be appointed for a term of three years.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expense.

Members of the Council shall receive necessary travel and subsistence expenses, when available, from Department of Commerce funds, pursuant to N.C.G.S. §138-5.

Section 7. Officers.

The Chair and Vice Chair of the Council shall be appointed by the Governor and serve at the pleasure of the Governor. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet at least three times yearly and at other times at the call of the Chair or upon written request a least ten of its members.

Section 9. Staff Assistance.

The Department of Commerce shall provide clerical support and other services required by the Council.

This Executive Order shall be effective immediately and rescinds Executive Order No. 79.

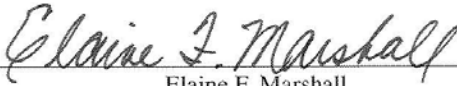
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this thirtieth day of July in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-first.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

<p><i>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.</i></p>

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
SRE North Carolina-2, LLC**

Pursuant to N.C.G.S. § 130A-310.34, SRE North Carolina-2, 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 Charlotte, Mecklenburg County, North Carolina. The Property which is the former site, among other things, of Town & County Rent-A-Car, consists of 1.6 acres and is located at 5324 East Independence Boulevard. Environmental contamination exists on the Property in the soil. SRE North Carolina-2, LLC has committed itself to effect redevelopment of the Property for no uses other than commercial/office purposes, through sale of the land to a developer. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and SRE North Carolina-2, 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) 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 Mecklenburg County Library, 310 N. Tryon Street, Charlotte, NC 28202 by contacting Susan Herzog, Senior Library Manager, at that address or at (704) 336-2725; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments 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. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if SRE North Carolina-2, 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 September 5, 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



U.S. Department of Justice

Civil Rights Division

JKT:MSR:ANS:maf
DJ 166-012-3
2007-3189
2007-3371

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

July 26, 2007

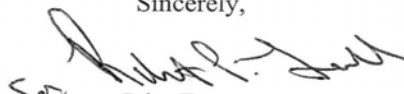
Mr. David A. Holec
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to eight annexations (Ordinance Nos. 07-58 through 07-60, and 07-75 through 07-79 (2007)) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 19 and July 5, 2007.

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

Sincerely,


John Tanner
Chief, Voting Section



U.S. Department of Justice

Civil Rights Division

JKT:RPL:SMC:maf
DJ 166-012-3
2007-3538

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

July 26, 2007

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

Dear Ms. McDonald:

This refers to the salary increases for the Mayor, the Mayor Pro Tem, and the City Council Members for 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 July 18, 2007.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "John Tanner", is written over a horizontal line.

John Tanner
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

JKT:MSR:TAL:par
DJ 166-012-3
2007-3192

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

August 6, 2007

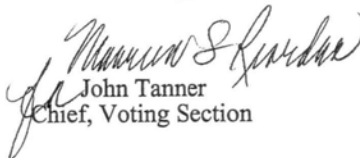
Richard J. Rose, Esq.
Poyner & Spruill
P.O. Box 353
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to four annexations (Ordinance Nos. O-2005-66, O-2005-102, O-2006-67, and O-2006-98) and their designation to Wards 3 and 5 of the City of Rocky Mount in Edgecombe and Nash Counties, 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 June 20, 2007.

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,


John Tanner
Chief, Voting Section

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

Statutory reference: G.S. 150B-21.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03K .0102 - .0103, .0304, .0501; 03O .0402 - .0404 and repeal the rule cited as 15A NCAC 03K .0506.

Proposed Effective Date: February 1, 2008

Public Hearing:

Date: Tuesday, October 9, 2007

Time: 7:00 p.m.

Location: CMAST Building, 303 College Circle, Third Floor, Room 306, Morehead City, NC 28557

Reason for Proposed Action:

15A NCAC 03K .0102, .0304 – Rule language regarding the use of handrakes, bullrakes and hand tongs is proposed for amendments to clarify the intent of protecting seagrass beds from rakes and tongs.

15A NCAC 03K .0103 – This rule is proposed for amendment to allow scallops to be included in sanctuaries for the purpose of increasing bay scallop populations.

15A NCAC 03K .0501 – The goals of the 2007 North Carolina Bay Scallop Fishery Management Plan are to implement a management strategy that restores the stock, maintains a sustainable harvest, maximizes the social and economic value, and considers the needs of all user groups. In support of these goals, the intent of this proposed rule amendment is to eliminate the December opening and compress the main season by opening it the last Monday in January. By this time, spawning is completed and the value of scallop adductor meats is higher.

15A NCAC 03K .0506 – The North Carolina Department of Agriculture and the federal Food and Drug Administration report that soaking scallop meats is a common and accepted practice that gives the product better color and helps retain water. This rule is proposed for repeal because it is no longer current.

15A NCAC 03O .0402 - .0403 – The rules governing the eligibility of individuals for Standard Commercial Fishing License (SCFL) were adopted by the Marine Fisheries Commission in 1999 to institute the eligibility provisions of the Fisheries Reform Act. Rule language addressing the creation and initiation of the license pool is proposed to be deleted, as it is no longer relevant to the administration of the pool. Also

proposed is a change in the frequency of meetings of the eligibility board based on the history of applications.

15A NCAC 03O .0404 – Changes are proposed to this rule that will relax certain requirements to qualify for a Standard Commercial Fishing License (SCFL), as a result of situations that have arisen in the administration of the eligibility pool. Language is also proposed to better define the intent of the rule and to make the rule consistent with other rules.

Procedure by which a person can object to the agency on a proposed rule: If you have any objections to the proposed rules, please forward a typed or handwritten letter indicating your specific reasons for your objections to the following address: NC Division of Marine Fisheries, Catherine Blum, Rulemaking Coordinator, P.O. Box 769, Morehead City, NC 28557

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557, phone (252) 808-8013, fax (252) 726-0254, email catherine.blum@ncmail.net

Comment period ends: November 5, 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 03 - MARINE FISHERIES

SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0102 PROHIBITED RAKES

It is unlawful to use a rake more than 12 inches wide or weighing more than six pounds to ~~take oysters or scallops take:~~

- (1) ~~oysters or scallops;~~
- (2) ~~clams in any live oyster bed or any established bed of submerged aquatic vegetation as described in 15A NCAC 03I .0101(b)(20) or salt water cordgrass (*Spartina alterniflora*).~~

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

15A NCAC 03K .0103 SHELLFISH OR SEED MANAGEMENT AREAS

(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet any of the following criteria. The area has:

- (1) ~~Conditions~~ conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;
- (2) ~~Shellfish~~ shellfish populations or shellfish enhancement projects ~~which may produce commercial quantities of shellfish at ten bushels or more per acre; that may:~~
 - (A) produce commercial quantities of shellfish at 10 bushels or more per acre;
 - (B) produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or
 - (C) serve as sanctuaries to increase spawning and disease resistance or to prevent predation.
- (3) ~~Shellfish populations or shellfish enhancement projects which may produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas.~~

(b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.

(c) It is unlawful to take ~~oysters or clams~~ shellfish from any Shellfish Management Area which has been closed and posted, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of ~~oysters or clams~~ shellfish and may designate time, place, character, or dimensions of any method or equipment that may be employed.

(d) It is unlawful to take oysters from Seed Management Areas for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed

Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

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

15A NCAC 03K .0304 PROHIBITED TAKING

(a) It is unlawful to take clams by any method, other than by hand tongs, hand rakes, or by hand, except as provided in 15A NCAC 03K .0302 and .0303. Regardless of the areas which may be opened, it is unlawful to take clams by ~~any method:~~

- (1) ~~other than hand tongs, hand rakes as described in 15A NCAC 03K .0102, or by hand in any live oyster bed, or~~
- (2) ~~by hand rakes as described in 15A NCAC 03K .0102, or by hand tongs in any established bed of submerged aquatic vegetation as defined described in 15A NCAC 03I .0101(b)(20) or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately. (*Spartina alterniflora*).~~

(b) It is unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick/deflector plates normally used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with 15A NCAC 03K .0302(a). A period of 14 days before and after the season as specified by proclamation will be allowed for the installation and removal of kick/deflector plates and clam trawls or cages. Vessels with permits for activities provided for in 15A NCAC 03K .0104, .0107, .0303(a), and .0401 shall be exempt from this Rule during the times such activities are permitted.

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

SECTION .0500 – SCALLOPS

15A NCAC 03K .0501 BAY SCALLOPS - SEASONS AND HARVEST LIMITS

(a) The Fisheries Director may, by proclamation, specify open seasons and methods for the taking of bay scallops during the following periods:

- (1) ~~During the month of December for a total of not more than four days;~~
- (2)(1) ~~Between~~ From the ~~second last~~ Monday in January ~~and through~~ the last Friday in May; and
- (3)(2) ~~Between~~ From August 1 ~~and through~~ September 15 by hand harvest methods only as described by proclamation.

(b) The Fisheries Director ~~may may, by proclamation,~~ impose any or all of the following restrictions ~~during any for any commercial or recreational open season specified season:~~

- (1) Specify number of days;
- (2) Specify areas;
- (3) Specify means and methods which may be employed in the taking;
- (4) Specify time period; and

- (5) ~~Limit~~ Specify the ~~quantity-quantity~~, but shall not exceed possession of more than 20 standard U.S. bushels per person per day or a total of 40 standard U.S. bushels in any combined commercial fishing operation per day.

(e) For any season provided from December through May, it is unlawful to take more than 20 standard U.S. bushels per person per day or to exceed a total of 40 standard U.S. bushels per day in any combined fishing operation.

(d) For any season provided from August 1 through September 15, it is unlawful to take more than ten standard U.S. bushels per person per day or exceed a total of 20 standard U.S. bushels per day in any combined fishing operation.

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

15A NCAC 03K .0506 SOAKED OR SWELLED BAY SCALLOPS PROHIBITED

It is unlawful to possess, sell, or take part in the production of soaked or swelled bay scallops that have been shucked. It is unlawful to permit bay scallops to be placed in still or standing water.

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

SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES

SECTION .0400 – STANDARD COMMERCIAL LICENSE ELIGIBILITY

15A NCAC 03O .0402 APPLICATION PROCESS

(a) Application forms for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be available at all offices of the Division of Marine Fisheries and must be submitted to the Morehead City Office of the Division of Marine Fisheries for processing.

(b) Applications for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool for the 1999 2000 license year shall be accepted beginning April 1, 1999. All applications received from April 1, 1999 through June 30, 1999, shall be reviewed for eligibility for the 1999 2000 license year.

(e)(b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be accepted or may be pending at any one time. An applicant may only have one entry in the eligibility pool at any one time.

(4)(c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing Licenses Eligibility Pool.

(e)(d) If an applicant has died or becomes ineligible and is subsequently selected from the eligibility pool, that license eligibility shall automatically revert to the eligibility pool.

(f)(e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License may not

apply for pool eligibility for two years from the date of the last transfer.

(g)(f) Applicants shall notify the Division of Marine Fisheries within 30 days of a change of address.

Authority G.S. 113-134; 143B-289.52; S.L. 1998-225, s. 4:24.

15A NCAC 03O .0403 ELIGIBILITY BOARD REVIEW

(a) The Eligibility Board will meet on the first Wednesday of May, 1999, and shall review all applications to determine eligibility under criteria set out in 15A NCAC 3O .0404. This Board will continue to meet as needed until all applications received by the Division of Marine Fisheries by June 30, 1999, have been reviewed.

(b)(a) After determination by the Eligibility Board, applicants will be notified in writing as to the applicant=s meeting or not meeting required eligibility criteria for the Standard Commercial Fishing License Eligibility Pool.

(c) Within 30 days of completion of the review by the Eligibility Board of the applications for eligibility, the Marine Fisheries Commission shall conduct a Business Meeting to draw the 500 applications from the Standard Commercial Fishing License Eligibility Pool for issuance of licenses. This selection shall be done by a random selection process.

(d) If less than 500 applications are determined to be eligible in the applications submitted from April 1, 1999 through June 30, 1999, the Eligibility Board will meet the first Wednesday of each month until the 500 licenses in the Standard Commercial Fishing License Eligibility Pool have been issued or until June 30, 2000. The Marine Fisheries Commission will draw applications from the Standard Commercial Fishing License Eligibility Pool for issuance of licenses by a random selection process at their next regularly scheduled meeting.

(e) The Eligibility Board shall meet at least quarterly after the initial review, unless the 500 openings on the Standard Commercial Fishing License Eligibility Pool are not filled in the initial review and drawing. Other meetings may be held as determined necessary by the Chairman of the Eligibility Board based on the number of applications received after June 30, 1999, to determine eligibility for future years' licenses.

(f)(b) In subsequent years following the 1999 2000 license year, the The Marine Fisheries Commission will determine the number for selection from the Standard Commercial Fishing License Eligibility Pool and draw the applications from the Standard Commercial Fishing License Eligibility Pool for issuance of licenses by a random selection process of licenses available from the pool at their first scheduled meeting following July 1 of each year and as necessary throughout the year.

(g)(c) In subsequent years following the 1999 2000 license year, the The Eligibility Board shall meet at least quarterly to review applications as often as deemed necessary by the Chairman of the Eligibility Board.

Authority G.S. 113-134; 143B-289.52; S.L. 1998-225, s. 4:24.

15A NCAC 03O .0404 ELIGIBILITY CRITERIA

In determining eligibility of an application for the Standard Commercial Fishing License Eligibility Pool, the Eligibility Board shall apply the following criteria:

- (1) Involvement in Commercial Fishing:
 - (a) Significant involvement in the commercial fishing industry for three of the last five years; or
 - (b) Significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years; or
 - ~~(c) Greater than 50 percent of the applicant's total annual income per year for at least three years derived from commercial fishing; or~~
 - ~~(d) Greater than 75 percent of the applicant's total annual income for three of the last five years being derived from commercial fishing; or~~
 - ~~(e)(c)~~ In the case of an applicant who ~~has turned is under 16 in the year prior to application, years of age,~~ significant involvement in commercial fishing for two out of the last five years ~~prior to reaching the age of 16 with a parent, legal guardian, grandparent or other adult family member; other adult; or~~
 - ~~(f)(d)~~ Significant ~~family~~ involvement of the applicant's family in commercial ~~fishing for the last five years fishing.~~ For the purpose of this Sub-item, family shall include mother, father, brother, sister, spouse, children, grandparents or legal guardian.

For the purposes of this Rule, significant involvement means persons or corporations who are engaged in the actual taking of ~~fish,~~ fish for sale, from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer who purchases fish at the point of landing or their employees at the point of landing. Significant involvement does not include activities such as those who transport fish from the point of landing; those who sell or make commercial or recreational fishing gear; those who operate bait and tackle shops, unless they are engaged in the actual taking of bait for sale; or those who work in fish markets or crab picking operations.
- (2) Compliance with Applicable Laws and Regulations:
 - (a) The applicant shall not have any licenses, endorsements or commercial fishing vessel registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review; or
 - (b) If selected for the Standard Commercial Fishing License

Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, endorsements or registrations or the right to hold such issued by the Division of Marine Fisheries are suspended or revoked; or

- (c) Four convictions within the last three years or the number of convictions which would cause suspension or revocation of license, endorsement, or registration within the last three years shall result in the application being denied; or
- (d) A record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool, the term convictions shall include but not be limited to any conviction for violation of any provision of G.S. 113 and any rule implementing or authorized by such statutes; any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such statute; any conviction of G.S. 75A and any rule implementing or authorized by such statutes; any conviction for violation of any provision of Article 7 of G.S. 143B and any rule implementing or authorized by such statutes; any conviction of resist, obstruct, or delay involving a Marine Patrol Officer or Wildlife Officer under G.S. 14-223; and any conviction involving assaultive behavior toward a Marine Patrol Officer or other governmental official of the Department of Environment and Natural Resources or the Wildlife Commission.

Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.

- (3) All applicants for the Standard Commercial Fishing License Eligibility Pool must meet all other statutory eligibility requirements for the Standard Commercial Fishing License.

Authority G.S. 113-134; 113-168.1; 113-168.2; 143B-289.52; S.L. 1998-225, s. 4.24.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07J .0409.

Proposed Effective Date: *January 1, 2008*

Public Hearing:

Date: *September 27, 2007*

Time: *5:00 p.m.*

Location: *Hilton Wilmington Riverside, 301 N. Water Street, Wilmington, NC 28401*

Reason for Proposed Action: *Changes to the existing rule include restructuring the procedures for assessing punitive and investigative costs associated with the enforcement action, the procedures for calculating the amount of civil penalty for both major and minor development violations, and addressing existing ambiguous rule language and procedures.*

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 Ave, Morehead City, NC 28557.*

Comments may be submitted to: *Jim Gregson, 400 Commerce Ave, Morehead City, NC 28557, phone (252)808-2808, fax (252)247-3330.*

Comment period ends: *November 5, 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
- ☒ Local
- ☐ Substantive ($\geq \$3,000,000$)
- ☐ None

CHAPTER 07 – COASTAL MANAGMENT

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

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

15A NCAC 07J .0409 CIVIL PENALTIES

(a) Purpose and Scope. These Rules provide the procedures and standards governing the assessment, remission, settlement and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).

(b) Definitions. The terms used herein shall be as defined in G.S. 113A-103 and as follows:

- (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through ~~134.134~~, plus amendments.
- (2) "Delegate" means the ~~director~~ Director or other employees of the Division of Coastal ~~Management~~ Management, or local permit ~~officers~~ to whom the Commission has delegated authority to act in its stead pursuant to this Rule.
- (3) "Director" means the Director, Division of Coastal Management.
- (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.
- (5) "Person" is defined in the Coastal Area Management Act, G.S. 113A-103(9).

(c) Civil penalties may be assessed against any person who commits a violation as provided for in G.S. 113A-126(d)(1) and (2).

(d) Investigative costs. Pursuant to G.S. 113A-126(d)(4a) the Commission or Director may also assess a respondent for the costs incurred by the Division for investigation, inspection, and monitoring associated with assessment the civil penalty. Investigative costs shall be in addition to any civil penalty assessed. For a minor development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less. The Division shall determine the amount of investigative costs to assess based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.

~~(d)(e)~~ Notice of Violation. The Commission hereby authorizes employees of the Division of Coastal Management to issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed. Such notices shall set forth the nature of the alleged violation, shall ~~request order~~ that the illegal activity be ceased and affected resources be restored in accordance with 15A NCAC 07J .0410. ~~restored to the fullest extent practicable.~~ The notice shall specify the time by which the unauthorized activity shall cease and restoration shall be completed as ordered by the Division. ~~within a specified time period, and~~ The notice shall be delivered personally or by registered mail, return receipt requested. ~~or certified mail. As soon as is feasible a notice will be followed by a penalty assessment or action to pursue some other appropriate remedy.~~

~~(e)(f)~~ Notice of Civil Penalty Assessment.

- (1) The Commission hereby delegates to the ~~director~~ Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule. ~~The director shall assess a civil penalty of not less than fifty dollars (\$50.00) for a minor development violation and not less than one hundred dollars (\$100.00) plus an amount equal to the application fee for a major development violation.~~
 - (2) The Director shall issue a notice of assessment within 30 days after the Division determines that restoration of the adversely impacted resources is complete.
 - ~~(2)(3)~~ (3) The notice of assessment shall specify the reason for ~~assessment~~ assessment, how the assessment was calculated, when and where payment shall be made, and shall inform the respondent of the right to appeal the assessment by filing a petition for a contested case hearing with the Office of Administrative Hearings pursuant to G.S. 150B-23. The notice shall be delivered personally or by registered mail, return receipt requested.
- ~~(f)(g)~~ (g) Amount of Assessment.
- (1) Civil penalties ~~may~~ shall not exceed the maximum amounts established by G.S. 113A-126(d).
 - (2) If any ~~person~~ respondent willfully continues to violate by action or inaction ~~the local land use plan, the Act, or any rule or order of the Commission after receipt of the date specified in a notice of violation, each day the violation continues or is repeated may~~ shall be considered a separate violation as provided in G.S. 113A-126(d)(2).
 - (3) In determining the amount of the penalty, the Commission or ~~director~~ Director shall consider the factors contained in G.S. 113A-126(d)(4), degree and extent of harm caused by the violation and the cost of rectifying the damage. In determining the degree and extent of harm caused, the Commission or director may consider the duration of the violation, damage to public resources, damage to private property, effectiveness of preventive and restorative measures taken by the respondent, previous record of the respondent in complying or not complying with the laws and rules implemented by the Commission, willfulness of the violation and any other factors relevant to the harm caused by an alleged violation. In considering the willfulness of a violation, the Commission or director may consider the erosion of public confidence in the enforcement of the Act and commission's rules, the encouragement of violations by others, and the costs incurred by the Division of Coastal Management and other
- ~~state agencies in securing compliance with the Act and commission's rules by the respondent.~~
- (4) Pursuant to Subparagraph ~~(f)(3)(g)(3)~~ (g)(3) of this Rule, civil penalties for major development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria. Assessments resulting from any violation which does not fit the following criteria shall be made using the best information available at the time of the assessment.
 - (A) Major development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs. Development which could have been permitted shall be subject to a minimum civil penalty of one hundred dollars (\$100.00) plus an amount equal to the application fee. This category shall include only development that can, at the time of assessment, meet all of the following four criteria:
 - (i) ~~consistency with the local land use plan;~~
 - (ii) ~~consistency with the Act and commission rules;~~
 - (iii) ~~proof of notification of adjacent riparian property owners; and~~
 - (iv) ~~no significant objections from these adjacent riparian property owners.~~
 - (B) Major development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules. Civil penalties for development which could not have been permitted

shall be assessed as follows. This category shall include development that is sufficiently inconsistent with the local land use plan, Act, or commission's rules to have warranted denial if the permit application process had been followed. In all cases, restoration shall be required to the fullest extent practicable consistent with the need to avoid additional damage to the resources, and penalties shall be assessed as follows:

- (i) Development which involves wetlands alteration or other damage which has been completely restored with no permanent, irreversible, or long term adverse impacts on coastal resources shall be subject to a minimum civil penalty of one hundred dollars (\$100.00) plus an amount equal to the application fee;
- (ii) Development which involves damage that was not completely restored but did not involve permanent or irreversible adverse impacts on coastal resources, or development which is of such a nature that it reflects a reckless disregard for its adverse impacts or has a high potential for permanent, long term or irreversible adverse impacts on coastal resources, shall be subject to a civil penalty of one half the dollar amount specified for the area affected according to Schedule A of this Rule plus an amount equal to the application fee;

- (iii) Development which involves wetlands alteration or other damage which causes permanent or irreversible adverse impacts on coastal resources shall be subject to a civil penalty of the dollar amount graduated according to Schedule A of this Rule plus an amount equal to the application fee;
- (iv) Development that does not involve disruption of an area of a specific size, has undetermined impacts, or has impacts that are difficult or impractical to determine shall be subject to an assessment of one hundred dollar (\$100.00) plus an amount equal to the application fee; or
- (v) Any structure or part of a structure that is constructed in violation of the local land use plan, the Act, or the Commission's rules shall be removed or modified as is necessary to correct the violation, and the liable party shall be assessed a minimum penalty of one hundred dollars (\$100.00) plus an amount equal to the application fee. If the structure is not removed or modified as requested, a court order will be sought to compel the necessary removal or modification and the liable party shall be subject to continuing assessment according to Subparagraph (f)(4)(G) of this Rule.

SCHEDULE A
Major Development Violations

AREA OF ENVIRONMENTAL CONCERN AFFECTED	Size of Violation (sq. ft.)										
	<u>≤ 100</u>	<u>101-500</u>	<u>501-1,000</u>	<u>1001-3000</u>	<u>3001-5000</u>	<u>5001-8000</u>	<u>8001-11,000</u>	<u>11,001 = 15,000</u>	<u>15,001-20,000</u>	<u>20,001-25,000</u>	<u>>25,000</u>
ESTUARINE WATERS OR PUBLIC TRUST AREAS (1)	<u>\$250</u>	<u>\$375</u>	<u>\$500</u>	<u>\$1,500</u>	<u>\$2,000</u>	<u>\$3,500</u>	<u>\$5,000</u>	<u>\$7,000</u>	<u>\$9,000</u>	<u>\$10,000</u>	<u>\$10,000</u>

PROPOSED RULES

<u>Primary Nursery Areas</u>	<u>\$100</u>	<u>\$225</u>	<u>\$350</u>	<u>\$850</u>	<u>\$1,350</u>	<u>\$2,850</u>	<u>\$4,350</u>	<u>\$3,000</u>	<u>\$1,000</u>	<u>n/a</u>	<u>n/a</u>
<u>Mudflats and Shell Bottom</u>	<u>\$100</u>	<u>\$225</u>	<u>\$350</u>	<u>\$850</u>	<u>\$1,350</u>	<u>\$2,850</u>	<u>\$4,350</u>	<u>\$3,000</u>	<u>\$1,000</u>	<u>n/a</u>	<u>n/a</u>
<u>Submerged Aquatic Vegetation</u>	<u>\$100</u>	<u>\$225</u>	<u>\$350</u>	<u>\$850</u>	<u>\$1,350</u>	<u>\$2,850</u>	<u>\$4,350</u>	<u>\$3,000</u>	<u>\$1,000</u>	<u>n/a</u>	<u>n/a</u>
<u>Coastal Wetlands</u>	<u>\$250</u>	<u>\$375</u>	<u>\$500</u>	<u>\$1,500</u>	<u>\$2,000</u>	<u>\$3,500</u>	<u>\$5,000</u>	<u>\$7,000</u>	<u>\$9,000</u>	<u>\$10,000</u>	<u>\$10,000</u>
<u>Coastal Shorelines</u>	<u>\$250</u>	<u>\$350</u>	<u>\$450</u>	<u>\$850</u>	<u>\$1,250</u>	<u>\$2,450</u>	<u>\$3,650</u>	<u>\$5,250</u>	<u>\$7,250</u>	<u>\$9,250</u>	<u>\$10,000</u>
<u>Wetlands (2)</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>	<u>\$700</u>	<u>\$1,100</u>	<u>\$2,300</u>	<u>\$3,500</u>	<u>\$4,750</u>	<u>\$2,750</u>	<u>\$750</u>	<u>n/a</u>
<u>ORW- Adjacent Areas</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>	<u>\$700</u>	<u>\$1,100</u>	<u>\$2,300</u>	<u>\$3,500</u>	<u>\$4,750</u>	<u>\$2,750</u>	<u>\$750</u>	<u>n/a</u>
<u>OCEAN HAZARD SYSTEM (3)(4)</u>	<u>\$250</u>	<u>\$350</u>	<u>\$450</u>	<u>\$850</u>	<u>\$1,250</u>	<u>\$2,450</u>	<u>\$3,650</u>	<u>\$5,250</u>	<u>\$7,250</u>	<u>\$9,250</u>	<u>\$10,000</u>
<u>Primary or Frontal Dune</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>	<u>\$700</u>	<u>\$1,100</u>	<u>\$2,300</u>	<u>\$3,500</u>	<u>\$4,750</u>	<u>\$2,750</u>	<u>\$750</u>	<u>n/a</u>
<u>PUBLIC WATER SUPPLIES (5)</u>	<u>\$250</u>	<u>\$350</u>	<u>\$450</u>	<u>\$850</u>	<u>\$1,250</u>	<u>\$2,450</u>	<u>\$3,650</u>	<u>\$5,250</u>	<u>\$7,250</u>	<u>\$9,250</u>	<u>\$10,000</u>
<u>NATURAL AND CULTURAL RESOURCE AREAS (6)</u>	<u>\$250</u>	<u>\$350</u>	<u>\$450</u>	<u>\$850</u>	<u>\$1,250</u>	<u>\$2,450</u>	<u>\$3,650</u>	<u>\$5,250</u>	<u>\$7,250</u>	<u>\$9,250</u>	<u>\$10,000</u>

(1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.

(2) Wetlands that are jurisdictional by the Federal Clean Water Act.

(3) If the AEC physically overlaps another AEC, use the greater penalty schedule.

(4) Includes the Ocean Erodible, High Hazard Flood Area, Inlet Hazard Area, and Unvegetated Beach Area.

(5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.

(6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.

(C) ~~Violations resulting from non-compliance with permit conditions or specifications shall be evaluated according to their adverse impacts on wetlands, water quality, fishery resources, primary nursery areas, mudflats, primary dunes, or other coastal resources. If adverse impacts occur, restoration shall be required to the fullest extent practicable and the amount of the assessment shall be determined in accordance with Subparagraph (f)(4)(B) of this Rule. If there has been no resource loss or damage and the project is consistent with the local land use plan, the Act, and the Commission's rules, the assessment shall be determined in accordance~~

~~with Subparagraph (f)(4)(A) of this Rule. Such permit violations shall include, but not be limited to, the following:~~

- ~~(i) failure to honor the development moratorium;~~
- ~~(ii) failure to excavate behind a silt screen or earthen plug;~~
- ~~(iii) failure to stabilize spoil material;~~
- ~~(iv) improper operation of a disposal area;~~
- ~~(v) location of a spoil disposal area outside of permitted boundaries;~~
- ~~(vi) depth of excavation exceeding permitted limits; or~~
- ~~(vii) bulkhead alignment outside of permit specifications.~~

~~(D)~~(C) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall be determined in accordance with Subparagraphs (f)(4)(A), (B) and (C) Parts (g)(4)(A) and (B) of this Rule.

~~(E)~~(D) Willful and intentional violations. The penalty assessed under Subparagraphs (f)(4)(A), (B) and (C) Parts (g)(4)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ~~two thousand five hundred dollars (\$2500)~~ ten thousand dollars (\$10,000) or be less than ~~five hundred dollars (\$500.00)~~ two thousand dollars (\$2,000) for each separate violation. A violation shall be considered to be willful and intentional when:

(i) ~~The violator person~~ received clear and direct written instructions from one of the Commission's delegates that a permit would be required for the development and the violator subsequently undertook development without a permit; or

(ii) The person received written instructions from one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit; or

~~(ii)~~(iii) ~~The violator person~~ committed previous violations of the Commission's rules; or involving the same or similar development activities in the same area of environmental concern; or

~~(iii)~~(iv) ~~The violator person~~ refused or failed to restore a damaged area as requested ordered by one of the Commission's delegates. If necessary, the Commission or Division shall seek a court order to require restoration. If appropriate a court order

~~shall also be sought to require restoration.~~

~~(F)~~(E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty ~~as follows:~~ in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (g)(4)(D) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(i) ~~For the first violation, the contractor shall receive a notice of violation and no civil penalty shall be assessed; and~~

~~(ii) For the second and each succeeding violation within the same area of environmental concern, the contractor shall be assessed a penalty in accordance with Subparagraph (f)(4) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Subparagraph (f)(4)(E) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.~~

~~(G)~~(F) Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty. Any development in violation of the permit requirements in the Act that continues after receipt of a

- ~~notice of violation shall be subject to a minimum daily penalty of five hundred dollars (\$500.00) for each day the development continues; and~~
- (ii) Refusal or failure to restore a damaged area as ~~requested~~ may ordered shall be considered a continuing violation and shall be assessed an additional penalty, subject to the minimum penalty of one hundred dollars (\$100.00) per day if such refusal or failure to restore does not result in additional environmental resource damage or loss. When resources continue to be affected by the violation, the amount of the penalty ~~will~~ shall be determined according to ~~(f)(4)(B)~~ Part(g)(4)(B) of this Rule. The continuing penalty period will be calculated from the date of ~~receipt of~~ specified in the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:

- (I) the Division's ~~request order~~ is satisfied, or
- (II) the ~~party~~ respondent enters into good faith negotiations with the Division, or
- (III) the ~~party~~ respondent contests the Division's ~~request order~~ in a judicial proceeding by raising a justiciable issue of law or fact therein.

The continuing penalty period ~~will~~ shall resume if the ~~party~~ respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.

- (5) Pursuant to Subparagraph ~~(f)(3)~~ (g)(3) of this Rule, civil penalties for minor development ~~violations~~ violations, including violations of permit conditions, shall be assessed in accordance with the following criteria:

- (A) Minor development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs. Development which could have been permitted shall be assessed a minimum civil penalty of fifty dollars (\$50.00). This category shall include only development that meets all of the following criteria:
- ~~(i) consistency with the local land use plan;~~
 - ~~(ii) consistency with the Act and commission's rules;~~
 - ~~(iii) proof of notification of adjacent property owners; and~~
 - ~~(iv) no significant objections from adjacent property owners.~~

- (B) Minor development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules. Civil penalties for development which could not have been permitted, that is those activities that are sufficiently inconsistent with the local land use plan, the Act, or the Commission's rules to have warranted denial if the permit application process had been followed, shall be restored to the fullest extent practicable consistent with the need to avoid additional damage to the

PROPOSED RULES

resources, and a penalty shall be assessed as follows:

- (i) Development which has been brought into compliance with provisions of the local land use plan, the Act, and the Commission's rules shall be subject to the minimum civil penalty of one hundred dollars (\$100.00);
- (ii) Development which has been completely restored with no permanent, irreversible, or long-lasting adverse impacts on coastal resources shall be subject to the minimum civil penalty of one hundred dollars (\$100.00);
- (iii) Development which violates estuarine shoreline area of environmental concern rules such that there will be permanent or long-lasting impacts on estuarine water quality shall be subject to a civil penalty of two hundred fifty dollars (\$250.00);

- (iv) Disturbance or reduction of a primary or frontal dune by less than one third of its height or width shall be subject to a civil penalty of one hundred fifty dollars (\$150.00);
- (v) Disturbance or reduction of a primary or frontal dune by more than one third of its height or width and less than two thirds of its height or width shall be subject to a civil penalty of two hundred dollars (\$200.00);
- (vi) Disturbance or reduction of a dune by more than two thirds of its height or width shall be subject to a civil penalty of two hundred fifty dollars (\$250.00); or
- (vii) Filling with unauthorized materials, covering natural dune vegetation, or both, shall be subject to a civil penalty of two hundred dollars (\$200.00).

SCHEDULE B

Minor Development Violations

AREA OF ENVIRONMENTAL CONCERN AFFECTED	Size of Violation (sq. ft.)										
	<u>≤ 100</u>	<u>101-500</u>	<u>501-1,000</u>	<u>1,001-3,000</u>	<u>3,001-5,000</u>	<u>5,001-8,000</u>	<u>8,001-11,000</u>	<u>11,001-15,000</u>	<u>15,001-20,000</u>	<u>20,001-25,000</u>	<u>>25,000</u>
Coastal Shorelines	<u>\$225</u>	<u>\$250</u>	<u>\$275</u>	<u>\$325</u>	<u>\$375</u>	<u>\$450</u>	<u>\$525</u>	<u>\$625</u>	<u>\$750</u>	<u>\$875</u>	<u>\$1,000</u>
ORW- Adjacent Areas	<u>\$125</u>	<u>\$150</u>	<u>\$175</u>	<u>\$225</u>	<u>\$275</u>	<u>\$350</u>	<u>\$425</u>	<u>\$375</u>	<u>\$250</u>	<u>\$125</u>	<u>n/a</u>
OCEAN HAZARD SYSTEM (1)(2)	<u>\$225</u>	<u>\$250</u>	<u>\$275</u>	<u>\$325</u>	<u>\$375</u>	<u>\$450</u>	<u>\$525</u>	<u>\$625</u>	<u>\$750</u>	<u>\$875</u>	<u>\$1,000</u>
Primary or Frontal Dune	<u>\$125</u>	<u>\$150</u>	<u>\$175</u>	<u>\$225</u>	<u>\$275</u>	<u>\$350</u>	<u>\$425</u>	<u>\$375</u>	<u>\$250</u>	<u>\$125</u>	<u>n/a</u>
PUBLIC WATER SUPPLIES (3)	<u>\$225</u>	<u>\$250</u>	<u>\$275</u>	<u>\$325</u>	<u>\$375</u>	<u>\$450</u>	<u>\$525</u>	<u>\$625</u>	<u>\$750</u>	<u>\$875</u>	<u>\$1,000</u>
NATURAL AND CULTURAL RESOURCE AREAS (4)	<u>\$225</u>	<u>\$250</u>	<u>\$275</u>	<u>\$325</u>	<u>\$375</u>	<u>\$450</u>	<u>\$525</u>	<u>\$625</u>	<u>\$750</u>	<u>\$875</u>	<u>\$1,000</u>

- (1) Includes the Ocean Erodible, High Hazard Flood Area, Inlet Hazard Area, and Unvegetated Beach Area.
- (2) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (3) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.

- (4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
- ~~(C)~~ Violations resulting from non-compliance with permit conditions or specifications shall be treated as development which could or could not have been permitted, and the penalty shall be as provided in Subparagraphs (f)(5)(A) and (B) of this Rule.
- ~~(D)~~(C) Violations of by public agencies (i.e.e.g. towns, counties and state agencies) shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. he represents. Penalties shall be assessed in accordance with Subparagraphs (f)(5)(A),(B) and (C)Parts(g)(5)(A) and (B) of this Rule.
- ~~(E)~~(D) Willful and intentional violations. The penalty assessed under Parts (g)(5)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed one thousand dollars (\$1,000) for each separate violation. A violation shall be considered to be willful and intentional when:
- (i) The person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit; or
- (ii) The person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit; or
- (iii) The person committed previous violations of the Commission's rules; or
- (iv) The person refused or failed to restore a damaged area as ordered by the local permit officer or one of the Commission's delegates. If necessary, a court order shall be sought to require restoration. For the following types of violations, civil penalties assessed pursuant to the criteria listed in Subparagraphs (f)(5)(A), (B), and (C) of this Rule shall be doubled, but shall not exceed two hundred fifty dollars (\$250.00) for each separate violation:
- (i) Violations that are willful and intentional or reflect a careless and reckless disregard for their impact. A violation shall be considered to be willful and intentional when the violator received clear and direct instructions from the local permit officer or one of the Commission's delegates prior to the violation that the activity would be in violation of the local land use plan, the Act, or the Commission's rules. In such cases, each day the action or inaction continues after receipt of a notice of violation shall be considered a separate violation and may be assessed a separate penalty; or
- (ii) Where the violator refuses to restore a damaged area or fails to restore it as requested by the local permit officer or one of the Commission's delegates. If appropriate, a court order shall be sought to require restoration.
- ~~(F)~~(E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil

penalty as follows: in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (g)(5)(D) of this Rule and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(i) For the first violation, the contractor shall receive a notice of violation and no civil penalty shall be assessed; and

(ii) For the second and each succeeding violation within the same area of environmental concern, the contractor shall be assessed a penalty in accordance with Subparagraph (f)(5) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Subparagraph (f)(5)(E) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed a doubled penalty.

(F) Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate

violation and shall be assessed an additional penalty.

(ii) Refusal or failure to restore a damaged area as ordered shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (g)(5)(B) of this Rule. The continuing penalty period will be calculated from the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:

(I) the Commission delegate's order is satisfied, or

(II) the respondent enters into good faith negotiations with the local permit officer or the Division, or

(III) the respondent contests the local permit officer's or the Division's order in a judicial proceeding by raising a justiciable issue of law or fact therein.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the local permit officer or the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the local permit officer or the Division.

SCHEDULE A

Size of Violation (sq. ft.)

Resource Affected	0-1000	1001-3000	3001-5000	5001-8000	8001-11,000
1. Primary nursery area	\$500	1,000	1,500	2,000	2,500
2. Submergent native vegetation	500	1,000	1,500	2,000	2,500
3. <i>S. alterniflora</i> regularly flooded	500	650	800	1,000	1,250
4. <i>S. alterniflora</i> (irregularly flooded) <i>Juncus roemerianus</i>	250	400	550	750	1,000
5. High marsh (<i>S. cynosuroides</i> <i>Cladium</i> , Cattail,	250	400	550	750	1,000

	S. patens, Scirpus, Distichlis Limonium sp.-)					
6.	Mudflats and shellfish beds	250	400	550	750	1,000
7.	Dunes	250	400	550	750	1,000
8.	Public trust area	250	400	550	750	1,000

SCHEDULE A

Size of Violation (sq. ft.)

	Resource	11,001-	15,001-	20,000-	
	Affected	15,000	20,000	25,000	>25,000
1.	Primary nursery area	\$2,500	2,500	2,500	2,500
2.	Submergent native vegetation	2,500	2,500	2,500	2,500
3.	S. alterniflora regularly flooded	1,500	2,000	2,500	2,500
4.	S. alterniflora (irregularly flooded) Juncus roemerianus	1,250	1,750	2,250	2,500
5.	High marsh (S. cynosuroides, Cladium, Cattail, S. patens, Scirpus, Distichlis Limonium sp.-)	1,250	1,750	2,250	2,500
6.	Mudflats and shellfish beds	1,250	1,750	2,250	2,500
7.	Dunes	1,250	1,750	2,250	2,500
8.	Public trust area	1,250	1,750	2,250	2,500

(g) Payment and Remission/Mitigation:

- (1) ~~Within 20 days after receipt of notification of a civil penalty assessment, the respondent must tender payment to the Department, submit a petition for a contested case hearing pursuant to G.S. 150B-23, or submit in writing a request for reduction of the penalty stating the reason(s) why such a request is justified.~~
- (2) ~~The director may modify the penalty to a lower amount upon finding additional or different facts which should be or should have been considered in determining the amount of the penalty.~~
- (3) ~~The director will accept and acknowledge all tenders of payment on behalf of the Commission.~~
- (4) ~~Requests for reduction of a penalty are solely for the purpose of allowing the respondent to contest the reasonableness of the penalty. A reduction procedure is not the proper context in which to contest facts or raise questions of law. A request for reduction must include:~~
 - (A) ~~a written statement justifying the reduction;~~
 - (B) ~~an acknowledgment of a civil liability as set out in the assessment; and~~
 - (C) ~~a waiver of the right to an administrative contested case hearing.~~
- (5) ~~If the director determines that the reduction request raises issues of fact or questions of law, he shall refuse to consider the reduction request and advise the respondent to submit a petition for a contested case hearing pursuant to G.S. 150B-23. The respondent shall waive his right to a contested case hearing if he fails to file a petition with the Office of Administrative Hearings within 20 days of the director's decision. There is no right to appeal a reduction decision to superior court. The~~

~~respondent should request a contested case hearing if he wishes to be able to seek review in superior court.~~

- (6) ~~If the director denies a reduction request, the respondent may request review of that decision by the Commission. The arguments to the commission shall be limited to the reasons stated in the written request for reduction.~~

(h) Hearings and Final Assessment. Final decisions in contested case hearings concerning assessments shall be made by the Commission. The final decision shall be based on evidence in the official record of the contested case hearing, the administrative law judge's recommended decision, any exceptions filed by the parties and oral arguments. Oral arguments shall be limited to the facts in the official record.

(i) Referral. If any civil penalty as finally assessed is not paid, the ~~director~~ Director on behalf of the Commission shall request the Attorney General to commence an action to recover the amount of the assessment.

(j) Reports to the Commission. Action taken by the ~~director~~ will Director shall be reported to the Commission at the next meeting. Such reports ~~will~~ shall include information on the following:

- (1) respondent(s) against whom penalties have been assessed;
- (2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
- (3) respondent(s) who have failed to pay; and
- (4) cases referred to the Attorney General for collection.

(k) Settlements. The ~~Coastal Resources~~ Commission hereby delegates to the ~~director~~ Director the authority to enter into a settlement of a civil penalty appeal at any time prior to final decision in an administrative contested case hearing. Such settlements shall not require the approval of the Commission and shall not be considered a final ~~commission~~ Commission decision for purposes of G.S. 113A-123. Any settlement agreement proposed subsequent to a final ~~commission~~ Commission

decision in the contested case shall be submitted to the Commission for approval.

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

Authority G.S. 113A-124; 113A-126(d).

SUBCHAPTER 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14A .0101; 14H .0111, .0113, .0121.

Proposed Effective Date: *January 1, 2008*

Public Hearing:

Date: *September 19, 2007*

Time: *8:00 a.m.*

Location: *1201 Front Street, Suite 110, Raleigh, NC 27609*

Reason for Proposed Action: *To expand the definition of Continuing Education Provider to include additional qualified entities and to put the definition in agreement with terminology used in G.S. 88B.*

Procedure by which a person can object to the agency on a proposed rule: *Written letter to 1201 Front Street, Suite 110, Raleigh, NC 27609*

Comments may be submitted to: *Stefanie Kuzdrall, 1201 Front Street, Suite 110, Raleigh, NC 27609, phone (919) 715-0018, fax (919) 733-4127, email skuzdrall@nccosmeticarts.com*

Comment period ends: *November 5, 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**

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O. 0102.
- (9) "Esthetics" refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing; applying eyelashes to any person (this is to include brow and lash color); beautifying the face, neck, arms or upper part of the human body by use of cosmetic preparations, antiseptics, tonic, lotions or creams; surface massaging (skin care only) with cosmetic preparation, antiseptics, tonics, lotion, or cream; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet by means of the hands, devices, apparatus, or appliances.
- (10) "Natural hair braiding" is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is not subject to regulation pursuant to G.S. 88B, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the

color of the hair or to straighten, curl, or alter the structure of the hair.

- (11) "Natural hair styling" is the provision of natural hair braiding services together with any of the other services or procedures included within the regulated practice of cosmetic art, and is subject to regulation pursuant to G.S. 88B, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.
- (12) ~~"Biennial licensing period" is the two year period beginning on the first day of October of an even numbered year and ending on the 30th day of September of an even numbered year.~~ "Licensing cycle" for cosmetologists is the three-year period beginning on the first day of October 2004 and ending on the 30th day of September 2007, and continuing thereafter in three year intervals. For estheticians and manicurists the licensing cycle is one year in length beginning on the first day of October and ending on the 30th day of September. For teachers, the licensing cycle is the two-year period beginning on the first day of October of an even-numbered year and ending on the 30th day of September of an even-numbered year.
- (13) "Provider" is a nonprofit professional cosmetic art association, community college, high school, vocational school, postsecondary proprietary school of cosmetic art licensed by the Board, manufacturer of supplies or equipment used in the practice of cosmetic art, the State Board or an agent of the State Board, or any individual or entity that owns and operates five or more licensed salons or that employs at least 50 ~~licensees~~ licensees or any individual in a Board-approved employment capacity within the cosmetic arts industry.

Authority G.S. 88B-2; 88B-4.

SUBCHAPTER 14H - SANITATION

SECTION .0100 - SANITATION

21 NCAC 14H .0111 CLEANLINESS OF OPERATORS

- (a) All operators shall be personally clean and neat.
- (b) Every person employed in a beauty establishment shall wear clean, washable outer garments with sleeves while serving patrons.
- (c) Each licensee shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.

Authority G.S. 88-23.

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

(a) All scissors, shears, razors, and other metal instruments used while shaping hair must be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it shall be cleaned by wiping it with a clean cloth moistened with a disinfectant that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions.
- (2) If it is immersible, it shall be disinfected by immersion, at least once a day and whenever it comes in contact with blood, with:
 - (A) a disinfectant that states the solution will destroy HIV, TB or HBV viruses, and approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions;
 - (B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and or tuberculocidal, that is mixed and used according to the manufacturer's directions;
 - (C) household bleach in a 10 percent solution for 10 minutes.
- (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

(b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

(c) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.

Authority G.S. 88B-4.

21 NCAC 14H .0121 PROHIBITED PRACTICES

Licensed cosmetologists, estheticians, and manicurists shall not use or possess in a shop any of the following products:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;
- (2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses; and
- (3) Permanent makeup, defined as beautifying the face by inserting or implanting facial cosmetic pigment under the surface of the skin or mucosa.
- (4) FDA rated Class III devices are prohibited for use by cosmetologists, estheticians, and manicurists. Class II devices may be used by licensees while under the direct supervision of a licensed physician.

Authority G.S. 88B-2; 88B-4.

CHAPTER 28 - REGISTRATION BOARD OF LANDSCAPE CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Landscape Contractors Registration Board intends to amend the rule cited as 21 NCAC 28 .0107.

Proposed Effective Date: January 1, 2008

Public Hearing:

Date: September 19, 2007

Time: 10:00 a.m.

Location: 7419 Knightdale Blvd., Suite 112, Knightdale, NC 27545

Reason for Proposed Action: 21 NCAC 28 .0107 – FEES – To increase fees to cover costs of administering the Board. (Renewal fees have remained the same for 30 years). Application fee increased to cover cost of background check.

Procedure by which a person can object to the agency on a proposed rule: Send written comments to NCLCRB, P.O. Box 1578, Knightdale, NC 27545; fax comments to (919) 266-6050; email comments to nclcrb@msn.com; or attend a Public Hearing on September 19, 2007, at the offices of NCLCRB, 7419 Knightdale Boulevard, Suite 112, Knightdale, NC 27545.

Comments may be submitted to: Sandra L. Kelly, P.O. Box 1578, Knightdale, NC 27545, phone (919) 266-8070, fax (919) 266-6050, email nclcrb@msn.com

Comment period ends: November 5, 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 .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 28 .0107 FEES

Fees, as authorized by G.S. 89D-5, shall be as follows:

- | | | |
|-----|---|-----------------------------------|
| (1) | all applications for certificates | \$50.00 <u>\$75.00</u> |
| (2) | initial certificate fee | \$50.00 <u>\$60.00</u> |
| (3) | all renewal fees | \$50.00 <u>\$60.00</u> |
| (4) | penalty for late renewal fee | \$10.00 <u>\$25.00</u> |
| (5) | duplicate certificate | \$ 1.00 <u>\$ 5.00</u> |
| (6) | examination fee, or re-examination fee | \$50.00 <u>\$60.00</u> |
| (7) | copy of duplicate parchment certificate | <u>\$35.00</u> |

Authority G.S. 89D-4(c); 89D-5; 89D-8.

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 July 26, 2007.

**REGISTER CITATION TO THE
NOTICE OF TEXT****PUBLIC HEALTH, COMMISSION FOR**

Food, Lodging/Inst Sanitation/Public Swimming Pools/Spas 10A NCAC 46 .0213* 21:09 NCR

INSURANCE, DEPARTMENT OF

Transactions Subject to Prior Notice-Notice Filing 11 NCAC 11B .0222* 21:19 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

Particulates from Fugitive Dust Emission Sources 15A NCAC 02D .0540* 21:16 NCR

Other Solid Waste Incineration Units 15A NCAC 02D .1211* 21:16 NCR

COASTAL RESOURCES COMMISSION

Approval Procedures 15A NCAC 07H .1302* 21:17 NCR

Approval Procedures 15A NCAC 07H .2002* 21:17 NCR

Approval Procedures 15A NCAC 07H .2202* 21:17 NCR

Replacement of Existing Structures 15A NCAC 07J .0210* 21:17 NCR

Exemption/Accessory Uses/Maintenance 15A NCAC 07K .0209* 21:17 NCR

Repair/Replacement

Guidelines for Public Access 15A NCAC 07M .0303* 21:17 NCR

Local Government and State Involvement in Access 15A NCAC 07M .0306* 21:17 NCR

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X-Ray Fee Amounts 15A NCAC 11 .1105* 21:17 NCR

Radioactive Materials and Accelerator Fee Amounts 15A NCAC 11 .1106* 21:17 NCR

Fees and Payment 15A NCAC 11 .1423* 21:17 NCR

PUBLIC HEALTH, COMMISSION FOR

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TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**10A NCAC 46 .0213 FOOD, LODGING/INST
SANITATION/PUBLIC SWIMMING POOLS/SPAS**

(a) A local health department shall provide food, lodging, and institutional sanitation and public swimming pools and spas

services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

- (1) The frequency of inspections of food, lodging, and institutional facilities and public swimming pools and spas with the following being the minimum:

Type of Establishment
Adult Day Service Facilities
Bed and breakfast homes
Bed and breakfast inns

Frequency Per Fiscal Year (July 1 – June 30)
1/year
1/year
1/6 months

Child day-care facilities	1/6 months
Food Service Establishments	
Risk Category I	1/year
Risk Category II	1/6 months
Risk Category III	1/4 months
Risk Category IV	1/3 months
Institutions	1/6 months
Local confinement facilities	1/year
Lodging	1/year
Migrant housing water and sewage evaluation	1/year
Primitive Experience Camps	
Operating 6 months or less per year	1/year
Operating more than 6 months per year	1/6 months
Private boarding schools and colleges	1/year
Public swimming pools and spas which operate only between April 1 and October 31 each year	1/operational season
Public swimming pools and spas which operate at times other than between April 1 and October 31 each year	2/year
Residential care facilities	1/year
Schools	1/year
Summer camps	1/year
Tattoo Artists	1/year

Risk Category I applies to food service establishments that prepare only non-potentially hazardous foods.

Risk Category II applies to food service establishments that cook and cool no more than two potentially hazardous foods. Potentially hazardous raw ingredients shall be received in a ready-to-cook form.

Risk Category III applies to food service establishments that cook and cool no more than three potentially hazardous foods.

Risk Category IV applies to food service establishments that cook and cool an unlimited number of potentially hazardous foods. This category also includes those facilities using specialized processes or serving a highly susceptible population.

- (2) Provisions for investigating complaints and suspected outbreaks of illness associated with food, lodging, and institutional facilities, and public swimming pools. Corrective actions shall be taken in cases of valid complaints and confirmed outbreaks of illness.

- (3) Provisions for keeping records of activities described in Subparagraphs (1) and (2) of this Paragraph.

(b) A local health department shall establish, implement, and maintain written policies for the provision of sanitation education for food service personnel and orientation and in-service training for Environmental Health Specialists. The policies shall include the following requirements for Environmental Health Specialists providing food, lodging, and institutional sanitation services:

- (1) Completion of the centralized training course provided by the Division for newly employed Environmental Health Specialists;
- (2) Compliance with Delegation of Authority as stated in 15A NCAC 01O .0100; and
- (3) Compliance with the Board of Sanitarian Examiners' requirements.

History Note: Authority G.S. 130A-4(b); 130A-9;

Eff. October 1, 1984;

Amended Eff. March 1, 1988; December 1, 1987; October 1, 1986;

Transferred and Recodified from 10 NCAC 12 .0239 Eff. April 4, 1990;

Amended Eff. August 1, 2007; May 1, 1996; July 1, 1993; October 1, 1992; December 1, 1991.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 11B .0222 TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING

(a) An insurer required to give prior notice of a proposed transaction under G.S. 58-19-30(b) shall submit a completed Form D referenced in 11 NCAC 11B .0216, which can be found at www.ncdoi.com.

(b) An insurer required to give prior notice of an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d) or an insurer that requests, under G.S. 58-19-30(c), approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (1) The amount of the proposed dividend or distribution;

- (2) The date established for payment of the dividend or distribution;
- (3) A statement as to whether the dividend or distribution is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
- (4) A statement identifying the dividend or distribution as an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d) or as an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c);
- (5) A copy of the calculations determining that the proposed dividend or distribution is an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d), or an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c).
The work paper shall include the following information:
 - (A) The amounts, dates and form of payment of all dividends or distributions (excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which notification is being given or approval is sought, and commencing on the day after the same day of the same month in the last preceding year;
 - (B) Surplus as regards policyholders (total capital and surplus) as of the preceding December 31;
 - (C) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31; and
 - (D) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding December 31.
- (6) A balance sheet and statement of income for the period between the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for approval or the prior notification of a dividend or distribution is submitted. The insurer shall indicate the amount of all unrealized capital gains included in unassigned funds;
- (7) A brief statement as to the effect of the proposed dividend or distribution upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and

- (8) A brief statement as to the intended use(s) of the proposed dividend or distribution by the parent, and, if applicable, any upstream parent, of the insurer.
- (c) A prior notification of an ordinary dividend or any other ordinary distribution required under G.S. 58-19-25(d) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.
- (d) A request for approval of an extraordinary dividend or any other extraordinary distribution required under G.S. 58-19-30(c) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.
- (e) For the purposes of the Commissioner's review of all proposed dividend payments or other distributions to shareholders, the factors set forth in G.S. 58-19-30(d) shall be considered.

History Note: Authority G.S. 58-2-40; 58-19-25; 58-19-30; Eff. April 1, 1993; Temporary Amendment Eff. December 31, 2006; Eff. August 1, 2007.

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

**15A NCAC 02D .0540 PARTICULATES FROM
FUGITIVE DUST EMISSION SOURCES**

(a) For the purpose of this Rule the following definitions shall apply:

- (1) "Excess fugitive dust emissions" means:
 - (A) Fugitive dust is visible extending beyond the facility's property line, or
 - (B) Upon inspection of settled dust on adjacent property, the Division finds that the dust came from the adjacent facility.
- (2) "Fugitive dust emissions" means particulate matter from process operations that does not pass through a process stack or vent and that is generated within plant property boundaries from activities such as: unloading and loading areas, process areas, stockpiles, stock pile working, plant parking lots, and plant roads (including access roads and haul roads).
- (3) "Production of crops" means cultivation of land for crop planting; crop irrigation; harvesting; on site curing, storage, or preparation of crops; or protecting them from damage or disease conducted according to practices acceptable to the Department of Agriculture.
- (4) "Public parking" means an area dedicated to or maintained for the parking of vehicles by the general public.
- (5) "Public road" means any road that is part of the State highway system or any road, street,

- or right-of-way dedicated or maintained for public use.
- (6) "Substantive complaints" means complaints that are verified with physical evidence.

(b) This Rule does not apply to:

- (1) abrasive blasting covered under Rule .0541 of this Section;
- (2) cotton ginning operations covered under Rule .0542 of this Section;
- (3) non-production military base operations;
- (4) land disturbing activities, such as clearing, grading, or digging, and related activities such as, hauling fill and cut material, building material, or equipment; or
- (5) public roads, public parking, timber harvesting, or production of crops.

(c) The owner or operator of a facility required to have a permit under 15A NCAC 02Q or of a source subject to a requirement under 15A NCAC 02D shall not cause or allow fugitive dust emissions to cause or contribute to substantive complaints, or visible emissions in excess of that allowed under Paragraph (e) of this Rule.

(d) If fugitive dust emissions from a facility required to comply with this Rule cause or contribute to substantive complaints, the owner or operator of the facility shall:

- (1) within 30 days upon receipt of written notification from the Director of a second substantive complaint in a 12-month period, submit to the Director a written report that includes the identification of the probable source(s) of the fugitive dust emissions causing complaints and what immediate measures can be made to abate the fugitive emissions;
- (2) within 60 days of the initial report submitted under Subparagraph (1) of this Paragraph, submit to the Director a control plan as described in Paragraph (f) of this Rule; and
- (3) within 30 days after the Director approves the plan, be in compliance with the plan.

(e) The Director may require that the owner or operator of a facility covered by Paragraph (c) of this Rule, develop and submit a fugitive dust control plan as described in Paragraph (f) of this Rule if:

- (1) ambient air quality measurements or dispersion modeling as provided in 15A NCAC 02D .1106(e) show violation or a potential for a violation of an ambient air quality standard for particulates in 15A NCAC 02D .0400; or
- (2) if the Division observes excessive fugitive dust emissions from the facility beyond the property boundaries for six minutes in any one hour using Reference Method 22 in 40 CFR 60, Appendix A.

(f) The fugitive dust control plan shall:

- (1) identify the sources of fugitive dust emissions within the facility;

- (2) describe how fugitive dust will be controlled from each identified source;
- (3) contain a schedule by which the plan will be implemented;
- (4) describe how the plan will be implemented, including training of facility personnel; and
- (5) describe methods to verify compliance with the plan.

(g) The Director shall approve the plan if he finds that:

- (1) the plan contains all required elements in Paragraph (f) of this Rule;
- (2) the proposed schedule contained in the plan will reduce fugitive dust emissions in a timely manner;
- (3) the methods used to control fugitive dust emissions are sufficient to prevent fugitive dust emissions from causing or contributing to a violation of the ambient air quality standards for particulates; and
- (4) the described compliance verification methods are sufficient to verify compliance with the plan.

If the Director finds that the proposed plan does not meet the requirements of this Paragraph he shall notify the owner or operator of the facility of any deficiencies in the proposed plan. The owner or operator shall have 30 days after receiving written notification from the Director to correct the deficiencies or submit a schedule describing actions to be taken and the time by which they will be implemented.

(h) If after a plan has been implemented, the Director finds that the plan inadequately controls fugitive dust emissions, he shall require the owner or operator of the facility to correct the deficiencies in the plan. Within 90 days after receiving written notification from the Director identifying the deficiency, the owner or operator of the facility shall submit a revision to his plan to correct the deficiencies.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(c)(7); Eff. July 1, 1998; Amended Eff. August 1, 2007.

15A NCAC 02D .1211 OTHER SOLID WASTE INCINERATION UNITS

(a) Applicability. With the exceptions in Paragraph (b), this Rule applies to other solid waste incineration (OSWI) units.

(b) Exemptions. The following types of incineration units are exempted from this Rule:

- (1) incineration units covered under Rules .1203 through .1206 and .1210 of this Section;
- (2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, pathological waste, low-level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:
 - (A) notifies the Director that the unit qualifies for this exemption; and

- (B) keeps records on a calendar-quarter basis of the weight, pathological waste, low-level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
 - (3) Cogeneration units if:
 - (A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes; and
 - (C) The owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
 - (4) Small power production unit if:
 - (A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C));
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and
 - (C) The owner or operator of the unit notifies the Director that the unit qualifies for this exemption.
 - (5) units that combust waste for the primary purpose of recovering metals;
 - (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold items for application of a coating;
 - (7) cement kilns;
 - (8) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
 - (9) air curtain burners covered under Rule .1904 of this Subchapter;
 - (10) institutional boilers and process heaters regulated under 40 CFR Part 63, Subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters);
 - (11) rural institutional waste incinerators that meet the conditions in 40 CFR 60.2993(h);
 - (12) incinerators that combust contraband or prohibited goods if owned or operated by a government agency, such as police, customs, agricultural inspection, or a similar agency, to destroy only illegal or prohibited goods, such as illegal drugs, or agricultural food products that cannot be transported into the country or across state lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities; or
 - (13) Incinerators used for national security and is used solely:
 - (A) to destroy national security materials integral to the field exercises during military training field exercises; or
 - (B) to incinerate national security materials when necessary to safeguard national security if the owner or operator follows to procedures in 40 CFR 60.2993(q)(2) to receive this exemption.
- (c) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.3078 shall apply in addition to the definitions in Rule .1202 of this Section.
- (d) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (1) Particulate Matter. Emissions of particulate matter from an OSWI unit shall not exceed 0.013 grains per dry standard cubic foot corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
 - (2) Opacity. Visible emissions from the stack of an OSWI unit shall not exceed 10 percent opacity (6-minute block average with 1 hour minimum sample time per run).
 - (3) Sulfur Dioxide. Emissions of sulfur dioxide from an OSWI unit subject to the requirements of this Rule shall not exceed 3.1 parts per million by volume corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
 - (4) Nitrogen Oxides. Emissions of nitrogen oxides from an OSWI unit shall not exceed 103 parts per million by dry volume corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
 - (5) Carbon Monoxide. Emissions of carbon monoxide from an OSWI unit shall not exceed 40 parts per million by dry volume, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run) and 12-hour rolling averages measured using continuous emissions monitoring system (CEMS).
 - (6) Odorous Emissions. An OSWI unit shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
 - (7) Hydrogen Chloride. Emissions of hydrogen chloride from an OSWI unit shall not exceed 15 parts per million by dry volume, corrected

- to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (8) Mercury Emissions. Emissions of mercury from an OSWI unit shall not exceed 74 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (9) Lead Emissions. Emissions of lead from an OSWI unit shall not exceed 226 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (10) Cadmium Emissions. Emissions of cadmium from an OSWI unit shall not exceed 18 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (11) Dioxins and Furans. Emissions of dioxins and furans from an OSWI unit shall not exceed 33 nanograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
- (12) Toxic Emissions. The owner or operator of any incinerator subject to the requirements of this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to Section 15A NCAC 02Q .0700.
- (13) Ambient Standards.
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
- | POLLUTANT | STANDARD |
|---------------------------------|----------|
| arsenic and its compounds | 2.3x10-7 |
| beryllium and its compounds | 4.1x10-6 |
| cadmium and its compounds | 5.5x10-6 |
| chromium (VI) and its compounds | 8.3x10-8 |
- (B) The owner or operator of a facility with OSWI units subject to this Rule shall demonstrate compliance with the ambient standards in Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
- (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (e) Operational Standards.
- (1) The operational standards in this Rule do not apply to an OSWI unit when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) The owner or operator of the OSWI shall meet the emission standards in Paragraph (d) of this Rule by July 1, 2010.
- (3) If a wet scrubber is used to comply with emission limitations, then the owner or operator of the OSWI unit:
- (A) shall establish operating limits for the four operating parameters as specified in the Table 3 of 40 CFR 60, Subpart FFFF and as described in Paragraphs 40 CFR 60.3023(a) during the initial performance test, and;
- (B) shall meet the operating limits established during the initial performance test beginning on July 1, 2010.
- (4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the emission standards of Paragraph (d) of this Rule, the owner or operator of the OSWI unit subject to the requirements of this Rule shall petition the US Environmental Protection Agency (EPA) for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the EPA approves the petition. The petition shall include the five items listed in the Paragraph 40 CFR 60.3024(a) through (e).
- (f) Periods of Startup, Shutdown, and Malfunction. The emission and operating standards apply at all times except during OSWI unit startups, shutdowns, or malfunctions.
- (g) Test Methods and Procedures.
- (1) The test methods and procedures described in Rule .0501 of this Subchapter, 40 CFR Part 60, Appendix A, 40 CFR Part 61, Appendix B, and 40 CFR 60.3027 shall be used to

- determine compliance with the emission standards in Paragraph (d) this Rule.
- (2) The owner or operator of OSWI unit shall conduct:
- (A) an initial performance test as required under 40 CFR 60.8 and according to 40 CFR 60.3027, no later than July 1, 2010; and after that;
- (B) annual performance tests according to 40 CFR 60.3027 and 40 CFR 60.3033, within 12 months following the initial performance test and within each 12 months thereafter.
- (3) The owner or operator of OSWI unit shall use the results of these tests:
- (A) to demonstrate compliance with the emission standards in Paragraph (d) of this Rule, and;
- (B) to establish operating standards using the procedures in Subparagraphs (e)(3) and (e)(4) of this Rule.
- (4) The owner or operator of OSWI unit may conduct annual performance testing less often if the requirements of 40 CFR 60.3035 are met.
- (5) The owner or operator of OSWI unit may conduct a repeat performance test at any time to establish new values for the operating limits. The Director may request a repeat performance test at any time if he finds that the current operating limits are no longer appropriate.
- (h) Monitoring.
- (1) The owner or operator of OSWI unit shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter and in 40 CFR 60.13, Monitoring Requirements.
- (2) The owner or operator of OSWI unit shall:
- (A) install, calibrate to manufacturers specifications, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. The oxygen concentration shall be monitored at each location where the carbon monoxide concentrations are monitored;
- (B) operate the continuous monitoring system according to 40 CFR 60.3039;
- (C) conduct daily, quarterly, and annual evaluations of the continuous emission monitoring systems according to 40 CFR 60.3040;
- (D) collect the minimum amount of monitoring data using the procedures in 40 CFR 60.3041(a) through (e) if the continuous emission monitoring system is operating or the procedures in 40 CFR 60.3041(f) if the continuous emissions monitoring system is temporarily unavailable; and
- (E) convert the one-hour arithmetic averages into the appropriate averaging times and units as specified in 40 CFR 60.3042 to monitor compliance with the emission standards in Paragraph (d) of this Rule.
- (3) The owner or operator of OSWI unit shall:
- (A) install, calibrate to manufacturers specifications, maintain, and operate devices or establish methods for monitoring or measuring the operating parameters as specified in 40 CFR 60.3043; and
- (B) obtain operating parameter monitoring data as specified in 40 CFR 60.3044 to monitor compliance with the operational standards in Paragraph (e) of this Rule.
- (i) Recordkeeping and Reporting. The owner or operators of an OSWI unit:
- (1) shall maintain all records required specified in 40 CFR 60.3046;
- (2) shall keep and submit records according to 40 CFR 60.3047;
- (3) shall submit, as specified in 40 CFR 60.3048, the following reports:
- (A) an initial test report and operating limits, as specified in 40 CFR 60.3049(a) and (b);
- (B) a waste management plan as specified in 40 CFR 60.3049(c); and
- (C) an annual report as specified in 40 CFR 60.3050 and 40 CFR 60.3051;
- (D) a deviation report as specified in 40 CFR 60.3053 if a deviation from the operating limits or the emission limitations occurs according to 40 CFR 60.3052(a); the deviation report shall be submitted following 40 CFR 60.3052(b);
- (E) a deviation report according to 40 CFR 60.3054(a) if a deviation from the requirement to have a qualified operator accessible occurs;
- (4) shall keep records and submit reports and notifications as required by 40 CFR 60.7;
- (5) may request changing semiannual or annual reporting dates as specified in this Paragraph; the Director may approve the request change using the procedures in 40 CFR 60.19(f).
- (6) shall submit reports in electronic or paper format postmarked on or before the submittal due dates.

(j) Excess Emissions and Start-up and Shut-down. All OSWI units shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(k) Operator Training and Certification.

- (1) No OSWI unit shall be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate OSWI unit.
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.3014(c) by the latest of:
 - (A) January 1, 2010,
 - (B) six month after OSWI unit startup, or
 - (C) six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.
- (3) Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.3014 (c)(2).
- (4) Operator qualification shall be maintained by completing an annual review or refresher course covering:
 - (A) update of regulations;
 - (B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
 - (C) inspection and maintenance;
 - (D) responses to malfunctions or conditions that may lead to malfunction; and
 - (E) discussion of operating problems encountered by attendees.
- (5) Lapsed operator qualification shall be renewed by:
 - (A) Completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
 - (B) Repeating the initial qualification requirements as specified in Subparagraph (3) of this Paragraph for a lapse of three years or more.
- (6) The owner or operator of the OSWI unit subject to the requirements of this Rule shall:
 - (A) have documentation specified in 40 CFR 60.3019(a) and (c) available at the facility and readily accessible for all OSWI unit operators and are suitable for inspection upon request;
 - (B) establish a program for reviewing the documentation specified in Part (A)

of this Subparagraph with each OSWI unit operator in a manner that the initial review of the information listed in Part (A) of this Subparagraph shall be conducted by the later of the three dates: January 1, 2010, six month after OSWI unit startup, or six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit; and subsequent annual reviews of the information listed in Part (A) of this Subparagraph shall be conducted no later than twelve month following the previous review.

- (7) The owner or operator of the OSWI unit shall follow the procedures in 40 CFR 60.3020 if all qualified OSWI unit operators are temporarily not at the facility and not able to be at the facility within one hour.

(l) Waste Management Plan.

- (1) The owner or operator of the OSWI unit shall submit a waste management plan that identifies in writing the feasibility and the methods used to reduce or separate components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. A waste management plan shall be submitted to the Director before September 1, 2010.
- (2) The waste management plan shall include:
 - (A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
 - (B) identification of any additional waste management measures;
 - (C) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place;
 - (D) the costs of additional measures and the emissions reductions expected to be achieved; and
 - (E) any other environmental or energy impacts.

(m) Compliance Schedule.

- (1) This Paragraph applies only to OSWI that commenced construction on or before December 9, 2004.
- (2) The owner or operator of an OSWI unit shall submit a permit application, including a compliance schedule, to the Director before January 1, 2008.
- (3) All OSWI shall be in compliance with this Rule no later than January 1, 2010.

- (4) The owner or operator of an CISWI unit shall notify the Director within 10 business days after the OSWI unit is to be in final compliance whether the final compliance has been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the permit application and required by its permit, so that, if the affected OSWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed and permitted. If the final compliance has not been achieved the owner or operator of the OSWI unit, shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.
- (5) The owner or operator of an OSWI unit who closes the OSWI unit and restarts it before January 1, 2010 shall submit a permit application, including a compliance schedule, to the Director. Final compliance shall be achieved by January 1, 2010.
- (6) The owner or operator of an OSWI unit who closes the OSWI unit and restarts it after January 1, 2010, shall submit a permit application to the Director and shall complete the emission control retrofit and meet the emission limitations of this Rule by the date that the OSWI unit restarts operation. The initial performance test shall be conducted within 30 days of restarting the OSWI unit.
- (7) The permit applications for OSWI units shall be processed under 15A NCAC 02Q .0500, Title V Procedures.
- (8) The owner or operator of an OSWI unit who plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by January 1, 2008, and shall cease operation by January 1, 2010.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4), (5), (10); 40 CFR 60.3014 through 60.3020; Eff. August 1, 2007.

15A NCAC 07H .1302 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter 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

- (2) property owners indicating that they have no objections to the proposed work; or confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The 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, DCM shall notify the applicant 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 may be appropriately marked. Written authorization to proceed with the proposed development may be issued during this visit. Construction of the boat ramp structure shall be completed within 120 days of this visit or the general authorization shall expire.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. August 1, 2007; September 1, 2006; January 1, 1990.

15A NCAC 07H .2002 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter 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/her name and address.

(b) The applicant 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. The 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 shall review all comments. If DCM determines that the comments are relevant to the potential impacts of the proposed project and the permitting issues raised by the comments are worthy of more detailed review, DCM shall notify the applicant that he/she must submit an application for a major development permit.

(d) 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 shall be completed within 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or continue construction.

History Note: Authority G.S. 113A-107; 113A-118.1; Eff. January 1, 1994; Amended Eff. August 1, 2007.

15A NCAC 07H .2202 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development.

(b) The applicant 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. The 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;
 DCM shall notify the applicant 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. Construction authorized by this permit shall be completed within 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or continue construction.

History Note: Authority G.S. 113A-107; 113A-118.1; Eff. February 1, 1996; Amended Eff. August 1, 2007.

15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES

Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and requires CAMA permits. Replacement of structures shall be permitted if the replacements is consistent with current CRC rules. Repair of structures damaged by natural elements, fire or normal deterioration is not considered development and shall not require CAMA permits. The CRC shall use the following criteria to determine whether proposed work is considered repair or replacement.

- (1) **NON-WATER DEPENDENT STRUCTURES.** Proposed work is considered replacement if the cost to do the work exceeds 50 percent of the market value of an existing structure immediately prior to the time of damage or the time of request. Market value and costs are determined as follows:
 - (a) 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:
 - (i) appraisal;
 - (ii) replacement cost with depreciation for age of the structure and quality of construction; or
 - (iii) tax assessed value.
 - (b) The cost to do the work is the cost to return the structure to its pre-damaged condition, using labor and materials obtained at market prices, regardless of the actual cost incurred by the owner to restore 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 shall be determined by the Division utilizing any or all of the following:

- (i) an estimate provided by a North Carolina licensed contractor qualified by license to provide an estimate or bid with respect to the proposed work;
 - (ii) an insurance company's report itemizing the cost, excluding contents and accessory structures; or
 - (iii) an estimate provided by the local building inspections office.
- (2) **WATER DEPENDENT STRUCTURES.** The proposed work is considered replacement if it enlarges the existing structure. The proposed work is also considered replacement if:
 - (a) 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, are considered as separate structures for the purpose of this Rule;
 - (b) 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;
 - (c) 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.

History Note: Authority G.S. 113A-103(5)b.5.; 113A-107(a),(b); Eff. July 1, 1990; Amended Eff. August 1, 2007.

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. Accessory buildings are subordinate in area and purpose to the principal structure and do 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 is 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., and that require no plumbing, electrical or other service connections and do not exceed 200 square feet are exempt from the CAMA minor development permit requirement if they meet the criteria set out in Paragraph (d) of this Rule.

(c) Any structure, or part 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 the 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., 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.

History Note: Authority G.S. 113A-103(5)b; 113A-103(5)c; 113A-111; 113A-118(a); 113A-120(8); Eff. November 1, 1984; Amended Eff. August 1, 2007; March 1, 2006; July 1, 2004; August 1, 2002; August 1, 2000.

15A NCAC 07M .0303 GUIDELINES FOR PUBLIC ACCESS

(a) Development shall not interfere with the public's right of access to the waterfront where the 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 shall include provisions for adequate public access within the vicinity of the project based on applicable Coastal Resources Commission rules.

(c) Policies regarding state and federal properties with waterfront areas intended to be used by the public shall provide for public access and parking so as to achieve maximum public use and benefit of these areas consistent with established legislation.

(d) Local governments may participate in the Public Beach and Coastal Waterfront Access Program as authorized by G.S. 113A-134.1 through 113A-134.3. The access program is intended to serve both year-round and seasonal users. In determining parking needs for access, local governments may use the current and projected seasonal population estimates provided in their land use plan as set out in 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 land use plan as required in 15A NCAC 07B .0702(d)(3)(A)(ii) and (iii) 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 user fees as long as those fees are used exclusively for operation and maintenance of the access facility. Other regulations, including schedules of operation, may also be established.

(g) Local governments 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 07B .0800 and local waterfront access plans. The Division of Coastal Management may provide 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 may 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 07B .0702(d)(3)(A)(ii) and (iii), local governments may consider the following guidelines:

- (1) Local/Neighborhood Access Sites- 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 07B .0702(d)(3)(A)(ii) and (iii), local governments may 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.

History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-227(a); 160A-314(a); 16 U.S.C. Sec. 1453; Eff. March 1, 1979;

Amended Eff. March 1, 1988; March 1, 1985; July 1, 1982;

RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;

Amended Eff. August 1, 2007; January 1, 1998; March 1, 1992.

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. The Division of Coastal Management may provide 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.

(b) 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:

- (1) identify numerous access needs and develop local policy to pursue access funding;
- (2) develop a local access plan; and
- (3) solicit access sites through corporate assistance.

(c) 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.

(d) Local governments may include provisions in local subdivision ordinances that require access for waterfront developments or require payment in lieu of access for non-water dependent subdivisions.

(e) Dedicated street stub outs may be acceptable for accessways.

(f) The Division of Coastal Management has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. The Division of Coastal Management (DCM) shall solicit for pre-application proposals from local governments and will select competitive projects for full application submittal. Projects from these final applications shall be selected for funding based on criteria in Rule .0307 of this Section and anticipated fund availability.

(g) The Division of Coastal Management shall ensure all projects funded through the Public Beach and Coastal

Waterfront Access Program are making progress throughout project implementation and ensure that completed projects are operated and maintained for access purposes.

History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. August 1, 2007.

15A NCAC 11 .1102 PAYMENT DUE

- (a) All fees established in this Section shall be due on the first day of July of each year.
- (b) Notwithstanding Paragraph (a) of this Rule, when a new license or registration is issued by the agency after the effective date of this Rule or after the first day of July of any subsequent 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 "Radiation Protection Section" and mail such payment to: 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.

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a);
Eff. July 1, 1982;
Amended Eff. May 1, 1993; May 1, 1992; July 1, 1989;
Temporary Amendment Eff. June 30, 2002;
Temporary Amendment Expired on March 28, 2003;
Findings of need for Emergency Rule disapproved by Codifier on June 8, 2007;
Emergency Amendment Eff. June 19, 2007 pursuant to G.S. 150B-21.1A(b);
Amended Eff. August 1, 2007.

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, 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 legal action to collect.

History Note: Authority G.S. 104E-9(8); 104E-19(a);
Eff. July 1, 1982;
Amended Eff. August 1, 2007; May 1, 1993.

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
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(b) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rule .0211 of this Chapter are the same as that provided for in the applicable category specified in Paragraph (a) of this Rule. The 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.

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a);
 Eff. July 1, 1982;
 Amended Eff. August 1, 2007; August 1, 2002; July 1, 1989.

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
Specific license of broad scope	
-Medical Broad	\$ 3,600.00
-Academic Broad	\$ 2,500.00
-Research and Development Broad	\$ 2,000.00
Specific license	
-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
General licenses	
-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 one thousand five hundred dollars (\$1,500) for a facility with accelerator unit(s).

(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.

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a);
 Eff. August 1, 2007.

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 are due on the first day of July of each 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 is 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 is 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 is one-half of the amount specified in this Rule.

(e) All fees received by the agency pursuant to provisions of this Rule are 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 "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 is 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, 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).

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a); Eff. July 1, 1994; Amended Eff. August 1, 2007; August 1, 2002.

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 and .1970 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) or .1970 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 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.

Drainage may be used in other types of soil when the requirements of Rule .1942, .1970 or .1948(d) in this Section are met.

- (3) 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 as follows:

- (a) GRAVELLESS TRENCHES: Gravelless nitrification trench systems may be substituted for conventional trench systems on any site found to be SUITABLE or 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 at the Division of Environmental Health 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, at a cost of thirty dollars (\$30.00). 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 minimum requirements in Table III(a):

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

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 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). 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 (small end opening at top) suitable for receiving the pipe from the septic tank or distribution device and making a mechanical joint in the nitrification trench.

- (ii) A Prefabricated, Permeable Block Panel System (PPBPS), utilizing both

horizontal and vertical air chambers and 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 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 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:
 - (a) An investigation of the site using pits at locations specified by the local health department 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 is sand, loamy sand, sandy loam, loam, or silt loam;
 - (ii) clay mineralogy is suitable;
 - (iii) greater than two-thirds of the material has a moist consistence that is loose, very friable, friable, or firm;
 - (iv) the saprolite wet consistence is nonsticky or slightly sticky and nonplastic or slightly plastic;
 - (v) the saprolite is in an undisturbed, naturally occurring state; and
 - (vi) the saprolite 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(b) is used in determining the long-term acceptance rate. 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(b): Long-Term Acceptance Rates for Saprolite Systems			
SAPROLITE GROUP	SAPROLITE TEXTURAL CLASS		LONG-TERM ACCEPTANCE RATE (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(b) 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. Other design criteria may also be used in conjunction with an advanced pretreatment system pursuant to Rule 1970. 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 does not exceed 1000 gallons.
- (d) The nitrification field 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, or the requirements of Subparagraph (h)(2) of Rule 1970 in conjunction with an advanced pretreatment system. 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 is a minimum of two feet above any wetness condition.
- (f) Surface and subsurface interceptor drains are required on sites with more slowly permeable horizons above the usable saprolite to intercept laterally flowing waters or perched waters.

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) or 1970 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 or TS-II 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 or TS-II 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;
 - (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;
 - (vi) if the texture of the receiving permeable horizon is sandy loam or loam, and the system design flow is greater than 600 gallons per day, the saturated hydraulic conductivity of the permeable horizon shall be field-determined; and

- (vii) if the texture of the receiving permeable horizon is silt loam, the saturated hydraulic conductivity of the permeable horizon shall be field-determined.
- (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 (LTAR) for all sand-lined trench systems. The long-term acceptance rate shall be:
 - (i) the rate set forth in Table III(c), based on the most hydraulically limiting, naturally occurring soils overlying the permeable receiving layer, or
 - (ii) when the saturated hydraulic conductivity of the underlying horizons is required to be determined pursuant to Subitem (7)(a)(vi) or Subitem (7)(a)(vii) of this Rule, either the rate set forth in Table III(c), based on the most hydraulically limiting, naturally occurring soils overlying the permeable receiving layer, or 10 percent of the saturated hydraulic conductivity of the underlying permeable horizon (or 20 percent with TS-I or TS-II pretreatment), whichever is less.

Table III(c): Long-Term Acceptance Rates for Sand Lined Trench Systems			
SOIL GROUP	TEXTURAL CLASS OF MOST HYDRAULICALLY LIMITING OVERLYING SOIL HORIZON	DISTRIBUTION OR PRETREATMENT CONDITION	LONG-TERM ACCEPTANCE RATE (LTAR) (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 or TS-II 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 or TS-II 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 or TS-II 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 or TS-II pretreatment	0.2 – 0.4

*The LTAR for all sand-lined trench systems shall not exceed the loading rates set forth in this table or 10 percent of the saturated hydraulic conductivity of the underlying permeable horizon (or 20 percent with TS-I or TS-II pretreatment) when required to be determined pursuant to Subitem (7)(a)(vi) or Subitem (7)(a)(vii) of this Rule, whichever is less. There shall be no reduction in trench length compared to a conventional gravel trench when accepted or innovative nitrification trenches are used.

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, if required by Article 3 of G.S. 90A. A Public Management Entity with a Certified Operator, if required by Article 3 of G.S. 90A, shall be required for sand lined trench systems when drainage is 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 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 trench bottoms are deeper than five feet below the natural grade, the effluent shall receive pretreatment to TS-I or TS-II 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. When laboratory analysis is required, the material shall be determined to be a clean, uncoated fine, medium, or coarse sand with at least 90 percent in sizes ranging from 0.1 to 1.0 millimeters, with no more than one percent smaller than 0.002 millimeters.
 - (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 or TS-II is utilized and six inches if both pressure dispersal and TS-I or TS-II 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) All required drainage components are considered to be a part of the wastewater system and subject to ownership and easement requirements in Sub-item (2)(d) of this Rule and Paragraphs (c) and (j) of Rule .1938.
 - (n) 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.

- (o) 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.
- (p) 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.

History Note: Authority G.S. 130A-335(e) and (f); Eff. July 1, 1982; Amended Eff. August 1, 2007; November 1, 1999; July 1, 1995; April 1, 1993; January 1, 1990; August 1, 1988.

15A NCAC 18A .2601 DEFINITIONS

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

- (1) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. Food equipment that is certified for sanitation by an American National Standards Institute (ANSI) - accredited program shall be approved. ANSI sanitation standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from ANSI, 1819 L Street, NW, 6th Floor, Washington, DC 20036, at a cost of six-hundred sixty-five dollars (\$665.00) and are also available for inspection at the Division of Environmental Health.
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the rules of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) "Critical Violation" means a violation relating to any one of the following risk factors that directly contribute to foodborne disease outbreaks:
 - (a) improper hot and cold holding, cooling or reheating potentially hazardous foods in accordance with Rules .2608 through .2609, .2612, .2615, .2638, or .2645 of this Section;
 - (b) inadequate cooking in accordance with Rule .2609 of this Section;
 - (c) poor personal hygiene of food handlers in accordance with Rules .2609, .2616, .2635, or .2638 of this Section;
 - (d) cross-contamination and contamination of food-contact surfaces in accordance with Rules .2608, .2610 through .2611, .2617 through .2620, .2622, .2635, .2638, or .2645 of this Section; or
 - (e) food from unapproved sources in accordance with Rules .2608, .2612 through .2613, .2622, or .2635 of this Section.
- (5) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (6) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (7) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating, cooking, or processing utensils or equipment, or who is employed at any time in a room in which food or drink is prepared or served.
- (8) "Environmental Health Specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (9) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drainboards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens, and other food preparation and holding appliances.
- (10) "Food" means any raw, cooked, or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (11) "Food service establishment" means any establishment or operation where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term

- does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (12) "Food stand" means a food service establishment which prepares or serves foods and which does not provide seating facilities for customers to use while eating or drinking.
- (13) "Good repair" means that the item in question can be kept clean and used for its intended purpose.
- (14) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (15) "Highly susceptible population" means persons who are more likely than other persons in the general population to experience foodborne disease because they are:
- (a) immunocompromised, preschool age children or adults, 55 years of age or older; and
 - (b) obtaining food as a patient or client at a facility that provides services such as custodial care, health care or assisted living, such as an adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.
- (16) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- (17) "Local health director" means the administrative head of a local health department or his authorized representative.
- (18) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- (19) "Meat market" means those food service establishments as defined in G.S. 130A-247(1)(v).
- (20) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- (21) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- (22) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (23) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- (24) "Private club" means a private club as defined in G.S. 130A-247(2).
- (25) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- (26) "Risk Factor" means a contributing factor that increases the chance of developing foodborne illness as it relates to food safety issues within a food service establishment.
- (27) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (28) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- (29) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (30) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (31) "Shellstock" means any shellfish which remains in their shells. Shellfish which are shucked or on the half-shell shall not be considered shellstock.
- (32) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (33) "Substantially similar" means similar in importance, degree, amount, placement or extent.
- (34) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (35) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation, or serving.

History Note: Authority G.S. 130A-248;
Eff. May 5, 1980;

Amended Eff. January 1, 1996; July 1, 1994; January 4, 1994; July 1, 1993;

Temporary Amendment Eff. April 8, 1996;

Amended Eff. August 1, 2007; April 1, 2005; October 1, 2004; January 1, 2002; August 1, 1998; April 1, 1997.

15A NCAC 18A .2604 INSPECTIONS AND REINSPECTIONS

(a) Upon entry into a food service establishment, Environmental Health Specialists shall identify themselves and their purpose in visiting that establishment. Environmental Health Specialists shall inquire as to the identity of the responsible person and invite the responsible person to accompany them during the inspection. If no employee is identified as the responsible person, Environmental Health Specialists shall invite an employee to accompany them on the inspection. Following the inspection, the Environmental Health Specialist shall offer to review the results of the inspection with the responsible person.

(b) The grading of restaurants, food stands, drink stands, or meat markets shall be done on an inspection form furnished by the Department to local health departments. The form shall provide for the following information:

- (1) the name and mailing address of the facility;
- (2) the name of person to whom permit is issued;
- (3) the permit and score given;
- (4) standards of construction and operation as listed in Rules .2607 through .2644 of this Section;
- (5) a short explanation for all points deducted;
- (6) the signature of the Environmental Health Specialist;
- (7) the date.

(c) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within or outside of the food service establishment. Deductions shall be based on actual violations of the rules of this Section observed during the inspection. The Environmental Health Specialist shall take zero, one-half or a full deduction of points depending upon the severity or the recurring nature of the non-critical violations. Critical violations may be corrected on-site and no more than one-half of the total point value shall be deducted when the violation meets the following criteria:

- (1) the critical violation was not documented on the previous inspection; and
- (2) correction of the item is documented on the inspection form.

(d) At the time of inspection, if a critical violation is observed and not corrected, the Environmental Health Specialist shall take one-half or a full deduction of points depending upon the severity or the recurring nature of the violation. The Environmental Health Specialist shall specify a time frame of no more than 10 calendar days to correct the critical violation.

(e) In determining whether items or areas of an establishment are clean for purposes of enforcing the rules set forth in this Section and grading an establishment, the Environmental Health Specialist shall consider, among other things: the age of the accumulated material, the relative percentage of items which are clean and not clean, the cleaning practices of the establishment and the health risk posed by the circumstances.

(f) Upon request of the permit holder or his or her representative a reinspection shall be made.

(g) In the case of establishments that have been closed for failure to comply with the Rules of this Section, a reinspection to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the Environmental Health Specialist.

(h) In the case of establishments which request an inspection for the purpose of raising the alphabetical grade, and which hold unrevoked permits, the Environmental Health Specialist shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 15 days, from the date of the request.

History Note: Authority G.S. 130A-248;

Eff. May 5, 1980;

Amended Eff. August 1, 2007; October 1, 2004; August 1, 1998; May 1, 1991; March 1, 1988.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 01 – NORTH CAROLINA ACUPUNCTURE LICENSING BOARD

21 NCAC 01 .0101 APPLICATION AND PRACTICE REQUIREMENTS FOR LICENSURE

In addition to and for the purposes of meeting the requirements of G.S. 90-455, an applicant for licensure to practice acupuncture shall satisfy requirements one through six and eight listed below or requirements one through five and requirements seven and eight listed below:

- (1) Submit a completed application;
- (2) Submit fees as required by Rule .0103 of this Section;
- (3) Ensure that an official copy of a diploma, transcript, license or certificate, examination score, or other document required for application is forwarded directly to the Board by the issuing entity or its successor organization or designated state agency. Documents shall have an official or government seal or written verification authenticating the document;
- (4) If the applicant sat for the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination on or before June 30, 2004, the applicant shall submit proof that he or she passed the acupuncture written exam and the point location exam as established and determined by NCCAOM or its successor organization. If the applicant sat for the licensing examination after June 30, 2004, the applicant shall submit proof that he or she passed, as determined by NCCAOM, the following four NCCAOM modules: Foundations of Oriental Medicine,

- Acupuncture, Biomedicine and Point Location;
- (5) Submit proof that he or she passed the Clean Needle Technique course as offered and determined by the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) or its successor organization;
 - (6) Submit proof of satisfying the education requirements listed below:
 - (a) US Trained Applicants. All U.S. trained applicants shall graduate from a three-year postgraduate acupuncture college, accredited by or in candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or its successor organization.
 - (b) Foreign Trained Applicants. All foreign trained applicants shall graduate from a postgraduate acupuncture college that meets the curricular requirements of ACAOM. The college shall also be approved by either:
 - (i) A foreign government's Ministry of Education;
 - (ii) A foreign government's Ministry of Health;
 - (iii) A governmental agency that is comparable to a division or department of the US Government charged with educational accreditation; or
 - (iv) A private foreign accreditation agency that has an accreditation process and standards substantially equivalent to that of ACAOM, and that is recognized for that purpose by the substantially equivalent governmental entity in that foreign country. The educational institutions shall meet the curricular requirements of ACAOM.
 - (c) The documents substantiating that the U.S. trained applicant has met the specified requirements shall be submitted as follows:
 - (i) The educational program or governmental agency from which the applicant received the certificate or diploma shall send an official copy of the applicant's transcript directly to the Board in a sealed envelope.
 - (ii) By its submission of this transcript, the program or agency shall verify the applicant's satisfactory completion of the required ACAOM academic and clinical education and designate the completed courses and the hours of study completed in each subject.
 - (d) The documents substantiating that the Foreign trained applicant has met the specified requirements shall be submitted as follows:
 - (i) The educational program or governmental agency from which the applicant received the certificate or diploma shall send an official copy of the applicant's transcript directly to the Board in a sealed envelope;
 - (ii) By submission of this transcript, the program or agency shall verify the applicant's satisfactory completion of his or her clinical education and designate the completed courses and hours of study earned in each subject;
 - (iii) The applicant, at his or her own expense, shall submit an accurate English translation that interprets all documents submitted in a foreign language. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant, certifying that the translation is a true and complete translation of the original. Each affidavit shall be signed before a notary public; and
 - (iv) All foreign trained applicants, at his or her expense, shall submit their

transcripts for evaluation by a foreign credential evaluation service to determine if the applicant's course work is equivalent to that required of an applicant from a three-year postgraduate acupuncture college accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). This includes a subject-by-subject analysis that meets the curricular requirements of ACAOM in effect at the time of certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) in the acupuncture written and point location examinations. The applicant may use a current member of the National Association of Credential Evaluation Services (NACES) or the American Association of Collegiate Registrars and Admissions Offices (AACRAO);

- (7) Practice Requirements:
 - (a) The applicant shall fulfill the requirements set forth in G.S. 90-455.
 - (b) Disciplinary action, as used in Article 30 of Chapter 90 of the General Statutes, means censure, suspension, or revocation but does not include a letter of caution, warning or admonition; and
- (8) Submit a license history stating the disciplinary record of the applicant to reflect any censure, suspension or revocation. The record shall be sent directly to the Board by each state board in which the applicant has been licensed to practice acupuncture.

History Note: Authority G.S. 90-451; 90-454; 90-455; Temporary Adoption Eff. March 18, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. August 1, 1996; Amended Eff. August 1, 2007; July 1, 2000; April 1, 1999; August 1, 1995.

21 NCAC 01 .0103 FEES

The following fees shall apply:

- | | | |
|------|---|------------|
| (1) | Application (non-refundable) | \$100.00 |
| (2) | Initial biennial licensing | \$500.00 |
| (3) | Renewal of biennial licensing | \$300.00 |
| (4) | Late license renewal (additional) | \$200.00 |
| (5) | Inactive license renewal, biennial extension | \$ 50.00 |
| (6) | Duplicate license | \$ 25.00 |
| (7) | Duplicate wall certificate | \$ 50.00 |
| (8) | Mailing Labels | \$150.00 |
| (9) | Returned check | \$ 40.00 |
| (10) | Verification of North Carolina licensure to another state | \$ 25.00 |
| (11) | Name change | \$ 5.00 |
| (12) | Continuing education per single program approval | \$ 50.00 |
| (13) | Continuing education provider approval | \$ 50.00 |
| (14) | Initial school application | \$1,000.00 |
| (15) | Biennial renewal school approval application | \$500.00 |

History Note: Authority G.S. 90-457; Temporary Adoption Eff. March 18, 1994 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner; Eff. August 1, 1994; Amended Eff. August 1, 2007.

21 NCAC 01 .0106 CHANGE OF NAME OR ADDRESS

Every person licensed under the provisions of this Article shall give written notice to the Board of any change in his or her name or address within 60 calendar days after the change takes place.

History Note: Authority G.S. 90-454; 90-455; 90-456; Eff. August 1, 2007.

21 NCAC 01 .0107 BOARD MAILING ADDRESS

All correspondence shall be mailed to the following address:
 North Carolina Acupuncture Licensing Board
 P.O. Box 10686
 Raleigh, N.C. 27605

History Note: Authority G.S. 90-450; Eff. August 1, 2007.

21 NCAC 01 .0201 RENEWAL OF LICENSURE

The procedure and requirements for renewal of license are as follows:

- (1) Biennial Renewal. A licensee must renew his or her license by the second July 1 following initial licensure and thereafter renew his or her license prior to expiration every two years.
- (2) Continuing Education. An applicant for license renewal shall verify on a form prepared by the Board that the licensee has completed the required continuing education units, the number of units completed, and a list of those programs completed. The licensee must retain

such receipts, vouchers or certificates as may be necessary to document completion of the continuing education units required. An applicant must retain records to establish that the applicant has fulfilled the educational requirements set by the Board.

- (3) Fees. The licensee must pay the renewal fee prescribed in Rule .0103 of this Chapter.
- (4) Suspended license. The holder of a suspended license must meet the prescribed renewal requirements or the license shall expire.
- (5) Expired license. He or she must not practice acupuncture with an expired license. Failure to receive notification that the license has expired during this period does not relieve the holder of an expired license of the responsibility of meeting the continuing education requirements that would have been required if the license had continued to be in effect. These continuing education units will not apply to the renewal requirements for the subsequent renewal period. To renew an expired license the applicant must file the approved application, submit proof of completion of continuing education, and pay the renewal late fee resulting from the expired license as well as the required renewal fee.

*History Note: Authority G.S. 90-455;
Eff. December 1, 1995;
Amended Eff. August 1, 2007.*

**21 NCAC 01 .0202 PROCESS TO OBTAIN
INACTIVE LICENSE; ACTIVATE LICENSE**

(a) The procedure and requirements for inactive status are as follows:

- (1) Written request for inactive license. A licensed acupuncturist not engaged in the practice of acupuncture may request that his or her license be placed in inactive status by submitting the request in writing to the Board.
- (2) Following a period of eight years, the Board shall treat an inactive license as lapsed.

(b) The procedure and requirements to activate a license are as follows:

- (1) Submit an application to activate a license on a form provided by the Board.
- (2) The applicant meeting the requirements to activate his or her license as set out in G.S. 90-455(c) shall submit a signed statement to the Board establishing that he or she has not been involved in any prohibited activities set forth in G.S. 90-456 during the period of inactive status.
- (3) To make this determination, the Board may hold a hearing in accordance with the requirements followed for revocation and suspension of a license as set out in 21 NCAC 01 .0710.

- (4) The applicant shall satisfy the Board that he or she completed 40 hours of continuing education units within the preceding two-year period as set out in G.S. 90-455.

(c) Fees: An applicant shall submit payment of an inactive license fee extension every two years upon notice by the Board.

(d) The Board shall activate a license upon a finding that the applicant has paid the sum total fee, completed the continuing education requirements, and not engaged in any prohibited activities that would constitute the basis for discipline as set forth in G.S. 90-456.

*History Note: Authority G.S. 90-450; 90-455; 90-456;
Eff. August 1, 2007.*

**21 NCAC 01 .0301 STANDARDS FOR
CONTINUING EDUCATION**

(a) Applicants for license renewal shall complete 40 Continuing Education Units (CEU) every two years. One CEU is defined as one contact hour or 50 minutes.

(b) All CEUs shall be completed during the two calendar years immediately preceding the:

- (1) License renewal date, or
- (2) Date on which the license renewal is approved by the Board.

(c) The following requirements shall apply to the total number of CEUs submitted by a licensee for license renewal:

- (1) A minimum of 25 CEUs must be obtained from formally organized courses which have content relating to the scope of practice of acupuncture as defined by G.S. 90-451(3). Each course shall be sponsored or approved by one or more of the following organizations or their successor organizations:
 - (A) National Acupuncture and Oriental Medicine Alliance (NAOMA);
 - (B) Association of Acupuncture and Oriental Medicine (AAOM);
 - (C) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM);
 - (D) Acupuncture Schools Accredited By or in Candidacy Status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM);
 - (E) National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);
 - (F) National Academy of Acupuncture and Oriental Medicine (NAAOM);
 - (G) Society for Acupuncture Research;
 - (H) National Acupuncture Detoxification Association;
 - (I) American Academy of Medical Acupuncture (AAMA);
 - (J) The acupuncture licensing board of another State;

- (K) North Carolina Association of Acupuncture and Oriental Medicine (NCAAOM);
- (L) American Heart Association; or
- (M) American Red Cross.
- (2) A maximum of 15 CEUs may be obtained from teaching acupuncture diagnosis and treatment. All CEUs for teaching shall be approved by the Board prior to the date of the class and awarded for actual classroom hours taught pursuant to this Rule. For approval the licensee shall submit the following information:
 - (A) Title of the course;
 - (B) Summary of course content or class syllabus;
 - (C) Location of the class;
 - (D) Dates of the class;
 - (E) Number of classroom hours taught; and
 - (F) Copy of course evaluation to be provided students.

(d) A course submitted to the Board for credit as CEUs shall be formally organized. A formally organized course shall consist of the following:

- (1) A record of attendance maintained on file by the sponsor of the course. This record shall be made available to the Board upon request;
- (2) For a course taught by an instructor who is required by the State to hold a credential to practice in the field which is the subject of the course, the credential of that instructor shall be in good standing and any instructor shall be competent to teach his or her designated course by virtue of his or her education, training, and experience;
- (3) The course shall have stated course objectives and a course syllabus or a description of the content of the course with a class outline;
- (4) The course shall be evaluated by each participant; and
- (5) Upon completion of each course the provider shall issue a certificate of completion to each participant to include:
 - (A) Title of the course;
 - (B) Name of participant;
 - (C) Name of all instructors;
 - (D) Name of provider;
 - (E) Date and location of the course; and
 - (F) Number of CEU's completed.

(e) CEUs from any given course may be used to satisfy the requirements of only one biennium.

(f) At the time of license renewal, each licensee shall sign a statement under penalty of perjury indicating the licensee has complied with the continuing education requirements.

(g) Each licensee shall retain for four years records of all continuing education programs attended, indicating:

- (1) title of the course or program;
- (2) sponsoring organization or individual;

- (3) accrediting organization; and
- (4) course hours in attendance.

(h) The Board may audit the records of any licensee. No licensee shall be subject to audit more than once every two years. Those licensees selected for audit shall be required to document their compliance with the continuing education requirements of this article.

(i) Failure to comply with the continuing education requirements shall prohibit license renewal and result in the license reverting to an expired status at the end of the renewal period.

(j) It shall constitute unprofessional conduct for a licensee to misrepresent completion of required CEUs. In the event of misrepresentation, disciplinary proceedings may be initiated by the Board.

(k) A maximum of 20 CEUs may be obtained for correspondence or on-line courses.

(l) All applications for pre-approval must be submitted 60 days prior to the date of the course.

(m) A licensee may apply to the Board for an extension of time as set out in G.S. 90-457.1.

History Note: Authority G.S. 90-454; 90-457.1;

Eff. July 1, 1995;

Temporary Amendment Eff. January 26, 1996;

Temporary Amendment Expired November 11, 1996;

Amended Eff. August 1, 2007; August 1, 2002.

CHAPTER 25 – INTERPRETER AND transliterator BOARD

21 NCAC 25 .0205 RENEWAL OF A PROVISIONAL LICENSE

(a) An application for the renewal of a provisional license is not timely filed unless it is received by the Board on or before the expiration date of the license being renewed.

(b) If a licensee does not timely file an application for the renewal of a provisional license, the licensee shall not practice or offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, or use the title "Licensed Interpreter for the Deaf", "Licensed Transliterator for the Deaf", or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator until he or she receives either a renewed provisional license, as described in Paragraph (c) of this Rule, or an initial full license.

(c) An application to renew an expired provisional license shall be approved by the Board if it is received by the Board within one year after the provisional license expired and if the application demonstrates that the applicant continues to qualify for a provisional license. A provisional license cannot be renewed after it has expired a second time.

(d) If the license being renewed has been suspended by the Board, any renewal license issued to the applicant shall be suspended as well until the term of the suspension has expired.

(e) The Board shall renew a provisional license as many as three times upon receipt of timely applications that demonstrate that

the applicant continues to qualify for a provisional license. The Board may, in its discretion, renew a provisional license a fourth or fifth time if the applicant timely files an application that demonstrates to the Board's satisfaction that the applicant's progress toward full licensure was delayed by:

- (1) a life-altering event, such as an acute or chronic illness suffered by either the applicant or a member of the applicant's immediate family;
- (2) active military service; or
- (3) a catastrophic natural event, such as a flood, hurricane, or tornado.

(f) The Board shall not for any reason renew a provisional license for a sixth time.

(g) The Board shall not issue an initial provisional license to anyone who has previously held a provisional license.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; 90D-12;

Eff. March 21, 2005;

Amended Eff. August 1, 2007.

21 NCAC 25 .0209 PERSONS WHO ARE INELIGIBLE TO APPLY FOR A LICENSE

(a) Any person who violates G.S. 90D-4(a) shall be ineligible for licensure for a period of up to two years following the last date on which the person violated G.S. 90D-4(a).

(b) Any person whose license application is denied by the Board on the ground that the person gave false information to, or withheld information from, the Board while seeking a license shall be ineligible for licensure for a period of two years following the denial.

(c) Any person whose license is revoked by the Board on any grounds other than G.S. 90D-12(5) shall be ineligible for licensure for a period of two years following the revocation.

(d) Any person whose license has been revoked pursuant to G.S. 90D-12(5) for failing to pay child support after having been ordered to do so by a court of competent jurisdiction, or for failing to comply with a subpoena issued pursuant to a child support or paternity establishment proceeding, shall be ineligible to apply for a new license until the Board receives a certification from the appropriate clerk of court that the person is no longer delinquent in child support payments or that the person has complied with, or is no longer subject to, the subpoena.

History Note: Authority G.S. 50-13.12; 90D-6; 90D-12;

Eff. March 21, 2005;

Amended Eff. August 1, 2007.

21 NCAC 25 .0210 TIME-LIMITED, NONRESIDENT EXEMPTION

(a) Nonresident persons who are nationally certified by the National Association of the Deaf, the National Cued Speech Association, or the Registry of Interpreters for the Deaf, Inc. are exempt from licensure so long as they provide interpreting or transliterating services in this State for no more than 20 days during any single calendar year.

(b) For the purposes of this Rule, each partial day of interpreting or transliterating shall be counted as a full day.

(c) Upon the request of any person, a nonresident providing interpreting or transliterating services under this exemption shall provide evidence of his or her certification by the National Association of the Deaf, the National Cued Speech Association, or the Registry of Interpreters for the Deaf, Inc.

History Note: Authority G.S. 90D-4(b)(6); S.L. 2005-299, s.1;

Eff. August 1, 2007.

21 NCAC 25 .0501 CONTINUING EDUCATION REQUIREMENTS

(a) A licensee shall earn at least two continuing education units ("CEUs") each licensure year. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a setting in which three or more persons come together at the same location at the same time as a group to listen to a lecture, to view a demonstration, to participate in group discussions, or to learn through any combination of these or similar activities.

(b) Surplus CEUs shall not be carried forward from the licensure year in which they were earned to any subsequent licensure year.

(c) A licensee may not earn CEUs while interpreting, whether or not the licensee is compensated for his or her services.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11;

Eff. March 21, 2005;

Amended Eff. August 1, 2007.

21 NCAC 25 .0502 PRORATION OF CONTINUING EDUCATION REQUIREMENTS

The CEU requirements specified in Rule .0501 of this Chapter shall be prorated as follows during a licensee's initial licensure year:

- (1) If the licensee receives his or her initial license in the months of October, November or December, the licensee shall be required to earned at least 2.0 CEUs by the following October 1. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a traditional classroom setting;
- (2) If the licensee receives his or her initial license in the months of January, February, or March, the licensee shall be required to earned at least 1.5 CEUs by the following October 1. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a traditional classroom setting;
- (3) If the licensee receives his or her initial license in the months of April, May, or June, the licensee shall be required to earned at least 1.0 CEUs by the following October 1. At least 0.5 of those CEUs shall be earned in professional studies and at least 0.5 of those CEUs shall be earned in a traditional classroom setting;

- (4) If the licensee receives his or her initial license in the months of July, August, or September, the licensee shall be required to earned at least 0.5 CEUs by the following October 1. At least 0.5 of those CEUs shall be earned in professional studies and at least 0.5 of those CEUs shall be earned in a traditional classroom setting.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; Eff. August 1, 2007.

21 NCAC 25 .0503 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS

(a) A licensee who has not complied with the continuing education requirements in this Section shall be ineligible for license renewal. Any person whose license renewal application is denied on these grounds may reapply for licensure as soon as the person is able to demonstrate that:

- (1) the person has earned at least two CEUs within the 12 months next preceding the date of reapplication;
- (2) at least 1.0 of those CEUs was earned in professional studies; and
- (3) at least 1.0 of those CEUs was earned in a traditional classroom setting.

(b) Notwithstanding the provisions of Paragraph (a) of this Rule, a licensee who has not complied with the continuing education requirements in this Section shall be eligible for license renewal if:

- (1) the licensee makes a timely application for renewal, including the payment of the required license fee; and
- (2) the licensee earns the required CEUs by no later than the 31st day of October in the new licensure year.

(c) CEUs earned in the current licensure year and used to cure a deficiency in the prior licensure year may not be used to meet the CEU requirements of the current year.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; Eff. August 1, 2007.

21 NCAC 25 .0504 CEU CREDIT FOR COLLEGE COURSES

A licensee may earn CEUs by enrolling in and completing a class or course sponsored by a college or university accredited by the Southern Association of Colleges and Schools or by any other accrediting agency recognized by the U.S. Department of Education. In order to receive CEU credit for the class or course, the licensee must authorize and direct the sponsoring college or university to mail to the Board a certified transcript documenting that the licensee completed the class or course and that the licensee earned at least a 2.0 grade point average in the class or course or a grade of "Pass" if the licensee was graded on a "Pass-Fail" basis.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; Eff. August 1, 2007.

21 NCAC 25 .0505 CEU CREDIT FOR WORKSHPS, CONFERENCES, AND INDEPENDENT STUDY RECOGNIZED BY RID

(a) A licensee may earn CEUs by attending workshops and conferences recognized by The Registry of Interpreters for the Deaf, Inc. ("RID"). In order to receive CEU credit for attendance at a workshop or conference recognized by RID, the licensee must submit to the Board a copy of the licensee's RID CEU transcript. RID shall be the sole judge of the number of CEUs earned by attendance at the workshop or conference.

(b) A licensee who is either a certified member of RID or an associate member of RID participating in the Associate Continuing Education Tracking ("ACET") Program may earn CEUs by independently studying instructional materials in any format -- including, but not limited to, videotapes, audiotapes, web sites, DVDs, CDs, and books and other printed materials -- so long as the materials have been recognized by RID. In order to receive CEU credit for such independent study, the licensee must submit to the Board a copy of the licensee's RID CEU transcript. RID shall be the sole judge of the number of CEUs earned by the completion of any independent study recognized by RID.

(c) If a licensee does not have an RID CEU transcript because the licensee is neither a certified member of RID nor an associate member of RID participating in the ACET Program, the licensee may receive CEU credit for attendance at the workshop or conference by submitting to the Board:

- (1) a certificate of completion signed by the workshop or conference sponsor, provider, or presenter; and
- (2) a copy of the advertisement or flyer that shows that attendance at the workshop or conference qualifies for RID CEUs.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; Eff. August 1, 2007.

21 NCAC 25 .0506 CEU CREDIT FOR WORKSHPS, CONFERENCES, AND INDEPENDENT STUDY APPROVED BY OTHER STATUTORY PROFESSIONAL LICENSING BOARDS

(a) A licensee may earn CEUs by attending workshops and conferences approved by other statutory professional licensing boards of this or any other state. In order to receive CEU credit for attendance at such workshops and conferences, the licensee must submit to the Board written evidence that the workshop or conference was approved by another statutory professional licensing board and that the licensee attended the workshop or conference. The mandatory professional licensing board that approves the workshop or conference shall be the sole judge of the number of CE hours that may be earned by attendance at the workshop or conference.

(b) A licensee may earn CEUs by independently studying instructional materials in any format -- including, but not limited to, videotapes, audiotapes, web sites, DVDs, CDs, and books and other printed materials -- so long as the materials have been approved for CE credit by another statutory professional licensing board. In order to receive CEU credit for such

independent study, the licensee must submit to the Board written evidence that the independent study was approved by another statutory professional licensing board and that the licensee satisfactorily completed the independent study. The statutory professional licensing board that approves the independent study shall be the sole judge of the number of CE hours that may be earned by completion of the independent study.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11;
Eff. August 1, 2007.

21 NCAC 25 .0701 SCHEDULE OF PENALTIES

The presumptive penalty for any violation of any provision of Chapter 90D of the North Carolina General Statutes or any rule adopted by the Board shall be:

- (1) \$100 for the first violation;
- (2) \$200 for the second violation;
- (3) \$400 for the third violation; and
- (4) \$800 for the fourth violation

History Note: Authority G.S. 90D-14(c); S.L. 2005-299, s.4;
Eff. August 1, 2007.

21 NCAC 25 .0702 EVALUATION OF MITIGATING AND AGGRAVATING FACTORS

- (a) If the Board finds that mitigating factors outweigh aggravating factors, the Board may assess a penalty that is less than the presumptive penalty.
- (b) If the Board finds that aggravating factors outweigh mitigating factors, the Board may assess a penalty that is more than the presumptive penalty, provided that no single penalty for any single violation shall exceed one thousand dollars (\$1,000).
- (c) If the Board assesses a penalty that is more or less than the presumptive penalty, the Board shall state its reasons for doing so. The Board need not state its reasons for assessing the presumptive penalty.

History Note: Authority G.S. 90D-14(c); S.L. 2005-299, s.4;
Eff. August 1, 2007.

21 NCAC 25 .0703 IDENTIFICATION OF SEPARATE OFFENSES

- (a) Each offer by an unlicensed person to practice as an interpreter or transliterator for a fee or other consideration shall constitute a separate violation for which a separate penalty may be assessed.
- (b) Each representation by an unlicensed person that such person is a licensed interpreter or transliterator shall constitute a separate violation for which a separate penalty may be assessed.
- (c) Each time an unlicensed person uses the title "Licensed Interpreter for the Deaf", "Licensed Transliterator for the Deaf", or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator shall constitute a separate violation for which a separate penalty may be assessed.
- (d) An advertisement that violates Paragraphs (a), (b), or (c) of this Rule shall constitute a single violation each day it is published.

(e) Each interpreting or transliterating engagement that violates a licensing statute or rule shall constitute a separate violation for which a separate penalty may be assessed.

(f) Each day a violation persists shall constitute a separate violation for which a separate penalty may be assessed.

History Note: Authority G.S. 90D-14(c); S.L. 2005-299, s.4;
Eff. August 1, 2007.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01O .0101 POLICY

Each agency shall have an operative performance management system as provided in 25 NCAC 01O .0102 - .0106 and that has been approved by the State Personnel Commission for compliance with these Rules. The State Personnel Director shall use the standards identified in the rules in this Section:

- (1) to help agencies establish, administer and revise their performance management systems; and
- (2) to review and approve any substantive changes to an agency's performance management system based on their compliance with the rules in this Section.

History Note: Authority G.S. 126-4; 126-7;
Eff. January 1, 1990;
Amended Eff. August 1, 2007; March 1, 2005.

25 NCAC 01O .0102 PURPOSE

The purposes of the performance management system are to ensure that:

- (1) The work performed by employees accomplishes the work of the agency;
- (2) Employees have an understanding of the quality and quantity of work expected from them;
- (3) Employees receive ongoing information about how effectively they are performing relative to expectations;
- (4) Awards and salary increases based on employee performance are distributed accordingly;
- (5) Opportunities for employee development are identified; and
- (6) Employee performance that does not meet expectations is addressed

History Note: Authority G.S. 126-4; 126-7;
Eff. August 1, 2007.

25 NCAC 01O .0103 COMPONENTS OF A PERFORMANCE MANAGEMENT SYSTEM

An operative performance management system shall consist of:

- (1) A process for communicating employee performance expectations, maintaining

- ongoing performance dialogue, and conducting annual performance appraisals;
- (2) A procedure for addressing employee performance that falls below expectations;
- (3) A procedure for encouraging and facilitating employee development;
- (4) Training in managing performance and administering the system; and
- (5) A procedure for resolving performance pay disputes.

History Note Authority G.S. 126-4; 126-7;
Eff. August 1, 2007.

25 NCAC 01O .0104 RATING SCALE

The annual performance appraisal shall use a five-level rating scale for reporting overall performance. A rating at the midpoint of the scale shall indicate that an employee's performance has met expectations. Alternative rating scales are permissible provided they are convertible to a five-level scale. Performance-based awards and salary increases shall be distributed in accordance with G.S. 126-7.

History Note: Authority G.S. 126-4; 126-7;
Eff. August 1, 2007.

25 NCAC 01O .0105 DISPUTE RESOLUTION

Employee disputes concerning their performance appraisal or the amount of their performance-based award shall be addressed in accordance with 25 NCAC 01J .0900.

History Note: Authority G.S. 126-4; 126-7;
Eff. August 1, 2007.

25 NCAC 01O .0106 MONITORING, EVALUATING, REPORTING

(a) The Human Resources Director in each agency shall monitor the administration of the performance management system to determine that appraisal ratings are made accurately and that performance-based salary increases and awards are distributed based on appraisals.

(b) Each agency shall evaluate its performance management system at least every three years to determine how effectively the system is meeting the purposes stated in 25 NCAC 01O .0102 and take actions to improve the system if necessary. Evaluation findings and any improvement actions shall be reported to the State Personnel Director.

History Note: Authority G.S. 126-4; 126-7;
Eff. August 1, 2007.

25 NCAC 01O .0201 PERFORMANCE MANAGEMENT PROCESS

25 NCAC 01O .0202 COMPONENTS OF AN OPERATIVE SYSTEM

25 NCAC 01O .0203 RELATIONSHIP/PERFORMANCE MGMT/OTHER HUMAN RESOURCES SYSTEMS

25 NCAC 01O .0204 RESPONSIBILITIES OF THE STATE PERSONNEL COMMISSION

25 NCAC 01O .0205 RESPONSIBILITIES OF THE OFFICE OF STATE PERSONNEL

25 NCAC 01O .0206 RESPONSIBILITIES OF AGENCIES

History Note: Authority G.S. 121-5; 126-4; 126-4(8); 126-7;
Eff. January 1, 1990;
Amended Eff. April 1, 2005; March 1, 2005; July 1, 1991;
Repealed Eff. August 1, 2007.

This Section contains information for the meeting of the Rules Review Commission on Thursday August 23 & September 20, 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

September 20, 2007	October 18, 2007
November 15, 2007	December 20, 2007

RULES REVIEW COMMISSION

**August 23, 2007
MINUTES**

The Rules Review Commission met on Thursday, August 23, 2007, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jeff Gray, Jennie Hayman, Thomas Hilliard, John Lewis, Robert Saunders, Mary Shuping, John Tart, and Judson Welborn. Dan McLawhorn, who has been nominated for appointment to the Commission, was also in attendance.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel and Dana Vojtko, Publications Coordinator.

The following people were among those attending the meeting:

Felicia Williams	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Nancy Pate	Department of Environment and Natural Resources
Barry Gupton	NCDOI-Building Code Council
Jonathan Womer	Office of State Budget and Management
Ellie Sprenkel	Department of Insurance
Glenda Artis	DHHS/Division of Aging and Adult Services
Louis Zeller	Blue Ridge Environmental Defense League
Erin Gould	Department of Labor
Carlotta Dixon	DHHS/Division of Social Services
Bob Hensley	DHHS/Division of Social Services
Mike Lopazansky	DENR/Division of Coastal Management
Jack Butler	DENR/Division of Waste Management
John Powers	DENR/Division of Waste Management
Ron Ennis	Department of Insurance
Jan Kinlaw	Department of Insurance
Delonda Alexander	Department of Environment and Natural Resources
Rose Williams	Department of Insurance
Vicky Young	Department of Insurance
Karen Cochrane-Brown	NC General Assembly Staff
Jan Andrews	Department of Insurance

Ruth Strauss	Department of Environment and Natural Resources
Matt Wegner	Department of Environment and Natural Resources
Kevin Leonard	Womble Carlyle Sandridge and Rice
Wendy Kelly	Helms Mullis and Wicker
Wallace Finlator	Attorney General's Office
Janet Shires	Department of Revenue
Sam Taylor	NC Association of Launderers and Cleaners

APPROVAL OF MINUTES

The meeting was called to order at 10:12 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 conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the July 26, 2007 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

15A NCAC 07H .1102, .1202, .1402, .2102, .2402, .2702 – Coastal Resources Commission. The Commission approved the rewritten rules submitted by the agency.

15A NCAC 07M .0307 – Coastal Resources Commission. The Commission approved the rewritten rule submitted by the agency.

17 NCAC 10 .0505, .0507 – Department of Revenue. The Commission approved the rewritten rules submitted by the agency.

21 NCAC 26 .0207, .0301 – Board of Landscape Architects. No rewritten rules have been submitted and no action was taken.

903.2.1.2: Building Code Council – No action was taken. The objection is under discussion by a committee of the Building Code Council. A response is expected for the September meeting.

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 rules from the Medical Board including the rules for the Perfusion Advisory Committee, Commissioner Lewis recused himself and did not participate in any discussion or vote concerning these rules because he is a public member of the Medical Board. His written explanation is part of the record of the meeting.

04 NCAC 05B .0105: Cemetery Commission - The Commission objected to this Rule due to lack of statutory authority and ambiguity. In (d), it is not clear what the Cemetery Commission would consider "good cause". While G.S. 150B-4 allows agencies to refuse to issue a declaratory ruling when it finds that the issuance of it is undesirable for good cause, the agency is required to prescribe in its rules the circumstances when a ruling will not be issued. Simply stating "good cause" does not fulfill that requirement. This objection applies to existing language in the Rule.

15A NCAC 02S .0102: Environmental Management Commission - The Commission objected to this Rule due to ambiguity. In (31), page 3, it is unclear all the uses that may constitute "residential" land use. The definition begins with human habitation and then proceeds to similar types of use, even if not residential, where there might be similar potential for human exposure to various chemicals. However, lines 13 through 15 become quite sweeping where it starts to include other property uses based on the "exposure potential" and the "sensitive nature" of the potentially exposed "population" without giving any indication of what exposure is potentially significant or intended, what type of sensitivity is being considered, and what populations are being considered. Presumably the population includes plants and animals, based on their other rules and definitions. The definition of "non-residential" is anything that is not "residential." In the case of the latter definition it is so broad and sweeping that it becomes difficult to know where the line is drawn between the two.

Louis Zeller spoke on behalf of the Blue Ridge Environmental Defense League in opposition to the rule. Wallace Finlator and Sam Taylor spoke in support of the rule.

21 NCAC 65 .0301: Board of Recreational Therapy Licensure - The Commission objected to this Rule due to lack of statutory authority and ambiguity. It is unclear whether the field placement course requirement in (a)(3) is in addition to or may serve as one of

the courses required in (a)(1). Paragraph (a)(1) requires that an applicant for licensure must have completed three, four, or five courses (depending on the year licensure is sought; the number of required courses is increasing over time until 2010) meeting certain conditions set out in the paragraph. Paragraph (a)(3) requires a clinical course or internship. It would seem that based on the description provided that this course or internship could meet the requirements of (a)(1). The rule does not specify whether the clinical course or internship may be counted as one of the required courses. There is no authority cited to require agency or college or university instructors who are supervising students to be licensed N.C. Recreational Therapists as set out in (b) and (c). This amounts to setting a job qualification for a college or university instructor or agency personnel. The requirement to be licensed when serving in this capacity may exist independently as a result of the practice act or accreditation requirements, but the board has not cited authority for it to set such a requirement as its own requirement.

21 NCAC 65 .0302: Board of Recreational Therapy Licensure - The Commission objected to this Rule due to lack of statutory authority. This rule is similar to the previous rule in requiring that a supervisor in a field placement experience be a licensed or otherwise credentialed person. For the same reasons as set out in the previous rule, you should object to this rule. There is no authority cited to require that the person supervising students in the field placement experience be a licensed N.C. Recreational Therapist or Therapy Assistant as set out in (b)(4) lines 20 - 21 or other certification or licensure as set out in lines 22 - 25. This amounts to setting a job qualification for a field experience or agency supervisor. The requirement to be licensed when serving in this capacity may exist independently as a result of the practice act or accreditation requirements, but the board has not cited authority for it to set such a requirement as its own requirement.

R324: Building Code Council – On the motion of Commissioner Gray, the Commission extended the period of review for this Rule. The Commission desires to give Mr. John Hoomani, General Counsel for the Department of Labor, an opportunity to express his opposition to the rule and be available to answer questions. The delay will not affect the proposed effective date of the rule. Kevin Leonard stood in favor of this rule and stated that he could return next month.

COMMISSION PROCEDURES AND OTHER BUSINESS

The meeting was adjourned at 11:37 a.m.

The next scheduled meeting of the Commission is Thursday, September 20, 2007. The schedule currently provides for an orientation and training session for the Commissioners at 9:30 a.m. with the business portion of the meeting beginning at 1:30 or 2:00 p.m.

Respectfully,
Dana Vojtko

LIST OF APPROVED PERMANENT RULES August 23, 2007 Meeting

CEMETERY COMMISSION

<u>Name and Address</u>	04 NCAC 05A .0101
<u>Petitions</u>	04 NCAC 05B .0101
<u>Notice</u>	04 NCAC 05B .0102
<u>Hearings</u>	04 NCAC 05B .0103
<u>Display</u>	04 NCAC 05C .0303
<u>Report</u>	04 NCAC 05D .0101
<u>Report</u>	04 NCAC 05D .0201

SOCIAL SERVICES COMMISSION

<u>Personnel Centers Home With Operator and Staff</u>	10A NCAC 06R .0305
<u>Personnel Day Care Homes Only Staff Person Is Operator</u>	10A NCAC 06R .0306
<u>General Requirements</u>	10A NCAC 06R .0401
<u>Building Construction</u>	10A NCAC 06R .0402
<u>Procedure</u>	10A NCAC 06R .0601
<u>Staff Requirements</u>	10A NCAC 06S .0204

<u>Purpose</u>	10A NCAC 70E .0101
<u>Method of Mutual Home Assessment</u>	10A NCAC 70E .0102
<u>Assessment Process</u>	10A NCAC 70E .0103
<u>Use of References</u>	10A NCAC 70E .0104
<u>Periodic Reassessment of Home</u>	10A NCAC 70E .0105
<u>Agency Foster Parent Agreement</u>	10A NCAC 70E .0106
<u>License Application</u>	10A NCAC 70E .0201
<u>Agency Foster Parents' Agreement</u>	10A NCAC 70E .0202
<u>Department of Social Services Intercounty Agreement</u>	10A NCAC 70E .0203
<u>Definitions</u>	10A NCAC 70E .0301
<u>Family Foster Home: Qualification</u>	10A NCAC 70E .0302
<u>Client Rights and Care of Foster Children</u>	10A NCAC 70E .0401
<u>Criteria For the Family</u>	10A NCAC 70E .0402
<u>Physical Facility</u>	10A NCAC 70E .0403
<u>Licensing Compliance Visits</u>	10A NCAC 70E .0404
<u>Criminal Histories</u>	10A NCAC 70E .0405
<u>Responsibility</u>	10A NCAC 70E .0501
<u>New Licenses</u>	10A NCAC 70E .0502
<u>Renewal</u>	10A NCAC 70E .0503
<u>Change in Factual Information on the License</u>	10A NCAC 70E .0504
<u>Termination</u>	10A NCAC 70E .0505
<u>Revocation or Denial</u>	10A NCAC 70E .0506
<u>Licensing Authority Function</u>	10A NCAC 70E .0507
<u>Kinds of Licenses</u>	10A NCAC 70E .0508
<u>Out-of-State Facilities and Family Foster Homes</u>	10A NCAC 70E .0509
<u>Reports of Abuse and Neglect</u>	10A NCAC 70E .0510
<u>Criminal History Checks</u>	10A NCAC 70E .0511
<u>Training Requirements</u>	10A NCAC 70E .0512
<u>Scope</u>	10A NCAC 70E .0601
<u>Definitions</u>	10A NCAC 70E .0602
<u>Licensing Authority Function</u>	10A NCAC 70E .0701
<u>Responsibility</u>	10A NCAC 70E .0702
<u>New Licenses</u>	10A NCAC 70E .0703
<u>Relicensure and Renewal</u>	10A NCAC 70E .0704
<u>Change in Factual Information on the License</u>	10A NCAC 70E .0705
<u>Foster Home Transfer Procedures</u>	10A NCAC 70E .0706
<u>Termination</u>	10A NCAC 70E .0707
<u>Revocation or Denial</u>	10A NCAC 70E .0708
<u>Kinds of Licenses</u>	10A NCAC 70E .0709
<u>Out-of-State Facilities and Foster Homes</u>	10A NCAC 70E .0710
<u>Purpose</u>	10A NCAC 70E .0801
<u>Method of Mutual Home Assessment</u>	10A NCAC 70E .0802
<u>Assessment Process</u>	10A NCAC 70E .0803
<u>Use of References</u>	10A NCAC 70E .0804
<u>Periodic Reassessment of Home</u>	10A NCAC 70E .0805
<u>Agency Foster Parent Agreement</u>	10A NCAC 70E .0806

<u>License Application</u>	10A NCAC 70E .0901
<u>Agency Foster Parents' Agreement</u>	10A NCAC 70E .0902
<u>Department of Social Services Intercounty Agreement</u>	10A NCAC 70E .0903
<u>Foster Home</u>	10A NCAC 70E .1001
<u>Client Rights</u>	10A NCAC 70E .1101
<u>Medication</u>	10A NCAC 70E .1102
<u>Physical Restraints</u>	10A NCAC 70E .1103
<u>Criteria for the Family</u>	10A NCAC 70E .1104
<u>Conflict of Interest</u>	10A NCAC 70E .1105
<u>Day Care Center Operations</u>	10A NCAC 70E .1106
<u>Relationship to Supervising Agency</u>	10A NCAC 70E .1107
<u>Fire and Building Safety</u>	10A NCAC 70E .1108
<u>Health Regulations</u>	10A NCAC 70E .1109
<u>Environmental Regulations</u>	10A NCAC 70E .1110
<u>Room Arrangements</u>	10A NCAC 70E .1111
<u>Exterior Setting and Safety</u>	10A NCAC 70E .1112
<u>Licensing Compliance Visits</u>	10A NCAC 70E .1113
<u>Criminal Histories</u>	10A NCAC 70E .1114
<u>Responsible Individual List</u>	10A NCAC 70E .1115
<u>Criminal History Checks</u>	10A NCAC 70E .1116
<u>Training Requirements</u>	10A NCAC 70E .1117
<u>Staffing Requirements</u>	10A NCAC 70G .0301
<u>Training Requirements</u>	10A NCAC 70G .0302
<u>Licensing Actions</u>	10A NCAC 70I .0101
<u>Staffing Requirements</u>	10A NCAC 70I .0801
<u>Training Requirements</u>	10A NCAC 70I .0802
<u>Fiscal Management</u>	10A NCAC 71R .0201

INSURANCE, DEPARTMENT OF

<u>License-Steps</u>	11 NCAC 11H .0102
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LABOR, DEPARTMENT OF

<u>Elevator, Escalator, Dumbwaiter, and Special Equipment An...</u>	13 NCAC 15 .0702
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Applicability</u>	15A NCAC 02N .0201
<u>Definitions</u>	15A NCAC 02N .0203
<u>Performance Standards for New UST System Installations or...</u>	15A NCAC 02N .0301
<u>Upgrading of Existing UST Systems After December 22, 1988...</u>	15A NCAC 02N .0302
<u>Implementation Schedule for Performance Standards for New...</u>	15A NCAC 02N .0304
<u>Requirements for Petroleum UST Systems</u>	15A NCAC 02N .0502
<u>Requirements for Hazardous Substance UST Systems</u>	15A NCAC 02N .0503
<u>General Requirements</u>	15A NCAC 02N .0901
<u>Notification</u>	15A NCAC 02N .0902
<u>Tanks</u>	15A NCAC 02N .0903
<u>Piping</u>	15A NCAC 02N .0904

<u>Containment Sumps</u>	15A NCAC 02N .0905
<u>Spill Buckets</u>	15A NCAC 02N .0906
<u>National Codes of Practice and Industry Standards</u>	15A NCAC 02N .0907
<u>Scope and Purpose</u>	15A NCAC 02S .0101
<u>Prioritization Assessment</u>	15A NCAC 02S .0401
<u>Purpose and Applicability</u>	15A NCAC 02S .0501
<u>Abatement of Imminent Hazard</u>	15A NCAC 02S .0502
<u>Prioritization of Certification Facilities and Sites</u>	15A NCAC 02S .0503
<u>Contaminated Site Characterization</u>	15A NCAC 02S .0504
<u>Preliminary Source Removal</u>	15A NCAC 02S .0505
<u>Tiered Risk Assessment</u>	15A NCAC 02S .0506
<u>Remedial Action Plan</u>	15A NCAC 02S .0507
<u>Land-Use Restrictions</u>	15A NCAC 02S .0508
<u>No Further Action Criteria</u>	15A NCAC 02S .0509

COASTAL RESOURCES COMMISSION

<u>Approval Procedures</u>	15A NCAC 07H .1102
<u>Approval Procedures</u>	15A NCAC 07H .1202
<u>Approval Procedures</u>	15A NCAC 07H .1402
<u>Approval Procedures</u>	15A NCAC 07H .2102
<u>Approval Procedures</u>	15A NCAC 07H .2402
<u>Approval Procedures</u>	15A NCAC 07H .2702
<u>Eligible Applicants/Grant Selection Criteria</u>	15A NCAC 07M .0307

REVENUE, DEPARTMENT OF

<u>Continuing Education Requirements for County Assessors</u>	17 NCAC 10 .0505
<u>Continuing Education Requirements for County Appraisers</u>	17 NCAC 10 .0507

MEDICAL BOARD

<u>Passing Score</u>	21 NCAC 32B .0211
<u>Passing Exam Score</u>	21 NCAC 32B .0314

NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

<u>Scope</u>	21 NCAC 32V .0101
<u>Definitions</u>	21 NCAC 32V .0102
<u>Qualifications for License</u>	21 NCAC 32V .0103
<u>Registration</u>	21 NCAC 32V .0104
<u>Continuing Education</u>	21 NCAC 32V .0105
<u>Supervision of Provisional Licensed Perfusionists</u>	21 NCAC 32V .0106
<u>Supervising Perfusionist</u>	21 NCAC 32V .0107
<u>Designation of Primary Supervision Perfusionist For Provi...</u>	21 NCAC 32V .0108
<u>Civil Penalties</u>	21 NCAC 32V .0109
<u>Identification Requirements</u>	21 NCAC 32V .0110
<u>Practice During a Disaster</u>	21 NCAC 32V .0111
<u>Temporary Licensure</u>	21 NCAC 32V .0112
<u>Orders for Assessments and Evaluations</u>	21 NCAC 32V .0113

RULES REVIEW COMMISSION

Provisional License to Full License 21 NCAC 32V .0114

BUILDING CODE COUNCIL

NC Building/Fire Code - Opening Limitations 1012.3
NC Plumbing Code - Separate Facilities 403.2
NC Plumbing Code - Public Lavatories 405.3.2
NC Fire Code - Alarm Activations 401.3.2
NC Fire Code - Evacuation Plan 404.2

AGENDA
RULES REVIEW COMMISSION
Thursday, September 20, 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. Cemetery Commission – 04 NCAC 05B .0105 (Bryan)
 - B. Environmental Management Commission – 15A NCAC 02S .0102 (DeLuca)
 - C. Board of Landscape Architects – 21 NCAC 26 .0207, .0301 (DeLuca)
 - D. Board of Recreational Therapy Licensure – 21 NCAC 65 .0301, .0302 (DeLuca)
 - E. Building Code Council – 903.2.1.2 (DeLuca)
 - F. Building Code Council – R324 (DeLuca)
 - IV. Review of Log of Permanent Rule filings for RRC review filed between July 21 and August 20, 2007 (attached)
 - V. Review of Temporary Rules
 - VI. Commission Business
 - Next meeting: October 18, 2007
-

Commission Review
Log of Permanent Rule Filings
July 21, 2007 through August 20, 2007

CULTURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 2 are from the state library.

The rules in Subchapter 2E concern library development services including consulting and developmental services (.0100); organization of regional libraries (.0200); allocation of state aid to public library systems (.0300); and state institutions eligible for funds (.0400).

Qualifications for Grants Eligibility 07 NCAC 02E .0301
Adopt/*

STATE BUDGET AND MANAGEMENT, OFFICE OF

The rules in Subchapter 3M provide for the uniform administration of State grants including rules about organization and structure

(.0100); responsibilities of grantees and subgrantees (.0200); responsibilities of the Office of the State Controller (.0300); responsibilities of agencies (.0400); responsibilities of the office of State Auditor (.0500); responsibilities of the Office of State Budget and Management (.0600); contracting monitoring and oversight (.0700); and sanctions (.0800).

<u>Purpose</u>	09	NCAC	03M	.0101
Amend/*				
<u>Definitions</u>	09	NCAC	03M	.0102
Amend/*				
<u>Office of the State Controller Responsibilities</u>	09	NCAC	03M	.0301
Amend/*				

MEDICAL CARE COMMISSION

The rules in Subchapter 13J deal with the licensing of home care agencies including general provisions (.0900); administration (.1000); scope of services (.1100); case review and plan of care (.1200); pharmaceuticals and medical treatment orders (.1300); and service records (.1400).

<u>In-Home Aide Services</u>	10A	NCAC	13J	.1107
Amend/*				

MENTAL HEALTH, COMMISSION FOR

The rules in Chapter 27 concern mental health community facilities and services.

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); licensing procedures (.0400); area program requirements; over-authority on county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); and consultation and education services (.6900).

Waiver of Licensure Rules 10A NCAC 27G .0813
Amend/*

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 45 are general procedures for public health programs.

The rules in Subchapter 45A are rules about payment programs including general provisions (.0100); eligibility determinations (.0200); eligibility procedures (.0300); reimbursement (.0400); and quality control (.0500).

Determination of Financial Eligibility 10A NCAC 45A .0202
Amend/*

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7J concern procedures for handling major development permits, variance requests, appeals from minor development permit decisions and declaratory rulings. They include definitions (.0100); permit application and procedures (.0200); hearing procedures (.0300); final approval and enforcement (.0400); general permits (.0500); declaratory rulings and petitions for rulemaking (.0600); procedures for considering variance petitions (.0700); and general permit issuing procedures (.1100).

Staff Review of Variance Petitions 15A NCAC 07J .0702
Amend/*

Procedures for Deciding Variance Petitions 15A NCAC 07J .0703
Amend/*

RADIATION PROTECTION COMMISSION

The rules in Chapter 11 are from the Radiation Protection Commission and cover a broad and diverse range of applications including general provisions (.0100); registration of radiation machines, facilities and services (.0200); licensing of radioactive material (.0300); safety requirements for industrial radiography operations (.0500); use of x-rays in the healing arts (.0600 - .0700); requirements for analytical x-ray (x-ray diffraction or florescence analysis) equipment (.0800); requirements for particle accelerators (.0900); requirements for notices, instructions, reports, and inspections (.1000); fees (.1100); land disposal of radioactive waste (.1200); tanning facilities and equipment (.1400); requirements for obtaining licenses authorizing access to low-level radioactive waste disposal facilities (.1500); and standards for protection against radiation resulting from activities regulated by this Chapter (.1600).

Definitions 15A NCAC 11 .0104
Amend/*

Incorporation By Reference 15A NCAC 11 .0117
Amend/*

Specific Licenses: General Requirements for Human Use 15A NCAC 11 .0318
Amend/*

Specific Licenses: Human Use By Individual Physicians 15A NCAC 11 .0320
Amend/*

Specific Licenses: General Requirements for Human Use of ... 15A NCAC 11 .0321
Amend/*

Specific Licenses: Human Use of Sealed Sources 15A NCAC 11 .0322
Amend/*

Specific Licenses: Manufacture of Radiopharmaceuticals 15A NCAC 11 .0333
Amend/*

Records and Reports of Misadministration 15A NCAC 11 .0350
Repeal/*

<u>Procedures for Administrations Requiring a Written Directive Amend/*</u>	15A	NCAC	11	.0356
<u>Measurements/Dosages of Unsealed Radioactive Material for... Amend/*</u>	15A	NCAC	11	.0359
<u>Surveys of Radiopharmaceutical Areas for Radiation Exposu... Amend/*</u>	15A	NCAC	11	.0360
<u>Medical Use of Unsealed Radioactive Material Amend/*</u>	15A	NCAC	11	.0361
<u>Provisions for the Protection of Human Research Subjects Adopt/*</u>	15A	NCAC	11	.0363
<u>Medical Events Adopt/*</u>	15A	NCAC	11	.0364
<u>Report and Notification of a Dose to an Embryo/Fetus or a... Adopt/*</u>	15A	NCAC	11	.0365
<u>Manual Brachytherapy Amend/*</u>	15A	NCAC	11	.0702
<u>Teletherapy Repeal/*</u>	15A	NCAC	11	.0703
<u>Dose Limits for Individual Members or the Public Amend/*</u>	15A	NCAC	11	.1611

PARKS AND RECREATION AUTHORITY

The rules in Chapter 12 are rules from either the DENR/Division of Parks and Recreation or the Parks and Recreation Authority.

The rules in Subchapter 12K cover the allocation and awarding of grants for qualified local governmental units for local park and recreation purposes.

<u>Site Control and Dedication Amend/*</u>	15A	NCAC	12K	.0109
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DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16Q concern general anesthesia and sedation including definitions (.0100); general anesthesia (.0200); parenteral conscious sedation (.0300); enteral conscious sedation (.0400); renewal of permits (.0500); reporting and penalties (.0600); and penalty for non-compliance (.0700).

<u>General Anesthesia and Sedation Definitions Amend/*</u>	21	NCAC	16Q	.0101
<u>Credentials and Permits for Moderate Conscious Sedation, ... Amend/*</u>	21	NCAC	16Q	.0301
<u>Clinical Requirements and Equipment Amend/*</u>	21	NCAC	16Q	.0302
<u>Temporary Approval Prior to Site Inspection Amend/*</u>	21	NCAC	16Q	.0303
<u>Minimal Conscious Sedation Credentials, Evaluation and Pe... Amend/*</u>	21	NCAC	16Q	.0401
<u>Minimal Conscious Sedation Permit Requirements, Clinical ... Amend/*</u>	21	NCAC	16Q	.0402
<u>Temporary Approval Prior to Site Inspection Amend/*</u>	21	NCAC	16Q	.0403
<u>Annual Renewal Required Amend/*</u>	21	NCAC	16Q	.0501

MASSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 include organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rulemaking and declaratory rulings (.0800); and complaints, disciplinary action and hearings (.0900).

<u>Board Approval</u>	21	NCAC	30	.0601
Amend/*				
<u>Definitions</u>	21	NCAC	30	.0602
Amend/*				
<u>Documentation of Successful Completion</u>	21	NCAC	30	.0603
Amend/*				
<u>Verification of Compliance</u>	21	NCAC	30	.0607
Adopt/*				
<u>School Approval Fees</u>	21	NCAC	30	.0608
Adopt/*				
<u>Disciplinary Sanctions; Reporting Requirements</u>	21	NCAC	30	.0609
Adopt/*				
<u>Authority to Operate</u>	21	NCAC	30	.0610
Adopt/*				
<u>Program Director and Administrative Staff Qualifications</u>	21	NCAC	30	.0611
Adopt/*				
<u>Instructional Staff Qualifications</u>	21	NCAC	30	.0612
Adopt/*				
<u>Approval Process for Key Administrative and Instructional...</u>	21	NCAC	30	.0613
Adopt/*				
<u>Management of Staff</u>	21	NCAC	30	.0614
Adopt/*				
<u>School Plant and Equipment</u>	21	NCAC	30	.0615
Adopt/*				
<u>Financial Management Systems and Economic Stability</u>	21	NCAC	30	.0616
Adopt/*				
<u>Student Recruitment</u>	21	NCAC	30	.0617
Adopt/*				
<u>Admissions</u>	21	NCAC	30	.0618
Adopt/*				
<u>Tuition Refunds and Financial Aid</u>	21	NCAC	30	.0619
Adopt/*				
<u>Program Requirements</u>	21	NCAC	30	.0620
Adopt/*				
<u>Student Records and Academic Progress</u>	21	NCAC	30	.0621
Adopt/*				
<u>Educational Credential Issued; Graduates' Pass Rate on Na...</u>	21	NCAC	30	.0622
Adopt/*				
<u>Learning Resources</u>	21	NCAC	30	.0623
Adopt/*				
<u>Standards of Professional Conduct</u>	21	NCAC	30	.0624
Adopt/*				
<u>School Complaint Policy</u>	21	NCAC	30	.0625
Adopt/*				
<u>Student Compensation Prohibited</u>	21	NCAC	30	.0626

Adopt/*				
<u>Transfer of Credit; Advanced Placement</u>	21	NCAC	30	.0627
Adopt/*				
<u>Ethical Requirements in Advertising</u>	21	NCAC	30	.0628
Adopt/*				
<u>Student Enrollment Agreement</u>	21	NCAC	30	.0629
Adopt/*				
<u>School Catalog</u>	21	NCAC	30	.0630
Adopt/*				
<u>Board Approval Not Transferable</u>	21	NCAC	30	.0631
Adopt/*				
<u>Initial application for Board Approval</u>	21	NCAC	30	.0632
Adopt/*				
<u>Application for Board Approval of Additional Programs</u>	21	NCAC	30	.0633
Adopt/*				
<u>Closure of School; Termination of a Program</u>	21	NCAC	30	.0634
Adopt/*				
<u>School Staff Members as Students</u>	21	NCAC	30	.0635
Adopt/*				

OCCUPATIONAL THERAPY, BOARD OF

The rules in Chapter 38 cover organization and general provisions (.0100); application for license and licensing procedures (.0200-.0300); conduct of business rules (.0400); rulemaking and declaratory rulings (.0500); administrative hearing procedures (.0600); professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapist and occupational therapy assistants (.0900); supervision of limited permittees (.1000); and supervision of unlicensed personnel (.1100).

<u>Fees</u>	21	NCAC	38	.0204
Amend/*				
<u>Limited Permits</u>	21	NCAC	38	.0303
Repeal/*				

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).

<u>Hours Records Providers Correspondence Reciprocity</u>	21	NCAC	46	.2201
Amend/*				

REAL ESTATE COMMISSION

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate recovery fund (.1400); forms (.1500); discriminating practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); and post-licensure education (.1900).

<u>Agency Agreements and Disclosure</u> Amend/*	21	NCAC	58A	.0104
<u>Advertising</u> Amend/*	21	NCAC	58A	.0105
<u>Broker-In-Charge</u> Amend/*	21	NCAC	58A	.0110
<u>Reporting Criminal Convictions and Disciplinary Actions</u> Amend/*	21	NCAC	58A	.0113
<u>Residential Property Disclosure Statement</u> Amend/*	21	NCAC	58A	.0114
<u>Disclosure of Offers Prohibited</u> Adopt/*	21	NCAC	58A	.0115
<u>Business Entities</u> Amend/*	21	NCAC	58A	.0502
<u>Reinstatement of Expired License, Revoked, Surrendered or...</u> Amend/*	21	NCAC	58A	.0505
<u>Continuing Education Required of Nonresident Licensees</u> Amend/*	21	NCAC	58A	.1711

The rules in Subchapter 58C deal with real estate prelicensing education schools including rules dealing with the licensing of all schools except private real estate schools (.0100); private real estate schools (.0200); prelicensing courses (.0300); and pre-licensing course instructors (.0600).

<u>Administration</u> Amend/*	21	NCAC	58C	.0206
<u>Bulletins</u> Amend/*	21	NCAC	58C	.0208
<u>Enrollment Procedure and Contracts</u> Amend/*	21	NCAC	58C	.0209
<u>Admissions Policy and Practice</u> Amend/*	21	NCAC	58C	.0210
<u>Program Structuring and Admission Requirements</u> Amend/*	21	NCAC	58C	.0302
<u>Course Completion Reporting</u> Amend/*	21	NCAC	58C	.0309
<u>Notice of Scheduled Courses</u> Adopt/*	21	NCAC	58C	.0313
<u>Application and Criteria for Original Approval</u> Amend/*	21	NCAC	58C	.0603

The rules in Subchapter 58E are the real estate continuing education rules both update and elective course components including rules dealing with update courses (.0100); update course instructors (.0200); elective courses, sponsors, and instructors (.0300); general sponsor requirements (.0400); and course operational requirements (.0500).

<u>Application and Criteria for Original Approval</u> Amend/*	21	NCAC	58E	.0203
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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>				
ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana	07 ABC 0149	Gray	04/19/07	
ABC Commission v. NK Group, Inc., T/A NK Food Mart,	07 ABC 0163	Overby	04/18/07	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>CRIME VICTIMS COMPENSATION</u>				
Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care Licensure Section	03 DHR 0945	Overby	04/16/07	
Kristen Valerie Kennedy v. Div. of Mental Health/Development Disabilities/ Substance Abuse Services at Dix	06 DHR 0984	Mann	05/08/07	
Eyvette Abbott, Robbie Wilson Community Services, Inc., v. DHHS (DMH/ DD/SAS)	06 DHR 1139	Webster	06/06/07	
Amran Hussein, Trading as Laurinburg Food Mart v. DHHS, Div. of Public Health	06 DHR 1569	Webster	04/17/07	
James Hampton for South Haven Assisted Living v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 1783	Gray	04/23/07	
Burnell Yancey, Jr. v. DHHS, Div. of Medical Assistance	06 DHR 1817	Elkins	05/29/07	22:01 NCR 82
Nidal Dahir, DHHS, Division of Public Health	06 DHR 1916	Lassiter	05/14/07	
Mary K. Short for Kathryn M. Short v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse	06 DHR 2282	Gray	05/18/07	
Egusta Ford v. DMA, Third Party Recovery	06 DHR 2364	Gray	05/14/07	
Annette L. Gwynn v. DHHS, Division of Medical Assistance	07 DHR 0030	Webster	06/08/07	
John A. Millan and Cornelia D. Millan v. DHHS	07 DHR 0031	Gray	05/23/07	
Doris Durden/MID #945-63-2642K v. DHHS	07 DHR 0055	Overby	06/04/07	
Rita Amirahmadi v. DHHS, Division of Medical Assistance	07 DHR 0250	Elkins	06/05/07	
Linda S. Little, Littles Day Care	07 DHR 0266	Overby	05/23/07	
Kareem S. Scott v. DHHS, DFS	07 DHR 0300	Webster	05/11/07	
Peter Emeka Nwankwo v. DHHS	07 DHR 0355	Overby	05/04/07	
Geraldine Fenner v. DHHS	07 DHR 0367	Overby	05/23/07	
Annette L. Gwyn v. DHHS/Division of Medical Assistance	07 DHR 0382	Lassiter	04/16/07	
Jessie Duncan v. DHHS	07 DHR 0424	Elkins	06/08/07	
Leonard Atkins Jr. v. Rowan County DSS (Ms. Tate)	07 DHR 0464	Gray	06/07/07	
Visitacion T Uy v. DHHS/Division of Medical Assistance	07 DHR 0489	Overby	05/10/07	
Dorothy Sue Johnson v. DHHS, DFS	07 DHR 0502	Webster	06/15/07	
Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental Health Licensure Section	07 DHR 0510	Gray	05/30/07	
Samantha A. Amerson v. DHHS	07 DHR 0578	Overby	06/15/07	
Anna Trask v. DHHS, Health Care Personnel Registry	07 DHR 0661	Overby	06/15/07	

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Travis Dan Williams v. Criminal Justice Education and Training Standards Commission	06 DOJ 1198	Webster	04/26/07		
Robert Anthony Wilson v. DOJ, Company Police Program	06 DOJ 1508	Gray	02/16/07		
Jeremy Shayne Pearce v. DOJ, Campus Police Program	06 DOJ 2424	Overby	04/16/07		
Andre Cornelius Patterson v. Private Protective Services Board	07 DOJ 0003	Gray	05/18/07		
David Keith Shelton v. Private Protective Services Board	07 DOJ 0011	Morrison	03/29/07		
Larry Talbert v. Private Protective Services Board	07 DOJ 0036	Morrison	04/05/07		
Patricia Ann Davis v. Criminal Justice Education and Training Standards Commission					
Patricia Ann Davis v. Criminal Justice Education and Training Standards	07 DOJ 0045	Gray	04/03/07		
Antonio Jose Coles v. Sheriff's Education and Training Standards Comm.	07 DOJ 0142	Overby	04/03/07		
Jeffrey S. Moore v. Private Protective Services Board	07 DOJ 0468	Morrison	06/08/07		

DEPARTMENT OF TRANSPORTATION

Citizens for the Preservation of Willis Landing, Kenneth M. Seigler v. DOT	07 DOT 0175	Gray	03/27/07		
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DEPARTMENT OF STATE TREASURER

Sparkle Nicole Jones v. DST and Denise Virginia Lee and Arthur E. Seay, III	05 DST 1612	Gray	05/23/07		
Charles R. Franklin, Jr. v. DST, Retirement Systems Division	06 DST 1672	Overby	05/14/07	22:01 NCR	85

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April Williams Compton v. National Board Certification Committee Public Schools of NC	06 EDC 1816	Webster	05/18/07		
Ms. Victoria L. Ruffin v. Board of Education	06 EDC 2218	Overby	06/01/07		
Connie R. Austin v. Dept. of Public Instruction	06 EDC 2270	Elkins	04/02/07		
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Wildcat Investments LLC, James Cook v. Cherokee County Health Depart.	06 EHR 0631	Gray	04/23/07		
Randy Dockery v. Cherokee County Health Department	06 EHR 0728	Gray	04/23/07		
Alan Raper v. Cherokee Health Department	06 EHR 0873	Gray	04/23/07		
Christopher Perry v. Caldwell County Health Department	06 EHR 1010	Elkins	06/05/07		
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Andrew Price v. DENR, Div. of Coastal Management and William F. Canady	06 EHR 1834	Morrison	05/11/07	22:01 NCR	95
Conrad McLean v. DENR/Division of Air Quality	06 EHR 2243	Gray	05/03/07		
Terry Collins v. DENR, Division of Waste Management	06 EHR 2414	Gray	05/01/07		
Paul A. Stennett v. DENR, Public Water Supply Section	07 EHR 0170	Overby	05/04/07		
Daniel R. Wroblewski v. DENR and Coastal Management	07 EHR 0217	Overby	05/08/07		

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Jerry W. Conner (NCDOC#0085045) and James A. Campbell (NCDOC#0063592) v. Council of State	07 GOV 0238	Morrison	08/09/07	22:04 NCR	280
James Edwards Thomas and Marcus Robinson and Archie Lee Billings v. Council of State	07 GOV 0264	Morrison	08/09/07	22:04 NCR	280

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Rose M. Baltezore v. City of Brevard	07 OSP 0009	Gray	04/03/07
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