

# ***NORTH CAROLINA REGISTER***

**VOLUME 23 • ISSUE 01 • Pages 1 – 165**

**July 1, 2008**

<b>I. IN ADDITION</b>	
Brownfields Property – West End Ventures, LLC.....	12
Notice of Application for Innovative Approval of a Wastewater System.....	1
Tax Review Board Decisions.....	2 – 11
<b>II. PROPOSED RULES</b>	
<b>Environment and Natural Resources, Department of</b>	
Water Treatment Facility Operators Certification Board.....	31 – 32
<b>Health and Human Services, Department of</b>	
Health Service Regulation, Division of.....	13 – 24
Mental Health/DD/SAS, Commission for.....	24 – 29
Mental Health/DD/SAS, Division of.....	29 – 31
<b>Occupational Licensing Boards and Commissions</b>	
Medical Board.....	32 – 34
Nursing, Board of.....	34 – 44
<b>III. APPROVED RULES.....</b>	<b>45 – 125</b>
<b>Community Colleges, Department of</b>	
Community Colleges, Board of	
<b>Environment and Natural Resources, Department of</b>	
Environmental Management Commission	
Soil and Water Conservation Commission	
Wildlife Resources Commission	
<b>Health and Human Services, Department of</b>	
Social Services Commission	
<b>Occupational Licensing Boards and Commission</b>	
Barber Examiners, Board of	
<b>State Personnel, Office of</b>	
State Personnel Commission	
<b>IV. RULES REVIEW COMMISSION .....</b>	<b>126 – 135</b>
<b>V. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions .....	136 – 138
Text of ALJ Decisions	
07 ABC 1584 .....	139 – 144
07 OSP 2222 .....	145 – 150
07 RCB 1176.....	151 – 165

## **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

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### **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  
Angela Person, Administrative Assistant      angela.person@ncmail.net      (919) 733-2721

### **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: William Crumbley, Economic Analyst      william.crumbley@ncmail.net      (919) 807-4740

### **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 2008 – December 2008

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 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

## **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.



Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: On-Site Water Protection Section  
1642 Mail Service Center  
Raleigh, NC 27699-1642

For: Revised Innovative Approval for Tire Chips

DENR Contact: Ted Lyon  
1-919-715-3274  
Fax: 919-715-3227  
ted.lyon@ncmail.net

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: [http://www.deh.enr.state.nc.us/osww\\_new/new1//index.htm](http://www.deh.enr.state.nc.us/osww_new/new1//index.htm).

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or [ted.lyon@ncmail.net](mailto:ted.lyon@ncmail.net), or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessments of Penalties for )  
the Taxable Years 2001 through 2004 by )  
the Secretary of Revenue of North Carolina )

ADMINISTRATIVE DECISION

NUMBER: 516

Docket Number 2007-88

vs. )

Todd B. and Patricia L. Guthrie, )  
Appellants )

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, December 27, 2007 pursuant to the petition of Todd B. and Patricia L. Guthrie (hereinafter "Appellants") for administrative review of the final decision entered by the Assistant Secretary of Revenue on October 31, 2007 affirming the proposed assessment of penalties for tax years 2001 through 2004, and modifying the proposed assessments for tax years 2001 through 2002 to include the \$500.00 penalty for filing a frivolous North Carolina individual income tax return.

Pursuant to N.C. Gen. Stat. § 105-241.1, Notices of Individual Income Tax Assessment reflecting additional tax, penalties, and interest were mailed to the Appellants for tax years 2003 and 2004. Notices of Individual Income Tax Assessment reflecting additional tax, penalties, and interest were mailed to Appellants for tax years 2001 and 2002. Appellants protested the assessments and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue affirmed the proposed assessments of penalties for tax years 2001 through 2004, and modified the proposed assessments for tax years 2001 through 2002 to include the \$500.00 penalty for filing a frivolous North Carolina individual income tax return. From the Assistant Secretary's final decision, Appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In

order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

Thus, it appearing to the Board, after conducting an administrative hearing in this matter, the Appellants failed to meet their burden, and upon reviewing the Assistant Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is Affirmed.

Ordered on December 27, 2007.



**TAX REVIEW BOARD**

Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
of Richard H. Moore, Chairman, State Treasurer

Edward S. Finley, Chair  
North Carolina Utilities Commission

George W. Boylan, Esquire  
Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Additional )  
Income Tax for the Taxable Year 2004 )  
by the Secretary of Revenue of North )  
Carolina )

ADMINISTRATIVE DECISION

NUMBER: 517

Docket Number 2007-87

vs. )

Ray V. Eury, )  
Appellant )

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, December 27, 2007 pursuant to the petition of Ray V. Eury (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on August 15, 2007 sustaining the proposed assessment of additional income tax for taxable year 2004.

Pursuant to N.C. Gen. Stat. § 105-241.1, an assessment proposing additional income tax, penalties, and interest for the taxable year 2004 was mailed to the Appellant. The Appellant protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a final decision sustaining the proposed assessment. Pursuant to N.C. Gen. Stat. § 105-241.2, the Appellant filed a notice of intent and petition for administrative review with the Tax Review Board.

Pursuant to N.C. Gen. Stat. §105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Appellant's petition should be dismissed since the grounds and arguments upon which relief is sought are deemed lacking in legal merit. Thus, the Board concludes that Appellant's petition for administrative review is frivolous and is filed for the purpose of delay.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Appellant's petition for administrative review be and is hereby **Dismissed**.

Ordered on December 27, 2007.

**TAX REVIEW BOARD**

*Stacey A. Phipps*

Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
of Richard H. Moore, Chairman, State Treasurer



*Edward S. Finley, Jr.*

Edward S. Finley, Jr., Chair  
North Carolina Utilities Commission

*George W. Boylan*

George W. Boylan, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Proposed Assessment of Unauthorized )  
 Substance Tax dated March 26, 2006 by )  
 the Secretary of Revenue of North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER: 518**

**Docket Number 2006-126**

vs. )

Renzie Johnson, Sr., )  
 Appellant )

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, December 27, 2007 pursuant to the petition of Renzie Johnson, Sr., (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on August 26, 2007 regarding the proposed assessment of unauthorized substance tax dated March 26, 2006.

Pursuant to N.C. Gen. Stat. § 105-113.111 and N.C. Gen. Stat. § 105-241.1(a)&(b), a notice of proposed assessment was delivered to Appellant, at his last known address, based upon his unauthorized possession of cocaine and marijuana on March 26, 2006, to which no tax stamps were affixed. The Appellant protested the proposed assessment and requested a hearing before the Secretary of Revenue. At the Appellant's request, the hearing was conducted via written communication. The Assistant Secretary conducted the hearing as provided in N.C. Gen. Stat. § 105-260.1. As a result of the hearing, the Assistant Secretary of Revenue entered a final decision sustaining the proposed assessment based on possession of cocaine and marijuana. From the Assistant Secretary's final decision, Appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

And it appearing to the Board, after conducting an administrative hearing in this matter, at which Appellant did not appear, and upon reviewing the Assistant Secretary's final decision, and the documents submitted to the Board by the Secretary of Revenue, that the record did not contain competent evidence to support the Assistant Secretary's decision that the Appellant had constructive possession of 29.2 grams of cocaine on March 26, 2006. As to Appellant's possession of 226.8 grams of marijuana, the Board determined that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law. Thus, the Assistant Secretary correctly ruled that the Appellant had constructive possession of 226.8 grams of marijuana on March 26, 2006.

**IT IS THEREFORE ORDERED** that the proposed assessment of unauthorized substance tax dated March 26, 2006 against the Appellant be revised to reflect the decision of the Board set forth herein, and that the final decision of the Assistant Secretary in this matter is **Modified** accordingly.

Order on December 27, 2007.

**TAX REVIEW BOARD**



Stacey A. Phipps  
Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
of Richard H. Moore, Chairman, State Treasurer

Edward S. Finley, Jr.  
Edward S. Finley, Jr., Chair  
North Carolina Utilities Commission

George W. Boylan  
George W. Boylan, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Proposed Assessments of Additional )  
Income Tax for the Taxable Years 2004 )  
and 2005 by the Secretary of Revenue of )  
North Carolina )

**ADMINISTRATIVE DECISION**

**NUMBER: 519**

vs. )

Docket Number 2007-199

Stanley S. and Nancy M. Huber, )  
Appellants )

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, December 27, 2007 pursuant to the petition of Stanly S. and Nancy M. Huber (hereinafter "Appellants") for administrative review of the final decision entered by the Assistant Secretary of Revenue on December 5, 2007 sustaining the assessments and related interest, but waiving the penalties for the years at issue.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing income tax, penalties, and accrued interest for tax years 2004 and 2005 were mailed to Appellants. Appellants protested the assessments and requested a hearing before the Secretary of Revenue. At Mr. Huber's request, the hearing was conducted via written communication. The Assistant Secretary of Revenue ("Assistant Secretary") conducted the hearing as provided in N.C. Gen. Stat. § 105-260.1. As the result of the hearing, the Assistant Secretary affirmed the proposed assessments of additional income tax for tax years 2004 and 2005, but waived the penalties for the years at issue. From the Assistant Secretary's final decision, Appellants filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.



Thus, it appearing to the Board, after conducting an administrative hearing in this matter, at which Mr. Huber appeared pro se, that he failed to establish that his claimed debts were worthless within the meaning of I.R.C. § 166; and upon reviewing the Assistant Secretary's final decision, the Board rules that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

**IT IS THEREFORE ORDERED** that the Assistant Secretary's final decision is Affirmed.

Ordered on December 27, 2007.

**TAX REVIEW BOARD**



A handwritten signature in cursive script, reading "Stacey A. Phipps".

Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
of Richard H. Moore, Chairman, State Treasurer

A handwritten signature in cursive script, reading "Edward S. Finley".

Edward S. Finley, Chair  
North Carolina Utilities Commission

A handwritten signature in cursive script, reading "George W. Boylan".

George W. Boylan, Esquire  
Appointed Member

**STATE OF NORTH CAROLINA**

**BEFORE THE  
TAX REVIEW BOARD**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Proposed Assessments of Motor Fuels    )  
Tax for the period of January 1, 2004        )  
through June 30, 2005 & Denial of Refunds    )  
of Civil Penalty Assessments issued by       )  
by the Secretary of Revenue                    )

**ADMINISTRATIVE DECISION**

**NUMBER: 520**

Docket Number 2006-153

vs.    )

Coastal Power and Electric, Inc.                )  
Appellant    )

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This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, February 28, 2008 pursuant to the petition of Coastal Power and Electric, Inc. (hereinafter "Appellant") for administrative review of the Final Decision on Remand entered by the Assistant Secretary of Revenue on December 17, 2007. In this decision, the Assistant Secretary affirmed the Final Decision dated March 30, 2007 in all respects.

On March 30, 2007, the Assistant Secretary issued Final Decision Docket No. 2006-153 ("Final Decision"), in which he modified Taxpayer's motor fuels tax liability for the audit period and sustained the denial of the refunds of sixteen (16) civil penalty assessments previously paid. On August 2, 2007, the Tax Review Board considered this matter and issued Tax Review Board Administrative Decision Number 510 dated October 30, 2007 that ordered the "matter be remanded to the Assistant Secretary for review of the post-audit information submitted at the hearing below." In accordance with Administrative Decision Number 510, the Assistant Secretary heard this matter on November 28, 2007 and issued his Final Decision on Remand, in which he "affirmed the Final Decision dated March 30, 2007 in all respects." On December 21, 2007, Taxpayer timely filed its notice of intent and petition for administrative review of the Final Decision on Remand.

And, it appears to the Board upon review of the Assistant Secretary's Final Decision on Remand that the Assistant Secretary did not comply with the Board's directive that he review and address the post-audit information submitted by the Appellant. The Board finds that such information constituted relevant, probative evidence, that its rejection by the Assistant Secretary was erroneous and produced incorrect and excessive assessments against Appellant. Upon its review of such information, the Board concludes that the two proposed assessments must be reduced to the amount of \$8,700. With regard to the proposed civil penalties, the Board again affirms the Assistant Secretary's denial of any refund of the amounts imposed.

IT IS THEREFORE ORDERED that the two proposed assessments against Appellant be revised to reflect the decision of the Board set forth herein, and that the Assistant Secretary's Final Decision on Remand is **modified** accordingly.

This the 3<sup>rd</sup> day of April, 2008.

TAX REVIEW BOARD



Stacey A. Phipps 19C  
Stacey A. Phipps, Chief Deputy Treasurer, on behalf  
of Richard H. Moore, Chairman, State Treasurer

Ed S. Finley, Jr.  
Edward S. Finley, Jr., Chair  
North Carolina Utilities Commission

George W. Boylan  
George W. Boylan, Esquire  
Appointed Member

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
West End Ventures, LLC**

Pursuant to N.C.G.S. 130A-310.34, West End Ventures, 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 Winston-Salem, Forsyth County, North Carolina. The Property consists of approximately eight (8) acres and is bordered by West Fourth Street to the north, West Second Street to the south, North Broad Street to the east and land in commercial use to the west. Environmental contamination exists on the Property in groundwater and soil. West End Ventures, LLC has committed itself to redevelopment of the Property for no uses other than mixed commercial and/or high-density residential purposes. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and West End Ventures, 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 Forsyth County Central Library, 660 West Fifth Street, Winston-Salem, NC 27101, which may be reached through Delores Cue at that address, at (336) 703-3073, by fax at (336) 727-2549 or by email at [cuedr@forsythlibrary.org](mailto:cuedr@forsythlibrary.org); 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](mailto: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 West End Ventures, 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 July 2, 2008. 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

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

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

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services, Division of Health Service Regulation intends to adopt the rules cited as 10A NCAC 14C .4006 amend the rules cited as 10A NCAC 14C .1903, .2101-.2103, .2106, .2701-.2703, .3702, .4002-.4003.*

**Proposed Effective Date:** November 1, 2008

**Public Hearing:**

**Date:** August 26, 2008

**Time:** 1:00 p.m.

**Location:** Council Building, Room 113, Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

**Reason for Proposed Action:** These rules are currently temporary rules which became effective February 1, 2008 and are now proposed for permanent rule amendment and/or adoption. Several subject matters are addressed in the State Medical Facilities Plan (SMFP). Each year, changes to existing Certificate of Need rules are required to ensure consistency with the SMFP which is effective January 1, 2008. The specific subject areas being addressed by these proposed permanent rule changes are Surgical Services and Operating Rooms, Positron Emission Tomography (PET) scanners, Radiation Therapy Equipment, Magnetic Resonance Imaging Scanners and Hospice Inpatient Services.

**Procedure by which a person can object to the agency on a proposed rule:** An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time.

**Comments may be submitted to:** Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701, fax (919)733-2757, email dhsr.rulescoordinator@ncmail.net

**Comment period ends:** September 2, 2008

**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 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION**

**SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS**

**SECTION .1900 – CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT**

**10A NCAC 14C .1903 PERFORMANCE STANDARDS**

(a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall be met:

- (1) an applicant's existing linear accelerators located in the proposed service area performed at least 6,750 ESTV treatments per machine or served at least 250 patients per machine in the twelve months prior to the date the application was submitted;
- (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or 6,750 ESTV treatments during the third year of operation of the new equipment; and
- (3) an applicant's existing linear accelerators located in the proposed service area shall be projected to be utilized at an annual rate of 6,750 ESTV treatments or 250 patients per machine during the third year of operation of the new equipment.

(b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.

(c) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:

- (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
  - (2) the maximum number and type of procedures that the proposed equipment is capable of performing.
- (d) The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

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

## **SECTION .2100 – CRITERIA AND STANDARDS FOR SURGICAL SERVICES AND OPERATING ROOMS**

### **10A NCAC 14C .2101 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).
- (2) "Operating room" means a room as defined in G.S. 131E-176(18c), which includes an inpatient operating room, an outpatient or ambulatory surgical operating room, or a shared operating room.
- (3) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1c).
- (4) "Dedicated cesarean section operating room" means an operating room as defined in the applicable State Medical Facilities Plan.
- ~~(4)~~(5) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation and which were licensed and certified prior to the beginning of the review period.
- ~~(5)~~(6) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed.
- ~~(6)~~(7) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
- ~~(7)~~(8) "Outpatient or ambulatory surgical operating room" means an operating room used solely for the performance of surgical procedures which require local, regional or general anesthesia and a period of post-operative observation of less than 24 hours.
- (9) "Related entity" means the parent company of the applicant, a subsidiary company of the

applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).

- ~~(8)~~(10) "Service area" means the Operating Room Service Area as defined in the applicable State Medical Facilities Plan.
- ~~(9)~~(11) "Shared operating room" means an operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
- ~~(40)~~(12) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
- ~~(44)~~(13) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
- ~~(42)~~(14) "Surgical case" means an individual who receives one or more surgical procedures in an operating room during a single operative encounter.

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

### **10A NCAC 14C .2102 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify each of the following specialty areas that will be provided in the facility:

- (1) gynecology;
- (2) otolaryngology;
- (3) plastic surgery;
- (4) general surgery;
- (5) ophthalmology;
- (6) orthopedic;
- (7) oral surgery; and
- (8) other specialty area identified by the applicant.

(b) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating ~~rooms~~, rooms except relocations of existing operating rooms between existing licensed facilities within the same service area, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide the following ~~information regarding the services to be offered in the facility following completion of the project:~~ information:

- (1) the number and type of ~~existing and proposed operating rooms~~; rooms in each licensed facility which the applicant or a related entity

- owns a controlling interest in and is located in the service area, (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of ~~existing and proposed shared~~ operating rooms; rooms to be located in each licensed facility which the applicant or a related entity owns a controlling interest in and is located in the service area after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the ~~current and projected~~ number of inpatient surgical procedures, identified by CPT code or ICD-9 CM procedure code, cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases ~~to be performed in the most recent 12 month period for which data is available, in the operating rooms~~; rooms in each licensed facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- (4) ~~the fixed and movable equipment to be located in each operating room;~~
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each licensed facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- (5) a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- ~~(5)(6)~~ the hours of operation of the proposed new operating rooms;
- ~~(6)(7)~~ if the applicant is an existing facility, the average ~~charge~~ reimbursement received per procedure for the 20 surgical procedures most commonly performed in the facility during the preceding 12 months and a list of all services and items included in ~~each charge~~; the reimbursement;
- ~~(7)(8)~~ the projected average ~~charge~~ reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility and a list of all services and items included in each charge; the reimbursement; and
- ~~(8)(9)~~ identification of providers of pre-operative services and procedures which will not be included in the facility's charge.
- (c) An applicant proposing to relocate existing operating rooms between existing licensed facilities within the same service area shall provide the following information:
- (1) the number and type of existing and approved operating rooms in each licensed facility in which the number of operating rooms will increase or decrease (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of operating rooms to be located in each affected licensed facility after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the number of inpatient surgical cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases performed in the most recent 12 month period for which data is available, in the operating rooms in each licensed facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each licensed facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;
- (5) a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- (6) the hours of operation of the facility to be expanded;
- (7) the average reimbursement received per procedure for the 20 surgical procedures most commonly performed in each affected licensed facility during the preceding 12 months and a list of all services and items included in the reimbursement;
- (8) the projected average reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility to be expanded and a list of all services and items included in the reimbursement; and

- (9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

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

**10A NCAC 14C .2103 PERFORMANCE STANDARDS**

(a) In projecting utilization, the ~~existing, approved and proposed~~ operating rooms shall be considered to be available for use five days per week and 52 weeks a year.

(b) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless:

- (1) ~~the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open heart and dedicated C-Section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project; or reasonably demonstrates the need for the number of proposed operating rooms in the facility, which is the subject of this review, in the third operating year of the project based on the following formula:  $\{[(\text{Number of facility's projected inpatient cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours}) + (\text{Number of facility's projected outpatient cases times 1.5 hours})] \div 1872 \text{ hours}\}$  minus the facility's total number of existing, approved and proposed operating rooms, excluding one operating room for Level I, II or III trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-section operating rooms. The number of rooms needed is the positive difference rounded to the next highest number for fractions of 0.50 or greater; or~~
- (2) the applicant demonstrates conformance of the proposed project to Policy AC-3 in the State Medical Facilities Plan titled "Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects."

(c) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms) except relocations of existing operating

rooms between existing licensed facilities within the same service area, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless the applicant reasonably demonstrates the need for the number of proposed operating rooms in addition to the rooms in its licensed facilities identified in response to 10A NCAC 14C .2102(b)(2) in the third operating year of the proposed project based on the following formula:  $\{[(\text{Number of projected inpatient cases for all its facilities, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours}) + (\text{Number of projected outpatient cases for all its facilities times 1.5 hours})] \div 1872 \text{ hours}\}$  minus the total number of ~~existing, approved and proposed~~ operating rooms, excluding one operating room for Level I, II or III trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-Section operating rooms in all of its licensed facilities in the service area. A need is demonstrated if the difference is a positive number greater than or equal to 0.50.

~~(e)(d)~~ A proposal An applicant that has one or more existing or approved dedicated C-section operating rooms and is proposing to develop an additional operating room to be used as a dedicated C-section operating room in the same facility shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open heart and dedicated C section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room and 3.2 surgical cases per day for each shared operating room demonstrate that an average of at least 365 C-sections per room were performed in the facility's existing dedicated C-section operating rooms in the previous 12 months and are projected to be performed in the facility's existing, approved and proposed dedicated C-section rooms during the third year of operation following completion of the project.

~~(d)(e)~~ An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy room, and 3.2 surgical cases per day for each shared operating room. The number of rooms needed is the positive difference rounded to the next highest number for fractions of 0.50 or greater; or

utilized an average of at least 1,872 hours per operating room per year, excluding dedicated open heart and C-Section operating rooms. The hours utilized per operating room shall be calculated as follows:  $[(\text{Number of projected inpatient cases, excluding open heart and C-sections performed in dedicated rooms, times 3.0 hours}) + (\text{Number of projected outpatient cases times 1.5 hours})] \div \text{the number of operating rooms, excluding dedicated open heart and C-Section operating rooms.}$



~~(e)(f)~~ An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall ~~provide documentation to show that each existing and approved ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty areas as proposed in the application is reasonably projected to be operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy room, and 3.2 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project.~~ reasonably demonstrate the need for the conversion in the third operating year of the project based on the following formula: [(Total number of projected outpatient cases for all ambulatory surgery programs in the service area times 1.5 hours) divided by 1872 hours] minus the total number of existing, approved and proposed outpatient or ambulatory surgical operating rooms and shared operating rooms in the service area. The need for the conversion is demonstrated if the difference is a positive number greater than or equal to one, after the number is rounded to the next highest number for fractions of 0.50 or greater.

~~(f)(g)~~ The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

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

#### **10A NCAC 14C .2106 FACILITY**

(a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.

(b) An applicant proposing a licensed ambulatory surgical facility shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.

(c) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.

~~(d) In competitive reviews, an applicant proposing to perform ambulatory surgical procedures in at least three specialty areas shall be considered more favorably than an applicant proposing to perform ambulatory surgical procedures in fewer than three specialty areas.~~

~~(e)(d)~~ The applicant shall provide a floor plan of the proposed facility identifying the following areas:

- (1) receiving/registering area;
- (2) waiting area;

- (3) pre-operative area;
- (4) operating room by type;
- (5) recovery area; and
- (6) observation area.

~~(f)(e)~~ An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:

- (1) physicians;
- (2) ancillary services;
- (3) support services;
- (4) medical equipment;
- (5) surgical equipment;
- (6) receiving/registering area;
- (7) clinical support areas;
- (8) medical records;
- (9) waiting area;
- (10) pre-operative area;
- (11) operating rooms by type;
- (12) recovery area; and
- (13) observation area.

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

#### **SECTION .2700 - CRITERIA AND STANDARDS FOR MAGNETIC RESONANCE IMAGING SCANNER**

##### **10A NCAC 14C .2701 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Capacity of fixed MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a fixed MRI scanner is 6,864 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 66 hours per week, 52 weeks per year.
- (3) "Capacity of mobile MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a mobile MRI scanner is 4,160 weighted MRI

- procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 40 hours per week, 52 weeks per year.
- (4) "Dedicated breast MRI scanner" means an MRI scanner that is configured to perform only breast MRI procedures and is not capable of performing other types of non-breast MRI procedures.
  - (5) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
  - (6) "Extremity MRI scanner" means an MRI scanner that is utilized for the imaging of extremities and is of open design with a field of view no greater than 25 centimeters.
  - (7) "Fixed MRI scanner" means an MRI scanner that is not a mobile MRI scanner.
  - (8) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
  - (9) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e).
  - (10) "Mobile MRI region" means either the eastern part of the State which includes the counties in Health Service Areas IV, V and VI (Eastern Mobile MRI Region), or the western part of the State which includes the counties in Health Service Areas I, II, and III (Western Mobile MRI Region). The counties in each Health Service Area are identified in Appendix A of the State Medical Facilities Plan.
  - (11) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more host facilities.
  - (12) "MRI procedure" means a single discrete MRI study of one patient.
  - (13) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan, except for proposed new mobile MRI scanners for which the service area is a mobile MRI region.
  - (14) "MRI study" means one or more scans relative to a single diagnosis or symptom.
  - (15) "Multi-position MRI scanner" means an MRI scanner as defined in the State Medical Facilities Plan, pursuant to a special need determination for a demonstration project.
  - ~~(15)~~(16) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
  - ~~(16)~~(17) "Temporary MRI scanner" means an MRI scanner that the Certificate of Need Section has approved to be temporarily located in North Carolina at a facility that holds a certificate of need for a new fixed MRI scanner, but which is not operational because the project is not yet complete.
  - ~~(17)~~(18) "Weighted MRI procedures" means MRI procedures which are adjusted to account for the length of time to complete the procedure, based on the following weights: one outpatient MRI procedure without contrast or sedation is valued at 1.0 weighted MRI procedure, one outpatient MRI procedure with contrast or sedation is valued at 1.4 weighted MRI procedures, one inpatient MRI procedure without contrast or sedation is valued at 1.4 weighted MRI procedures; and one inpatient MRI procedure with contrast or sedation is valued at 1.8 weighted MRI procedures.
  - ~~(18)~~(19) "Weighted breast MRI procedures" means MRI procedures which are performed on a dedicated breast MRI scanner and are adjusted to account for the length of time to complete the procedure, based on the following weights: one diagnostic breast MRI procedure is valued at 1.0 weighted MRI procedure (based on an average of 60 minutes per procedure), one MRI-guided breast needle localization MRI procedure is valued at 1.1 weighted MRI procedure (based on an average of 66 minutes per procedure), and one MRI-guided breast biopsy procedure is valued at 1.6 weighted MRI procedures (based on an average of 96 minutes per procedure).

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

**10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT**

- (a) An applicant proposing to acquire an MRI scanner, including a mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.
- (b) Except for proposals to acquire mobile MRI scanners that serve two or more host facilities, both the applicant and the person billing the patients for the MRI service shall be named as co-applicants in the application form.
- (c) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall provide the following information:

- (1) documentation that the proposed fixed MRI scanner, excluding fixed extremity and breast MRI scanners, shall be available and staffed for use at least 66 hours per week;
  - (2) documentation that the proposed mobile MRI scanner shall be available and staffed for use at least 40 hours per week;
  - (3) documentation that the proposed fixed extremity or dedicated breast MRI scanner shall be available and staffed for use at least 40 hours per week;
  - (4) the average charge to the patient, regardless of who bills the patient, for each of the 20 most frequent MRI procedures to be performed for each of the first three years of operation after completion of the project and a description of items included in the charge; if the professional fee is included in the charge, provide the dollar amount for the professional fee;
  - (5) if the proposed MRI service will be provided pursuant to a service agreement, the dollar amount of the service contract fee billed by the applicant to the contracting party for each of the first three years of operation;
  - (6) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner and their estimate of the number of patients proposed to be referred per year, which is based on the physicians' historical number of referrals;
  - (7) for each location in the MRI service area at which the applicant or a related entity will provide MRI services, utilizing existing, approved, or proposed fixed MRI scanners, the number of fixed MRI scanners operated or to be operated at each location;
  - ~~(7)~~(8) for each location in the MRI service area at which the applicant or a related entity will provide MRI services, utilizing existing, approved, or proposed fixed MRI scanners, projections of the annual number of unweighted MRI procedures to be performed for each of the four types of MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;
  - ~~(8)~~(9) for each location in the MRI service area at which the applicant or a related entity will provide services, utilizing existing, approved, or proposed fixed MRI scanners, projections of the annual number of weighted MRI procedures to be performed for each of the four types of MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;
  - ~~(9)~~(10) a detailed description of the methodology and assumptions used to project the number of unweighted MRI procedures to be performed at each location, including the number of contrast versus non-contrast procedures, sedation versus non-sedation procedures, and inpatient versus outpatient procedures;
  - ~~(10)~~(11) a detailed description of the methodology and assumptions used to project the number of weighted MRI procedures to be performed at each location;
  - ~~(11)~~(12) for each ~~existing fixed or existing~~, approved or proposed mobile MRI scanner owned by the applicant or a related entity and operated in North Carolina in the month the application is submitted, the vendor, tesla strength, serial number or vehicle identification number, CON project identification number, ~~physical location for fixed MRI scanners,~~ and host sites ~~for mobile MRI scanners;~~ sites;
  - (12)(13) for each approved fixed or mobile MRI scanner to be owned by the applicant or a related entity and approved to be operated in North Carolina, the proposed vendor, proposed tesla strength, CON project identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners; for each host site in the mobile MRI region in which the applicant or a related entity will provide the proposed mobile MRI services, utilizing existing, approved, or proposed mobile MRI scanners, projections of the annual number of unweighted and weighted MRI procedures to be performed for each of the four types of MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;
  - ~~(13)~~(14) if proposing to acquire a mobile MRI scanner, an explanation of the basis for selection of the proposed host sites if the host sites are not located in MRI service areas that lack a fixed MRI scanner; and
  - ~~(14)~~(15) identity of the accreditation authority the applicant proposes to use.
- (d) An applicant proposing to acquire a mobile MRI scanner shall provide copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the new MRI scanner.
- (e) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall demonstrate that:
- (1) it has an existing and ongoing working relationship with a breast-imaging radiologist or radiology practice group that has experience interpreting breast images provided by mammography, ultrasound, and MRI scanner equipment, and that is trained to interpret images produced by a MRI scanner configured exclusively for mammographic studies;
  - (2) for the last 12 months it has performed the following services, without interruption in the provision of these services: breast MRI

- procedures on a fixed MRI scanner with a breast coil, mammograms, breast ultrasound procedures, breast needle core biopsies, breast cyst aspirations, and pre-surgical breast needle localizations;
- (3) its existing mammography equipment, breast ultrasound equipment, and the proposed dedicated breast MRI scanner is in compliance with the federal Mammography Quality Standards Act;
  - (4) it is part of an existing healthcare system that provides comprehensive cancer care, including radiation oncology, medical oncology, surgical oncology and an established breast cancer treatment program that is based in the geographic area proposed to be served by the applicant; and,
  - (5) it has an existing relationship with an established collaborative team for the treatment of breast cancer that includes, radiologists, pathologists, radiation oncologists, hematologists/oncologists, surgeons, obstetricians/gynecologists, and primary care providers.
- (f) An applicant proposing to acquire an extremity MRI scanner, pursuant to a need determination in the State Medical Facilities Plan for a demonstration project, shall:
- (1) provide a detailed description of the scope of the research studies that shall be conducted to demonstrate the convenience, cost effectiveness and improved access resulting from utilization of extremity MRI scanning;
  - (2) provide projections of estimated cost savings from utilization of an extremity MRI scanner based on comparison of "total dollars received per procedure" performed on the proposed scanner in comparison to "total dollars received per procedure" performed on whole body scanners;
  - (3) provide projections of estimated cost savings to the patient from utilization of an extremity MRI scanner;
  - (4) commit to prepare an annual report at the end of each of the first three operating years, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, that shall include:
    - (A) a detailed description of the research studies completed;
    - (B) a description of the results of the studies;
    - (C) the cost per procedure to the patient and billing entity;
    - (D) the cost savings to the patient attributed to utilization of an extremity MRI scanner;
    - (E) an analysis of "total dollars received per procedure" performed on the extremity MRI scanner in comparison
- to "total dollars received per procedure" performed on whole body scanners; and
- (F) the annual volume of unweighted and weighted MRI procedures performed, by CPT code;
  - (5) identify the operating hours of the proposed scanner;
  - (6) provide a description of the capabilities of the proposed scanner;
  - (7) provide documentation of the capacity of the proposed scanner based on the number of days to be operated each week, the number of days to be operated each year, the number of hours to be operated each day, and the average number of unweighted MRI procedures the scanner is capable of performing each hour;
  - (8) identify the types of MRI procedures by CPT code that are appropriate to be performed on an extremity MRI scanner as opposed to a whole body MRI scanner;
  - (9) provide copies of the operational and safety requirements set by the manufacturer; and
  - (10) describe the criteria and methodology to be implemented for utilization review to ensure the medical necessity of the procedures performed.
- (g) An applicant proposing to acquire a multi-position MRI scanner, pursuant to a need determination in the State Medical Facilities Plan for a demonstration project, shall:
- (1) commit to prepare an annual report at the end of each of the first three operating years, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, that shall include:
    - (A) the number of exams by CPT code performed on the multi-position MRI scanner in an upright or nonstandard position;
    - (B) the total number of examinations by CPT code performed on the multi-position MRI scanner in any position;
    - (C) the number of doctors by specialty that referred patients for an MRI scan in an upright or nonstandard position;
    - (D) documentation to demonstrate compliance with the Basic Principles policy included in the State Medical Facilities Plan;
    - (E) a detailed description of the unique information that was acquired only by use of the multi-position capability of the multi-position MRI scanner; and
    - (F) the number of insured, underinsured, and uninsured patients served by type of payment category;
  - (2) provide the specific criteria that will be used to determine which patients will be examined in

- other than routine supine or prone imaging positions;
- (3) project the number of exams by CPT code performed on the multi-position MRI scanner in an upright or nonstandard position;
  - (4) project the total number of examinations by CPT code performed on the multi-position MRI scanner in any position;
  - (5) demonstrate that access to the multi-position MRI scanner will be made available to all spine surgeons in the proposed service area, regardless of ownership in the applicant's facility;
  - (6) demonstrate that at least 50 percent of the patients to be served on the multi-position MRI scanner will be spine patients who are examined in an upright or nonstandard position; and
  - (7) provide documentation of the capacity of the proposed fixed multi-position MRI scanner based on the number of days to be operated each week, the number of days to be operated each year, the number of hours to be operated each day, and the average number of unweighted MRI procedures the scanner is capable of performing each hour.

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

#### **10A NCAC 14C .2703 PERFORMANCE STANDARDS**

(a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner shall:

- (1) demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns a controlling interest in and operates in the mobile MRI region in which the proposed equipment will be located, except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.]; with the exception that in the event an existing mobile MRI scanner has been in operation less than 12 months at the time the application is filed, the applicant shall demonstrate that this mobile MRI scanner performed an average of at least 277 weighted MRI procedures per month for the period in which it has been in operation;
- (2) demonstrate annual utilization in the third year of operation is reasonably projected to be at least 3328 weighted MRI procedures on each of the existing, approved and proposed mobile MRI scanners owned by the applicant or a related entity to be operated in the mobile MRI region in which the proposed equipment will be located. [Note: This is not the average number of weighted MRI procedures

performed on all of the applicant's mobile MRI scanners.];

- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(b) An applicant proposing to acquire a fixed magnetic resonance imaging (MRI) scanner, except for fixed MRI scanners described in Paragraphs (c) and (d) of this Rule, shall:

- (1) demonstrate that the existing fixed MRI scanners which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area performed an average of 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data;
- (2) demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns a controlling interest in and operates in the proposed MRI service area except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];
- (3) demonstrate that the average annual utilization of the existing, approved and proposed fixed MRI scanners which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area are reasonably expected to perform the following number of weighted MRI procedures, whichever is applicable, in the third year of operation following completion of the proposed project:
  - (A) 1,716 weighted MRI procedures in MRI service areas in which the SMFP shows no fixed MRI scanners are located,
  - (B) 3,775 weighted MRI procedures in MRI service areas in which the SMFP shows one fixed MRI scanner is located,
  - (C) 4,118 weighted MRI procedures in MRI service areas in which the SMFP shows two fixed MRI scanners are located,
  - (D) 4,462 weighted MRI procedures in MRI service areas in which the SMFP shows three fixed MRI scanners are located, or
  - (E) 4,805 weighted MRI procedures in MRI service areas in which the SMFP shows four or more fixed MRI scanners are located;
- (4) if the proposed MRI scanner will be located at a different site from any of the existing or approved MRI scanners owned by the applicant or a related entity, demonstrate that

the annual utilization of the proposed fixed MRI scanner is reasonably expected to perform the following number of weighted MRI procedures, whichever is applicable, in the third year of operation following completion of the proposed project:

- (A) 1,716 weighted MRI procedures in MRI service areas in which the SMFP shows no fixed MRI scanners are located,
- (B) 3,775 weighted MRI procedures in MRI service areas in which the SMFP shows one fixed MRI scanner is located,
- (C) 4,118 weighted MRI procedures in MRI service areas in which the SMFP shows two fixed MRI scanners are located,
- (D) 4,462 weighted MRI procedures in MRI service areas in which the SMFP shows three fixed MRI scanners are located, or
- (E) 4,805 weighted MRI procedures in MRI service areas in which the SMFP shows four or more fixed MRI scanners are located;

- (5) demonstrate that annual utilization of each existing, approved and proposed mobile MRI scanner which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area is reasonably expected to perform 3,328 weighted MRI procedures in the third year of operation following completion of the proposed project. [Note: This is not the average number of weighted MRI procedures to be performed on all of the applicant's mobile MRI scanners.];
- (6) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(c) An applicant proposing to acquire a fixed dedicated breast magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for an adjustment to the need determination shall:

- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 1,664 weighted MRI procedures which is .80 times 1 procedure per hour times 40 hours per week times 52 weeks per year; and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(d) An applicant proposing to acquire a fixed extremity MRI scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for an adjustment to the need determination shall:

- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 80 percent of the capacity defined by the applicant in response to 10A NCAC 14C ~~.2702(f)(6);~~ .2702(f)(7); and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(e) An applicant proposing to acquire a fixed multi-position MRI scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for a demonstration project shall:

- (1) demonstrate annual utilization of the proposed multi-position MRI scanner in the third year of operation is reasonably projected to be at least 80 percent of the capacity defined by the applicant in response to 10A NCAC 14C .2702(g)(7); and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

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

## **SECTION .3700 - CRITERIA AND STANDARDS FOR POSITRON EMISSION TOMOGRAPHY SCANNER**

### **10A NCAC 14C .3702 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall provide the following information for each facility where the PET scanner will be operated:

- (1) The projected number of procedures to be performed and the projected number of patients to be served for each of the first three years following completion of the proposed project. Projections shall be listed by clinical area (e.g., oncology, cardiology), and all methodologies and assumptions used in making the projections shall be provided.
- (2) ~~Documentation that all of the following services were provided, at each facility where the PET scanner will be operated, continuously throughout the 12 months immediately prior to the date on which the application is filed:~~ of arrangements made between the applicant and other providers to assure patients of the facility will have access to all of the following services:
  - (A) nuclear medicine imaging services;
  - (B) single photon emission computed tomography (including brain, bone, liver, gallium and thallium stress);
  - (C) magnetic resonance imaging scans;
  - (D) computerized tomography scans;

- (E) cardiac angiography;
- (F) cardiac ultrasound; and
- (G) ~~neuroangiography.~~  
neuroangiography;
- (H) radiation oncology;
- (I) medical oncology; and
- (J) surgical oncology.

(3) Documentation that the facility will:

- (A) establish the clinical PET unit, and any accompanying equipment used in the manufacture of positron-emitting radioisotopes, as a regional resource that will have no administrative, clinical or charge requirements that would impede physician referrals of patients for whom PET testing would be appropriate; and
- (B) provide scheduled hours of operation for the PET scanner of a minimum of ~~42~~ 60 hours per ~~day, six days~~ a week, except for mobile scanners.

(c) An applicant proposing to acquire a mobile PET scanner shall provide copies of letters of intent from and proposed contracts with all of the proposed host facilities at which the mobile PET scanner will be operated.

(d) An applicant proposing to acquire a mobile PET scanner shall demonstrate that each host facility offers or contracts with a hospital that offers comprehensive cancer services including radiation oncology, medical oncology, and surgical oncology.

(e) An applicant shall document that all equipment, supplies and pharmaceuticals proposed for the service have been certified for use by the U.S. Food and Drug Administration or will be used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations.

(f) An applicant shall document that each PET scanner and cyclotron shall be operated in a physical environment that conforms to federal standards, manufacturer's specifications, and licensing requirements. The following shall be addressed:

- (1) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
- (2) quality control measures and assurance of PET tomography and associated instrumentation;
- (3) radiation protection and shielding;
- (4) radioactive emission to the environment; and
- (5) radioactive waste disposal.

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

#### **SECTION .4000 - CRITERIA AND STANDARDS FOR HOSPICE INPATIENT FACILITIES AND HOSPICE RESIDENTIAL CARE FACILITIES**

##### **10A NCAC 14C .4002 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the

application form for Hospice Inpatient and Hospice Residential Care Services.

(b) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall provide the following information:

- (1) the projected annual number of hospice patients, admissions, deaths, and other discharges, by for each level of care (i.e., respite care, hospice residential care and hospice inpatient care), to be served in the facility by quarter for in each of the first 24 months three years following completion of the project and the methodology and assumptions used to make the projections;
- (2) the projected annual number of hospice patients, admissions, deaths, and other discharges for each level of care to be served by the applicant's licensed hospice agency in each of the first three years following completion of the project and the methodology and assumptions used to make the projections;
- (2)(3) the projected annual number of patient care days, by for each level of care (i.e., respite care, hospice residential care and hospice inpatient care), by quarter, to be provided in each of the first two three years of operation following completion of the project and the methodology and assumptions used to make the projections shall be stated; projections;
- (4) the projected average length of stay (ALOS) based on admissions to the applicant's facility, for each level of care, (i.e., respite care, hospice residential care and hospice inpatient care) and the methodology and assumptions used to make the projections;
- (5) the projected readmission rate, for each level of care, (i.e., respite care, hospice residential care and hospice inpatient care) and the methodology and assumptions used to make the projections;
- (3)(6) the projected average annual cost per patient care day, by level of care (i.e., respite care, hospice residential care and hospice inpatient care) for each of the first ~~two~~ three operating years following completion of the project and the methodology and assumptions used to project the average annual cost; ~~and~~
- (4)(7) documentation of attempts made to establish working relationships with sources of referrals to the hospice facility including copies of proposed agreements for the provision of inpatient care and residential care;
- (8) documentation of the projected number of referrals to be made by each referral source;

~~(c) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:~~

- (4)(9) copies of the proposed contractual agreements, if the applicant is not a licensed hospice, with

- a licensed hospice or a licensed home care agency with a hospice designation on its license, for the provision of hospice services;
- (2)(10) documentation of the projected number of patients to be referred for each payor mix type from the referring hospices, if the applicant is not a licensed hospice or if the applicant proposes to admit patients on a contractual basis; and
- (3)(11) a copy of the admission policies, including the criteria that shall be used to select persons for admission; and admission to the hospice inpatient and residential care beds.
- (4) ~~documentation that a home-like setting shall be provided in the facility.~~

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

#### **10A NCAC 14C .4003 PERFORMANCE STANDARDS**

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:

- (1) the average occupancy rate of the licensed hospice ~~beds~~ beds, for each level of care, in the facility is projected to be at least 50 percent for the last six months of the first operating year following completion of the project;
- (2) the average occupancy rate for the licensed hospice ~~beds~~ beds, for each level of care, in the facility is projected to be at least 65 percent for the second operating year following completion of the project; and
- (3) if the application is submitted to address the need for a hospice residential care ~~facility~~, beds, each existing hospice residential care facility which is located in the hospice service area ~~and which has licensed hospice beds of the type proposed by the applicant attained~~ operated at an occupancy rate of at least 65 percent for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.

(b) An applicant proposing to add hospice inpatient facility beds to an existing hospice inpatient facility ~~or hospice residential care facility~~ shall document that the average occupancy of the licensed hospice inpatient ~~and hospice residential care~~ facility beds in its existing facility was at least 65 percent for the nine months immediately preceding the submittal of the proposal.

(c) An applicant proposing to add residential care beds to an existing hospice residential care facility shall document that the average occupancy of the licensed hospice residential care beds in its existing facility was at least 65 percent for the nine months immediately preceding the submittal of the proposal.

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

#### **10A NCAC 14C .4006 FACILITY**

An applicant proposing to develop new hospice inpatient facility beds or new hospice residential care facility beds shall document:

- (1) that a home-like setting shall be provided in the facility;
- (2) that the services will be provided in conformity with applicable state and local laws and regulations pertaining to zoning, physical environment, water supply, waste disposal and other relevant health and safety requirements; and
- (3) for new facilities, the location of the site on which the services are to be operated. If the site is neither owned by nor under option to the applicant, the applicant must provide a written commitment to pursue acquiring the site if and when the approval is granted, must specify a secondary site on which the services could be operated if acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.

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

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend the rules cited as 10A NCAC 27G .0104, .0504.*

**Proposed Effective Date:** February 1, 2009

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

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

**10A NCAC 27G .0104** - *The purpose of this addition is to further delineate and distinguish certain Qualified Professionals who are included currently under Item 18 of this rule, from other Qualified Professionals. The Qualified Professionals included in this amendment are persons who have achieved QP status by virtue of learning licensure or certification in approved categories, as opposed to persons who achieve QP status by virtue of experience alone in the MH/DD/SA field. Making this distinction in the rule allows further identification of distinct roles in services definitions and in other administrative functions where there is a need for certified or licensed professional to perform duties consistent with the scope of practice identified in each licensure or certification category.*

**10A NCAC 27G .0504** - *The proposed revisions to the rule are necessary to delineate the changing role and functions of the Local Management Entities in Mental Health Reform and to outline procedures for the Local Management Entity Clients*



*Rights Oversight and Provider Client Rights Assurance committees.*

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

**Comments may be submitted to:** *W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email denise.w.baker@ncmail.net*

**Comment period ends:** *September 2, 2008*

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

**Fiscal Impact:**

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

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

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

**SECTION .0100 - GENERAL INFORMATION**

**10A NCAC 27G .0104 STAFF DEFINITIONS**

The following credentials and qualifications apply to staff described in this Subchapter:

- (1) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:
  - (a) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a

- substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
- (b) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
- (c) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; or
- (d) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Supervision shall be provided by a

qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.

- ~~(2)~~ "Certified alcoholism counselor (CAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- ~~(3)~~ "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- ~~(2)(4)~~ "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Practice Board.
- ~~(3)~~ "Certified criminal justice addictions professional (CCJP)" means and individual who is certified as such by the North Carolina Substance Abuse Professional Practice Board.
- ~~(4)(5)~~ "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- ~~(5)(6)~~ "Certified substance abuse prevention consultant (CSAPC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Practice Board.
- ~~(6)(7)~~ "Clinical" means having to do with the active direct treatment/habilitation of a client.
- ~~(7)(8)~~ "Clinical staff member" means a qualified professional or associate professional who provides active direct treatment/habilitation to a client.
- ~~(8)(9)~~ "Clinical/professional supervision" means regularly scheduled assistance by a qualified professional or associate professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.
- ~~(9)(10)~~ "Clinical social worker" means a social worker who is licensed as such by the N.C. Social Work Certification and Licensure Board.
- ~~(10)(11)~~ "Director" means the individual who is responsible for the operation of the facility.
- ~~(11)~~ "Licensed clinical addictions specialist (LCAS)" means an individual who is licensed as such by the North Carolina Substance Abuse Professional Practice Board.
- ~~(12)~~ "Licensed clinician" means an individual with full clinical licensure as a psychiatrist, licensed psychologist, licensed psychological associate, licensed clinical social worker, licensed

professional counselor, licensed marriage and family therapist, and licensed clinical addictions specialist. "Licensed clinician" also includes an individual with full clinical licensure and certification as a certified clinical nurse specialist in psychiatric mental health advanced practice, and a certified nurse practitioner in psychiatric mental health advanced practice.

- ~~(13)(12)~~ "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- ~~(14)(13)~~ "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- ~~(15)(14)~~ "Paraprofessional" within the mh/dd/sas system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. Supervision shall be provided by a qualified professional or associate professional with the population served. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.
- ~~(16)(15)~~ "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed a training program in psychiatry accredited by the Accreditation Council for Graduate Medical Education.
- ~~(17)(16)~~ "Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina as either a licensed psychologist or a licensed psychological associate.
- ~~(18)(17)~~ "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.
- ~~(19)(18)~~ "Qualified professional" means, within the mh/dd/sas system of care:
  - (a) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who

- also has four years of full-time accumulated experience in mh/dd/sa with the population served; or
- (b) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; or
- (c) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
- (d) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- ~~(20)~~(19) "Qualified substance abuse prevention professional (QSAPP)" means, within the mh/dd/sas system of care:
- (a) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated supervised experience in substance abuse prevention; or
- (b) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated supervised experience in substance abuse prevention; or
- (c) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated supervised experience in substance abuse prevention; or

- (d) a substance abuse prevention professional who is certified as a Certified Substance Abuse Prevention Consultant (CSAPC) by the North Carolina Substance Abuse Professional ~~Certification~~Practice Board.

*Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147.*

## **SECTION .0500 - AREA PROGRAM REQUIREMENTS**

### **10A NCAC 27G .0504 LOCAL MANAGEMENT ENTITY CLIENT RIGHTS OVERSIGHT COMMITTEES AND PROVIDER CLIENT RIGHTS ASSURANCE COMMITTEES**

~~(a) The area board shall bear ultimate responsibility for the assurance of client rights.~~

~~(b) Each area board shall establish at least one Client Rights Committee, and may require that the governing body of a contract agency also establish a Client Rights Committee. The area board shall also develop and implement policy which delineates:~~

- ~~(1) composition, size, and method of appointment of committee membership;~~
- ~~(2) training and orientation of committee members;~~
- ~~(3) frequency of meetings, which shall be at least quarterly;~~
- ~~(4) rules of conduct for meetings and voting procedures to be followed;~~
- ~~(5) procedures for monitoring the effectiveness of existing and proposed methods and procedures for protecting client rights;~~
- ~~(6) requirements for routine reports to the area board regarding seclusion, restraint and isolation time out; and~~
- ~~(7) other operating procedures.~~

~~(c) The area board established Client Rights Committee shall oversee, for area operated services and area contracted services, implementation of the following client rights protections:~~

- ~~(1) compliance with G.S. 122C, Article 3;~~
- ~~(2) compliance with the provisions of 10A NCAC 27C, 27D, 27E, and 27F governing the protection of client rights, and 10A NCAC 26B governing confidentiality;~~
- ~~(3) establishment of a review procedure for any of the following which may be brought by a client, client advocate, parent, legally responsible person, staff or others:~~
  - ~~(A) client grievances;~~
  - ~~(B) alleged violations of the rights of individuals or groups, including cases of alleged abuse, neglect or exploitation;~~
  - ~~(C) concerns regarding the use of restrictive procedures; or~~
  - ~~(D) failure to provide needed services that are available in the area program.~~

~~(d) Nothing herein stated shall be interpreted to preclude or usurp the authority of a county Department of Social Services to conduct an investigation of abuse, neglect, or exploitation or the authority of the Governor's Advocacy Council for Persons with Disabilities to conduct investigations regarding alleged violations of client rights.~~

~~(e) If the area board requires a contract agency to establish a Client Rights Committee, that Committee shall carry out the provisions of this Rule for the contract agency.~~

~~(f) Each Client Rights Committee shall be composed of a majority of non area board members, with a reasonable effort made to have all applicable disabilities represented, with consumer and family member representation. Staff who serve on the committee shall not be voting members.~~

~~(g) The Client Rights Committee shall maintain minutes of its meetings and shall file at least an annual report of its activities with the area board. Clients shall not be identified by name in minutes or in written or oral reports.~~

~~(h) The area board Client Rights Committee shall review grievances regarding incidents which occur within a contract agency after the governing body of the agency has reviewed the incident and has had opportunity to take action. Incidents of actual or alleged Client Rights violations, the facts of the incident, and the action, if any, made by the contract agency shall be reported to the area director within 30 days of the initial report of the incident, and to the area board within 90 days of the initial report of the incident.~~

(a) The Local Management Entity (LME) governing board shall establish at least one Client Rights Oversight Committee in its catchment area and require that provider governing bodies establish a Client Rights Assurance Committee according to Paragraph (d) in this Rule. The LME Client Rights Oversight Committee shall be responsible for client rights protections in accordance with the LME's role as manager of public mental health, developmental disabilities, and substance abuse (mh/dd/sa) services. The Provider Client Rights Assurance Committee shall be responsible for client rights protections in accordance with the provider's role as provider of services.

(b) The LME governing board shall ratify policies governing Client Rights Oversight Committee membership and operating procedures including:

- (1) each LME committee shall be comprised of a majority of non-board members, with disability representation that reflects the clients served and at least 50 percent of the membership shall consist of individuals who are either consumers or family members;
- (2) staff support to assist the committee to meet the requirements of the provisions of this Rule;
- (3) minimize travel barriers for consumers and families to enhance participation;
- (4) LME staff members who serve on the committee shall not be voting members;
- (5) minimum and maximum committee size, composition, terms of office, quorum necessary to conduct business, method for open nomination process and method of appointment of committee membership

including assurance of representation from each county;

- (6) procedure for removal for good cause;
- (7) training and orientation of committee members at least annually;
- (8) attendance requirements;
- (9) frequency of meetings which shall be at least quarterly;
- (10) location of meetings which shall be in North Carolina;
- (11) rules of conduct for meetings and voting procedures to be followed;
- (12) assurance against any conflicts of interest;
- (13) compliance with confidentiality rules according to 10A NCAC 26B;
- (14) the collection of information and the submission of reports requested by the LME, its governing board or the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) regarding the rights of consumers receiving public services; and
- (15) other committee operating procedures required to protect clients' rights and to assure compliance with this rule.

(c) The duties of the LME Client Rights Oversight Committee shall be to work with the governing board to oversee, for individuals receiving mh/dd/sa services in its catchment area, client rights protections including:

- (1) assurance that the requirements of this rule and other client rights protections are reviewed through routine provider monitoring in accordance with 10A NCAC 27G .0601 - .0610;
- (2) compliance with G.S. 122C, Article 3 regarding clients' rights and advance instruction;
- (3) compliance with the protection of clients' rights in the community according to 10A NCAC 27C, 27D, 27E and 27F;
- (4) assurance of confidentiality according to 10A NCAC 26B;
- (5) review of aggregate and descriptive complaint and appeal data in accordance with 10A NCAC 27G .0701 - .0704 and 10A NCAC 27I .0601 - .0609, respectively;
- (6) apprise the LME governing board or a designated officer, at any time during the year, of issues that relate to the assurance of clients' rights; and
- (7) having authority to request employees to collect and analyze relevant information that the committee or the LME governing board require to fulfill the requirements of this Rule.

(d) Provider governing bodies shall establish Client Rights Assurance Committees through one of the options below:

- (1) a provider shall form its own committee(s); or

- (2) multiple providers may enter into written agreements to form a committee(s) to meet the requirements of this Rule.

(e) The provider governing body shall adopt policies governing committee membership and operating procedures including:

- (1) each committee shall be comprised of a majority of non-board members, with disability representation that reflects the clients served and at least 50 percent of the membership shall consist of individuals who are either consumers or family members;
- (2) minimum and maximum committee size, composition, terms of office, quorum necessary to conduct business, method for open nomination process and method of appointment of committee membership;
- (3) procedure for removal for good cause; and
- (4) operation procedures of the committee including:
  - (A) attendance requirements;
  - (B) frequency of meetings at least quarterly;
  - (C) location of meetings which shall be in North Carolina;
  - (D) rules of conduct for meetings and voting procedures;
  - (E) training and orientation of committee members at least annually;
  - (F) assurance against any conflicts of interest;
  - (G) compliance with confidentiality rules according to 10A NCAC 26B;
  - (H) administrative support to the committee required to meet the provisions of this Rule;
  - (I) minimize travel barriers for consumers and families to enhance participation;
  - (J) other committee operating procedures required to protect client rights and to assure compliance with this Rule.

(f) The provider committee shall assure clients' rights protections including the following:

- (1) compliance with applicable requirements of this Rule;
- (2) compliance with G.S. 122C, Article 3 regarding clients' rights and advance instruction;
- (3) compliance with incident reporting and other applicable clients' rights' provisions of 10A NCAC 27G .0601 - .0610;
- (4) compliance with the protection of clients' rights in the community enumerated in 10A NCAC 27C, 27D, 27E and 27F;
- (5) review of clients' rights data including incidents, complaints, appeals and investigations investigation; and

- (6) appraise the governing body or a designated officer, at any time during the year, of issues that relate to the assurance of clients' rights.

(g) If an LME provides a service or services, the LME Client Rights Oversight Committee shall follow the requirements of the Provider Client Rights Assurance Committee for the LME service or services.

(h) The LME Client Rights Oversight Committee and the Provider Client Rights Assurance Committee shall work with state and local agencies to protect clients' rights for individuals receiving md/dd/sa services and nothing herein stated shall be interpreted to preclude the legal authority of local and state agencies including:

- (1) a county Department of Social Services to conduct an investigation of abuse, neglect or exploitation; or
- (2) North Carolina's protection and advocacy system to conduct investigations regarding alleged violations of clients' rights; and
- (3) law enforcement agencies' investigations of criminal allegations that pertain to rights violations.

(i) The LME Client Rights Oversight Committee and the Provider(s) Client Rights Assurance Committee shall document initial orientation of committee members and annual training thereafter on topics to fulfill their duties as described in this Rule including:

- (1) applicable North Carolina statutes and rules codified in the North Carolina Administrative Code;
- (2) the organization of the North Carolina public system for mental health, developmental disabilities and substance abuse services;
- (3) the duties of the local and state consumer family advisory committee according to G.S. 122C-170 and 171, respectively;
- (4) principles of advocacy, self-determination and recovery; and
- (5) customer service strategies.

(j) A LME Client Rights Oversight Committee and a Provider Client Rights Assurance Committee shall maintain meeting minutes. Clients shall not be identified by name in minutes or in written or oral reports.

(k) A provider Client Rights Assurance Committee shall complete an annual report and send it to the LME(s) with whom the provider has a service agreement.

(l) A LME Client Rights Oversight Committee shall complete an annual report and send it to the DMH/DD/SAS which shall publish an annual analysis of the LME committee reports.

(m) The reports noted in Paragraph (k) and (l) of this Rule shall be submitted on forms provided by the DMH/DD/SAS.

*Authority G.S. 122C-64; 143B-147; 122C-115.4.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – DMH/DD/SAS intends to amend the rule cited as 10A NCAC 27G .0404.*

**Proposed Effective Date:** February 1, 2009

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

**Reason for Proposed Action:** *The proposed amendment is necessary to update the rule to include accurate information and incorporate additions required by Session Law 2005-276.*

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

**Comments may be submitted to:** W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email denise.w.baker@ncmail.net

**Comment period ends:** September 2, 2008

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

**Fiscal Impact:**

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

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

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

**SECTION .0400 - LICENSING PROCEDURES**

**10A NCAC 27G .0404 OPERATIONS DURING LICENSED PERIOD**

(a) ~~A~~An initial license shall be valid for a period not to exceed ~~two years~~15 months from the date on which the license is

issued. Each license shall be renewed annually thereafter and shall expire at the end of the calendar year.

(b) For all facilities providing periodic and day/night services, the license shall be posted in a prominent location accessible to public view within the licensed premises.

(c) For 24-hour facilities, the license shall be readily available for review upon request.

(d) For residential facilities, the DHSR complaint hotline number shall be posted conspicuously in a public place in each facility.

~~(d)(e)~~ A facility shall accept no more clients than the number for which it is licensed.

~~(e)(f) DFS-DHSR~~ conduct inspections of facilities without advance notice. ~~For facilities that are not operated by or contracted with area programs, and that are not subject to the Accreditation Review described in Section .0600 of these Rules, DFS shall conduct an on-site inspection at least once every two years. For purposes of this inspection, DFS may accept DMH/DD/SAS or area program verification in accordance with Rule .0402© of this Section, or deemed status in accordance with Rule .0403 of this Section.~~

~~(f)~~ Written notification must be submitted to DFS prior to any of the following:

- ~~(1) Construction of a new facility or any renovation of an existing facility;~~
- ~~(2) Increase or decrease in capacity by program service type;~~
- ~~(3) Change in program service;~~
- ~~(4) Change in ownership including any change in a partnership~~
- ~~(5) Change of name of facility; or~~
- ~~(6) Change in location of facility.~~

(g) Licenses for facilities that have not served any clients during the previous 12 months shall not be renewed.

(h) DHSR shall conduct inspections of all 24-hour facilities an average of once every 12 months, to occur no later than 15 months as of July 1, 2007.

(i) Written requests shall be submitted to DHSR a minimum of 30 days prior to any of the following changes:

- (1) Construction of a new facility or any renovation of an existing facility;
- (2) Increase or decrease in capacity by program service type;
- (3) Change in program service; and
- (4) Change in location of facility.

(j) Written notification must be submitted to DHSR a minimum of 30 days prior to any of the following changes:

- (1) Change in ownership including any change in partnership; or
- (2) Change in name of facility.

~~(g)(k)~~ When a licensee plans to close a facility or discontinue a service, written notice at least 30 days in advance shall be provided to ~~DFS~~DHSR, to all affected clients, and when applicable, to the legally responsible persons of all affected clients. This notice shall address continuity of services to clients in the facility.

~~(h)(l)~~ Licenses shall expire unless renewed by ~~DFS-DHSR~~ for an additional period. ~~Thirty days prior~~Prior to the expiration of

a license, the licensee shall submit to ~~DFS~~ DHSR the following information:

- (1) Annual Fee;
- ~~(1)(2)~~ Brief description of any changes in the facility since the last written notification was submitted;
- ~~(2)(3)~~ Annual local-Local-current fire and sanitation inspection report; report with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required;
- ~~(3)~~ Copies of deficiencies and corrective action issued by an area program, DMH/DD/SAS, or any accreditation agency; and
- ~~(4)~~ Annual sanitation inspection report, with the exception of a day/night or periodic service that does not handle food for which a sanitation inspection report is not required; and
- ~~(4)(5)~~ All applications for license renewal shall disclose the ~~The~~ names of individuals who are owner, partners or shareholders holding an ownership or controlling interest of 5% or more of the applicant entity.

Authority G.S. 122C-23; 122C-25; 122C-27.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Water Treatment Facility Operators Certification Board intends to amend the rules cited as 15A NCAC 18D .0307 - .0308.*

**Proposed Effective Date:** November 1, 2008

**Public Hearing:**

**Date:** July 16, 2008

**Time:** 10:00 a.m.

**Location:** 2728 Capital Blvd., Raleigh, NC

**Reason for Proposed Action:** *The revision is necessary to indicate that the annual contact hours required for operators should be Board approved. In addition, a change is proposed to require operators with certifications that have been expired less than 2 years have to pay renewal fees in arrears and the late fees before receiving upgrades or certifications in other areas.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person can object to the agency on a proposed rule by writing, emailing or calling: Lancie Bailey, NCWTFO Certification Board, 1635 Mail Service Center, Raleigh, NC 27699-1635, email Lancie.Bailey@ncmail.net, phone (919) 715-9571*

**Comments may be submitted to:** *Lancie Bailey, 1635 Mail Service Center, Raleigh, NC 27699-1635*

**Comment period ends:** September 2, 2008

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

**Fiscal Impact:**

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

## CHAPTER 18 - ENVIRONMENTAL HEALTH

### SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

#### SECTION .0300 - APPLICATIONS AND FEES

#### 15A NCAC 18D .0307 EXPIRATION AND REVOCATION OF CERTIFICATE

(a) If the operator fails to pay the renewal fee or meet the continuing education requirements of Rule .0308(a) of this Section, the certificate shall expire.

(b) If an operator in responsible charge fails to meet the requirements of 15A NCAC 18D .0701, his/her certificate may be revoked.

(c) An individual who has had certification revoked by the Board shall petition the Board for any new certification sought and may not petition the Board for such new certification sooner than two years after the effective date of the revocation.

(d) An operator who has a certificate that has been expired less than two years must pay any renewal fees in arrears and late fees before receiving an upgrade or a certificate in another area.

Authority G.S. 90A-25.1; 90A-26.

#### 15A NCAC 18D .0308 PROFESSIONAL GROWTH HOURS

(a) All certified operators ~~who have held a certificate for the calendar year~~ shall complete six contact hours of Board approved instruction each year following the year of initial certification ~~during the year immediately preceding annual certification renewal for each certification renewed. The same contact hours may be credited to all certifications for which the training is relevant. The instruction shall be related to system operation or professional development. Training providers shall~~

submit an attendance roster to the Board after completion of the training event per agreement with the Board. Ultimately proof of professional growth hours shall be the responsibility of the operator. The roster shall contain the operator's certification ID number or the last four digits of the Social Security number. ~~Proof of continuing education shall be submitted to the Board with the annual certification renewal form.~~

(b) The organization providing the instruction shall give each participant a certificate or other proof of successful completion which includes the name of the provider, the provider's address, and contact person with telephone number. The proof of completion shall identify the name of the participant, the number of contact hours completed, the course name, the instructor's name, and the date of the instruction received. For in-house training, an instructor from outside of the organization shall provide the instruction. ~~If an operator fails to provide proof of the required six contact hours of instruction at the time of annual certification renewal, the certification shall be expired.~~

(c) Renewal notices will be mailed to operators prior to the renewal date and will state whether the Board has a record of their professional growth hours for the preceding year. If the Board does not have a record of professional growth for an operator, the operator must provide proof of the required six contact hours of instruction at the time of annual certification renewal. If an operator fails to provide proof of the required six contact hours, the certification shall be expired.

Authority G.S. 90A-25.1; 90A-26.

**Comments may be submitted to:** Katherine Carpenter,  
Medical Board, 1203 Front Street, Raleigh, NC 27609, phone  
(919)326-1100, fax (919)326-0036, email  
rules@ncmedboard.org.

**Comment period ends:** September 2, 2008

**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

**SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS**

**21 NCAC 32M .0103 NURSE PRACTITIONER REGISTRATION**

(a) The Board of Nursing shall register an applicant who:

- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
- (2) has successfully completed a nurse practitioner education program as outlined in Rule .0105 of this Subchapter;
- (3) is certified as a nurse practitioner by a national credentialing body consistent with 21 NCAC 36 .0120(7) and (9); and
- (4) has supplied additional information necessary to evaluate the application as requested.

(b) Beginning January 1, 2005, new graduates of a nurse practitioner program, who are seeking first-time nurse practitioner registration in North Carolina shall:

- (1) hold a Master's Degree or higher degree in Nursing or related field with primary focus on Nursing;
- (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body; and

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 32 – MEDICAL BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Board intends to amend the rules cited as 21 NCAC 32M .0103-.0104, .0106, .0109, .0115.*

**Proposed Effective Date:** November 1, 2008

**Public Hearing:**

**Date:** September 2, 2008

**Time:** 10:00 a.m.

**Location:** Medical Board, 1203 Front Street, Raleigh, NC

**Reason for Proposed Action:** *The Board of Nursing and the Medical Board recently reviewed all nurse practitioner rules to improve clarity. Revision of the rules is necessary due to changes in the nurse practitioner requirements regarding higher degree, drug samples, application and renewal procedures.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may submit objections to the proposed amendment, in writing by September 2, 2008, Rules Coordinator, Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org.*



- (3) provide documentation of certification by a national credentialing body.

*Authority G.S. 90-18(c)(14); 90-18.2; 90-171.36.*

#### **21 NCAC 32M .0104 PROCESS FOR APPROVAL TO PRACTICE**

(a) Prior to the performance of any medical acts, a nurse practitioner shall:

- (1) meet registration requirements as specified in 21 NCAC 32M .0103 of this Section;
- (2) submit an application for approval to practice; ~~practice on forms provided by the Board of Nursing and the Medical Board;~~
- (3) submit any additional information necessary to evaluate the application as requested; and
- (4) have a collaborative practice agreement with a primary supervising physician.

(b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(c) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.

(d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement and the nurse practitioner shall notify the Boards in writing. The Boards may extend the nurse practitioner's approval to practice in cases of emergency such as sudden injury, illness or death of the primary supervising physician.

(e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0103 of this Subchapter and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Subparagraph (a) of this Rule.

(f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (1) addition or change of primary supervising physician shall be submitted to both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

(g) Interim status for a nurse practitioner applicant shall be granted to a registered nurse who has met the registration requirements as set forth in Rule .0103 and .0105 of this Subchapter with the following limitations:

- (1) no prescribing privileges;

- (2) primary or back-up physicians shall be continuously available for ongoing supervision, collaboration, consultation and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
- (3) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0110(e)(3) of this Subchapter; and
- (4) shall not exceed six months.

(h) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0108(c) of this Subchapter; and
- (2) complete the appropriate application.

(i) Volunteer Approval to Practice. Both Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(j) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0115 of this Subchapter.

(k) A Nurse Practitioner approved under this Subchapter shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

*Authority G.S. 90-18(c)(14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42.*

#### **21 NCAC 32M .0106 ANNUAL RENEWAL**

(a) Each registered nurse who is approved to practice as a nurse practitioner in this state shall annually renew each approval to practice with the ~~Medical Board of Nursing~~ no later than 30 days after the nurse practitioner's birthday the last day of the nurse practitioner's birth month by:

- (1) Maintaining current RN licensure;
- (2) Submitting the fee required in Rule .0115 of this Subchapter; and
- (3) Completing the renewal ~~form~~ application.

(b) A nurse practitioner with first-time approval to practice after January 1, 2000, shall provide evidence of certification or recertification by a national credentialing body.

(c) If the nurse practitioner has not renewed ~~within 60 days of her/his birthday~~, by the last day of her/his birth month, the approval to practice as a nurse practitioner shall lapse.

*Authority G.S. 90-6; 90-18(14); 90-171.23(b).*

#### **21 NCAC 32M .0109 PRESCRIBING AUTHORITY**

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice

- agreement as outlined in Rule .0110(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
    - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
    - (B) dosage units for schedules II, IIN, III and IIIN are limited to a 30 day supply; and
    - (C) the prescription or order for schedules II, IIN, III and IIIN may not be refilled.
  - (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
    - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
    - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
  - (4) Refills may be issued for a period not to exceed one year except for schedules II, IIN, III and IIIN which may not be refilled.
  - (5) Each prescription shall be noted on the patient's chart and include the following information:
    - (A) medication and dosage;
    - (B) amount prescribed;
    - (C) directions for use;
    - (D) number of refills; and
    - (E) signature of nurse practitioner.
  - ~~(6) The prescribing number assigned by the Medical Board to the nurse practitioner shall appear on all prescriptions issued by the nurse practitioner.~~
  - ~~(7)~~(6) Prescription Format:
    - (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval prescribing number.
    - (B) The nurse practitioner's assigned DEA number shall be written on the

prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.

- (c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

*Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14); 90-171.42; 58 Fed. Reg. 31,171 (1993) (to be codified at 21 C.F.R. 1301).*

#### **21 NCAC 32M .0115 FEES**

- (a) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval to ~~practice,~~ practice and each subsequent application for approval to practice. ~~practice and annual renewal of approval to practice.~~ The application fee shall be twenty dollars (\$20.00) for the volunteer approval.
- (b) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (c) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (d) No portion of any fee in this Rule is refundable.

*Authority G.S. 90-6.*

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### **CHAPTER 36 - BOARD OF NURSING**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0109, .0112, .0120, .0201 - .0203, .0232, .0501, .0503 - .0506, .0602 - .0603, .0605, .0803 - .0804, .0806, .0809, and .0813.*

**Proposed Effective Date:** November 1, 2008

#### **Public Hearing:**

**Date:** September 19, 2008

**Time:** 1:00 p.m.

**Location:** NC Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC

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

**21 NCAC 36 .0109** – Clarify the process for posting information related Board elections and deadlines for receipt of information from potential candidates.

**21 NCAC 36 .0112** – Clarify that paragraph (a) relates to all licensed nurse members of the Board, except the RN At-Large Member.

**21 NCAC 36 .0120** – Clarify the definition of contact hour.

**21 NCAC 36 .0201 - .0203, .0232** – Changes to clarify with our current renewal process and continuing competence requirements.

**21 NCAC 36 .0501, .0503 - .0506, .0602 - .0603, .0605** – Clarify technical changes for improvement throughout the rules and decrease ambiguity.

**21 NCAC 36 .0803 - .0804, .0806, .0809, .0813** – The Board of Nursing and the Medical Board recently reviewed all nurse practitioner rules to improve clarity. Revision of the rules is necessary due to changes in the nurse practitioner requirements regarding higher degree, drug samples, application and renewal procedures.

**Procedure by which a person can object to the agency on a proposed rule:** Persons may submit objections to these rules by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, fax (919) 781-9461, email jeans@ncbon.com

**Comments may be submitted to:** Jean H. Stanley, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, phone (919) 782-3211 extension 252, fax (919) 781-9461, email jeans@ncbon.com

**Comment period ends:** September 19, 2008

**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 - GENERAL PROVISIONS**

**21 NCAC 36 .0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS**

(a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next year shall be announced in the last issue of the North Carolina Board of Nursing "Bulletin" for the calendar year, which shall be mailed to the address on record for each North Carolina licensed nurse and posted on the Board's website at [www.ncbon.com](http://www.ncbon.com). The "Bulletin" and website shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.

(b) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner holds a current

North Carolina license to practice nursing. If the nominee is not currently licensed, the petition shall be declared invalid. If any petitioners are not currently licensed and this decreases the number of petitioners to less than 10, the petition shall be declared invalid.

(c) On forms provided by the Board, each nominee shall:

- (1) indicate the category for which the nominee is seeking election;
- (2) attest to meeting the qualifications specified in G.S. 90-171.21(d); and
- (3) provide written permission to be listed on the ballot.

The forms must be received by the Board or postmarked on or before April 15, by April 15 at midnight.

(d) Minimum on-going employment requirements for the registered nurse or licensed practical nurse member shall include continuous employment equal to or greater than 50% of a full-time position that meets the criteria for the specified Board member position.

(e) This Paragraph applies in determining qualifications for registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a Board approved nursing program in the specific category as outlined in G.S. 90-171.21(d).
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing services to inpatients, but excludes nursing homes and adult care homes.
- (3) A hospital system is defined as a multihospital system, or a single diversified hospital system that includes a hospital as defined in Subparagraph (e)(2) of this Rule plus non-hospital preacute and postacute client services.
- (4) A nurse accountable for the administration of nursing services shall be the chief nurse executive of a hospital, hospital system, or the director of nursing services for a service division that includes inpatient care within a hospital or hospital system.
- (5) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist includes any advanced practice registered nurse who meets the criteria specified in G.S. 90-171.21(d)(4).

(f) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing at the appropriate licensure level for each category.

(g) A nominee shall be listed in only one category on the ballot.

(h) Separate slates shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in random order on the slate for licensed practical nurse nominees and within the categories for registered nurse nominees. Slates shall be published in the "Bulletin" and posted to the Board website following the Spring

Board meeting and shall be accompanied by biographical data on nominees and a passport-type photograph.

(i) The procedure for voting shall be identified in the "Bulletin" following the Spring Board meeting.

(j) The Board of Nursing may contract with a computer or other service to receive the votes and tabulate the results.

(k) The tabulation and verification of the tabulation of votes shall include the following:

- (1) The certificate number shall be provided for each individual voting; and
- (2) The certificate number shall be matched with the database from the Board.

(l) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.

(m) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:

- (1) the number of nurses eligible to vote;
- (2) the number of votes cast; and
- (3) the number of votes cast for each person on the slate.

(n) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

(o) All petitions to nominate a nurse, signed consents to appear on the slate, verifications of qualifications, and copies of the computerized validation and tabulation shall be retained for a period of three months following the close of an election.

*Authority G.S. 90-171.21; 90-171.23(b).*

## **21 NCAC 36 .0112 DETERMINATION OF VACANCY**

(a) Except for the RN At-Large Member, should a ~~licensed registered~~ nurse member of the Board cease to meet the employment criteria as defined in G.S. 90-171.21(d) and Rule .0109 Paragraphs (d) and (e) of this Section, the member shall have 60 days to resume employment in the designated area. If employment criteria for the specified area are not met within 60 days, the seat shall be declared vacant. Provided, however, that if such a change in employment for the specified category of Board member occurs within 18 months of the end of the member's term, such member may continue to serve until the end of the term.

(b) If at any time a registered nurse member no longer meets the eligibility requirements listed in G.S. 90-171.21(d)(1)(a) and (a1), such member shall no longer continue to serve and the position shall be declared vacant.

(c) If at any time a licensed practical nurse member no longer meets the eligibility requirements listed in G.S. 90-171.21(d)(2)(a) and (a1), such member shall no longer continue to serve and the position shall be declared vacant.

(d) Any vacancy of an unexpired term shall be filled according to G.S. 90-171.21(c).

*Authority G.S. 90-171.21(c); 90-171.23(b).*

## **21 NCAC 36 .0120 DEFINITIONS**

The following definitions shall apply throughout this chapter unless the context indicates otherwise:

- (1) "Academic term" means one semester of a school year.
- (2) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (3) "Accredited institution" means an institution accredited by a United States Department of Education approved institutional accrediting body.
- (4) "Active Practice" means activities that are performed, either for compensation or without compensation, consistent with the scope of practice for each level of licensee as defined in G.S. 90-171.20(4), (7) and (8).
- (5) "Advanced Practice Registered Nurse (APRN)" means for the purposes of Board qualification a nurse who meets the criteria specified in G.S. 90-171.21(d)(4).
- (6) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (7) "Clinical experience" means application of nursing knowledge in demonstrating clinical judgment.
- (8) "Clinical judgment" means the application of the nursing student's knowledge, skills, abilities and experience in making decisions about client care.
- (9) "Competent" means having the knowledge, skills and ability to safely perform an activity or role.
- (10) "Continuing Competence" means the on-going acquisition and application of knowledge and the decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in nursing care that contributes to the health and welfare of clients served.
- (11) "Contact ~~Hour~~ Hours" means 60 ~~50~~ minutes of an organized learning experience.
- (12) "Continuing Education Activity" means a planned, organized learning experience that is related to the practice of nursing or contributes to the competency of the nurse as defined in 21 NCAC 36 .0223 Subparagraph (a)(2).
- (13) "Controlling institution" means the degree-granting organization or hospital under which the nursing education program is operating.
- (14) "Curriculum" means an organized system of teaching and learning activities directed toward the achievement of specified learning objectives/outcomes.
- (15) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected

- situation. The nurse retains accountability for the delegation.
- (16) "Dimensions of Practice" means those aspects of nursing practice that include professional responsibility, knowledge-based practice, legal/ethical practice and collaborating with others, consistent with G.S. 90-171.20(4), (7) and (8).
- (17) "Distance education" means the teaching/learning strategies used to meet the learning needs of students, when the students and faculty are separate from each other.
- (18) "Faculty directed clinical practice" means the responsibility of nursing program faculty in overseeing student clinical learning including the utilization of preceptors.
- (19) "Focused client care experience" means a clinical experience that simulates an entry-level work experience. The intent is to assist the student to transition to an entry-level practice. There is no specific setting requirement. Supervision may be by faculty/preceptor dyad or direct faculty supervision.
- (20) "Interdisciplinary faculty" means faculty from professions other than nursing.
- (21) "Interdisciplinary team" means all individuals involved in providing a client's care, who cooperate, collaborate, communicate and integrate care to ensure that care is continuous and reliable.
- (22) "Level of Licensure" means practice of nursing by either a Licensed Practice Nurse or a Registered Nurse as defined in G.S. 90-171.20(7) and (8).
- (23) "Level of student" means the point in the program to which the student has progressed.
- (24) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the nursing program at any one time. The number reflects the capacity of the nursing program based on demonstrated resources sufficient to implement the curriculum.
- (25) "Methods of Instruction" means the planned process through which teacher and student interact with selected environment and content so that the response of the student gives evidence that learning has taken place. It is based upon stated course objectives/outcomes for learning experiences in classroom, laboratory and clinical settings.
- (26) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.
- (27) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.
- (28) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.
- (29) "Nursing Accreditation body" means a national nursing accrediting body, recognized by the United States Department of Education.
- (30) "Nursing program faculty" means individuals employed full or part time by academic institution responsible for developing, implementing, evaluation and updating nursing curricula.
- (31) "Nursing project" means a project or research study of a topic related to nursing practice that includes a problem statement, objectives, methodology and summary of findings.
- (32) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- (33) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in Section .0300.
- (34) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model and supervisor for a faculty directed clinical experience.
- (35) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.
- (36) "Program Closure" means to cease operation of a nursing program.
- (37) "Program Type" means a course of study that prepares an individual to function as an entry-level practitioner of nursing. The three program types are:
- (a) BSN - Curriculum components for Bachelor of Science in Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, nursing theory, nursing research, community and public health, health care policy, health care delivery and finance, communications, therapeutic interventions and current trends in health care. For this program type, the client is the individual, family, group, and community.
- (b) Associate Degree in Nursing (ADN)/Diploma in Registered Nursing - Curriculum components for the ADN/Diploma in Registered Nursing provides for the attainment of knowledge and skill sets in the

current practice in nursing, community concepts, health care delivery, communications, therapeutic interventions and current trends in health care. For this program type, client is the individual, group of individuals, and family.

- (c) Practical Nurse Diploma - Curriculum prepares for functioning in a dependent role in providing direct nursing care under the direction of a registered nurse or other health care provider as defined by the Nursing Practice Act. Curriculum components provide for the attainment of knowledge and skill sets in the current practice of practical nursing, communications, therapeutic interventions, including pharmacology, growth and development and current trends in health care. For this program type client is the individual, or group of individuals.
- (38) "Review" means collecting and analyzing information to assess compliance with Section .0300 of this Chapter. Information may be collected by multiple methods including review of written reports and materials, on-site observations and review of documents or in person or telephone interview(s) and conference(s)
- (39) "Rescind Approval" means a Board action that removes the approval status previously granted.
- (40) "Self Assessment" means the process whereby the individual reviews her/his own nursing practice and identifies the knowledge and skills possessed, as well as those skills to be strengthened.
- (41) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of that group of patients and the likely co-morbidities, interventions and responses to those problems.
- (42) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- (43) "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing nursing programs compliance with Section .0300 of this Chapter.

*Authority G.S. 90-171.23; 90-171.38.*

#### **SECTION .0200 - LICENSURE**

#### **21 NCAC 36 .0201 REGULAR RENEWAL**

(a) ~~Application forms for renewal~~ Renewal notices will be sent no less than 60 days prior to expiration date of a license to all registrants whose licenses are due for biennial renewal. The ~~forms-notices~~ will be mailed to each eligible registrant's last known address as it appears in the records of the Board. A license is issued for the following biennium when:

- (1) all required information is submitted as requested on the application form; and
- (2) ~~a certified or cashier's check or money order accompanies the application. A personal check for renewal fee is acceptable. However, the license will not be mailed until the check has been cleared through the bank.~~
- (2) all payment of required fees are received; and
- (b) It shall be the duty of each registrant to keep the Board informed of a current mailing address. Failure of the Board to send or of the registrant to receive a notice of renewal ~~an application form for renewal~~ shall not excuse the registrant from the requirements for license renewal.
- (c) Renewal applications must be postmarked on or before the date the current license expires.
- (d) Applicants for license renewal may be required to demonstrate evidence of behavior competent to practice nursing if required by the Board for just cause.

*Authority G.S. 90-171.23(b); 90-171.34; 90-171.37.*

#### **21 NCAC 36 .0202 INACTIVE AND RETIRED STATUS**

(a) A registrant whose licensure status is inactive and who desires to resume the practice of nursing in North Carolina shall be removed from inactive status and shall obtain a current license. To this end the registrant shall:

- (1) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (2) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- (3) submit evidence showing that the nurse is safe and competent to re-enter the practice of nursing; ~~and~~
- (4) submit the current fee for renewal; ~~and renewal.~~
- (5) attest to having completed Continuing Competence requirements and be prepared to submit evidence of completion if requested by the Board as specified in 21 NCAC 36 .0232(b).
- (b) The registrant whose license has been inactive for a period of five years or more shall also submit:
  - (1) self-certification that the registrant is of mental and physical health necessary to competently practice nursing;
  - (2) evidence of competency to resume the practice of nursing through:
    - (A) satisfactory completion of a Board-approved course; or

(B) an active license in another jurisdiction within the last five years.

(c) If a refresher course is required, the registrant shall apply for reactivation of license within one year of completing the refresher course in order to receive a current license. The application for reactivation shall include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives.

(d) The Board shall decline to reactivate a license if it is not satisfied as to the applicant's competency to practice nursing.

(e) A registrant who has retired from the practice of nursing may request and be granted by the Board retired nurse status, provided the registrant:

- (1) holds a current unencumbered license issued by the North Carolina Board of Nursing;
- (2) is not currently the subject of an investigation by this Board for possible violation of the Nursing Practice Act; and
- (3) pay the application fee pursuant to G.S. 90-171.27(b).

(f) While remaining on retired status, the registrant shall not practice nursing in North Carolina and shall not be subject to payment of the license renewal fee.

(g) The registrant may use the title Retired Registered Nurse or Retired Licensed Practical Nurse once issued retired status.

(h) The registrant whose licensure status is retired shall not be eligible to vote in Board elections.

(i) A registrant whose licensure status is retired and who desires to resume the practice of nursing shall apply for reinstatement of a license to practice nursing and meet the same reinstatement requirements for a nurse on inactive status as set forth in Paragraphs (b)–(e) of this Rule.

*Authority G.S. 90-171.21; 90-171.23(b); 90-171.27(b); 90-171.36; 90-171.36A; 90-171.37; 90-171.43.*

## **21 NCAC 36 .0203 REINSTATEMENT OF LAPSED LICENSE**

(a) The registrant whose license has lapsed and who desires reinstatement of that license shall:

- (1) furnish information required on forms provided by the Board;
- (2) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (3) attest to having completed Continuing Competence requirements and be prepared to submit evidence of completion if requested by the Board as specified in 21 NCAC 36 .0232(b).
- ~~(4)(3)~~ submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- ~~(5)(4)~~ submit such other evidence that the Board may require to determine whether the license should be reinstated;
- ~~(6)(5)~~ provide a statement of the reason for failure to apply for renewal prior to the deadline; and

~~(7)(6)~~ submit payment of reinstatement and renewal fee.

(b) The registrant whose license has lapsed for a period of five years or more shall also submit:

- (1) evidence of mental and physical health necessary to competently practice nursing;
- (2) evidence of satisfactory completion of a Board-approved refresher course or proof of active licensure within the past five years in another jurisdiction; and
- (3) a recent photograph for identification purposes, if deemed necessary.

(c) If a refresher course is required, the registrant shall apply for reinstatement of the license within one year of completing the refresher course in order to receive a current license. The application for reinstatement shall include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.

(d) The Board may decline to reinstate a license if it is not satisfied as to the applicant's ability to practice nursing.

*Authority G.S. 90-171.23(b); 90-171.35; 90-171.37.*

## **21 NCAC 36 .0232 CONTINUING COMPETENCE**

(a) Effective July 1, 2006, upon application for license renewal or reinstatement, each licensee shall:

- (1) Complete a self-assessment of practice including the dimensions of: professional responsibility, knowledge based practice, legal/ethical practice and collaborating with others;
- (2) Develop a plan for continued learning; and
- (3) Select and implement a learning activity option from those outlined in Paragraph (b) of this Rule.

(b) Effective July 1, 2008, upon application for license renewal or reinstatement, each licensee shall attest to having completed one of the following learning activity options during the preceding renewal cycle and be prepared to submit evidence of completion if requested by the Board:

- (1) National Certification or re-certification related to the nurse's practice role by a national credentialing body recognized by the Board, consistent with 21 NCAC 36 .0120 and 21 NCAC 36 .0801;
- (2) Thirty contact hours of continuing education activities related to the nurse's practice;
- (3) Completion of a Board approved refresher course, consistent with 21 NCAC 36 .0220 and 21 NCAC 36 .0808(d);
- (4) Completion of a minimum of two semester hours of post-licensure academic education related to nursing practice;
- (5) Fifteen contact hours of a continuing education activity related to the nurse's practice and completion of a nursing project as principal or co-principal investigator to include a statement

- of the problem, project objectives, methods and summary of findings;
- (6) Fifteen contact hours of a continuing education activity related to the nurse's practice and authoring or co-authoring a published nursing-related article, paper, book or book chapter;
  - (7) Fifteen contact hours of a continuing education activity related to the nurse's practice and designing, developing, and conducting an educational presentation or presentations totaling a minimum of five contact hours for nurses or other health professionals; or
  - (8) Fifteen contact hours of a continuing education activity related to the nurse's practice and 640 hours of active practice within the previous two years.
- (c) The following documentation shall be accepted as evidence of completion of learning activity options outlined in Paragraph (b) of this Rule:
- (1) Evidence of national certification shall include a copy of a certificate which includes name of licensee, name of certifying body, date of certification, date of certification expiration. Certification shall be initially attained during the licensure period, or have been in effect during the entire licensure period, or have been re-certified during the licensure period.
  - (2) Evidence of contact hours of continuing education shall include the name of the licensee; title of educational activity, name of the provider, number of contact hours and date of activity.
  - (3) Evidence of completion of a Board approved refresher course shall include written correspondence from the provider with the name of the licensee, name of the provider, and verification of successful completion of the course.
  - (4) Evidence of post-licensure academic education shall include a copy of transcript with the name of the licensee, name of educational institution, date of attendance, name of course with grade and number of credit hours received.
  - (5) Evidence of completion of a nursing project shall include an abstract or summary of the project, the name of the licensee, role of the licensee as principal or co-principal investigator, date of project completion, statement of the problem, project objectives, methods used and summary of findings.
  - (6) Evidence of authoring or co-authoring a published nursing-related article, paper, book or book chapter which shall include a copy of the publication to include the name of the licensee and publication date.
  - (7) Evidence of developing and conducting an educational presentation or presentations totaling at least five contact hours for nurses or

other health professionals shall include a copy of program brochure or course syllabi, objectives, content and teaching methods, and date and location of presentation.

- (8) Evidence of 640 hours of active practice in nursing shall include documentation of the name of the licensee, number of hours worked in calendar or fiscal year, name and address of employer and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency.

(d) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (b) of this Rule throughout the renewal cycle.

(e) Effective July 1, 2008, at the time of license renewal or reinstatement, licensees ~~may~~shall be subject to ~~random~~ audit for proof of compliance with the Board's requirements for continuing competence.

(f) The Board shall inform licensees of their selection for audit upon notice of license renewal or request for reinstatement. Documentation of acceptable evidence shall be consistent with Paragraph (c) of this Rule and shall be submitted to the Board no later than the last day of the renewal month.

(g) Failure of a licensee to meet the requirements of this Rule shall result in disciplinary action pursuant to G.S. 90-171.37 and 21 NCAC 36 .0217.

*Authority G.S. 90-171.23(b); 90-171.37(1) and (8).*

## **SECTION .0500 - PROFESSIONAL CORPORATIONS**

### **21 NCAC 36 .0501      AUTHORITY AND DEFINITIONS**

(a) Chapter 55B of the General Statutes of North Carolina, the "Professional Corporation Act," authorizes the North Carolina Board of Nursing to adopt regulations for professional corporations whose purpose is the provision of nursing and related services.

(b) The rules in this Section supplement the basic statutory law governing professional corporations and shall be interpreted so as not to conflict with such statutory law, as it may be amended from time to time, or with other statutes and laws governing corporations generally.

(c) "Board" means the North Carolina Board of Nursing.

(d) "Nursing and Related Services" means those activities through which nursing, as defined in G.S. 90-171.20(4), is practiced.

(e) "Licensee" means any individual who is duly licensed to practice nursing in North Carolina as a registered nurse.

(f) "Professional Corporation" means professional corporations organized for the purpose of providing nursing related services in North Carolina.

(g) "Director" means the Executive Director of the North Carolina Board of Nursing.

~~(h) "Assistant" means the Administrative Assistant to the Executive Director of the North Carolina Board of Nursing.~~



Authority G.S. 55B-2; 55B-12; 90-171.20.

**21 NCAC 36 .0503 PREREQUISITES FOR INCORPORATION**

The following requirements must be met in order to incorporate:

- (1) The incorporator, whether one or more, of a professional corporation shall be duly licensed to practice nursing in North Carolina as a registered nurse.
- (2) Before the filing of the articles of incorporation with the Secretary of State, the incorporators shall file, with the ~~assistant to the~~ Board, the original articles of incorporation, plus a copy, together with a registration fee of fifty dollars (\$50.00).
- (3) The original articles of incorporation and the copy shall be accompanied by an application to the Board (Corp. Form 1) certified by all incorporators, setting forth the names, addresses, and certificate numbers of each shareholder of ~~said the~~ corporation who will be practicing nursing for ~~said the~~ corporation.
- (4) Included with the above shall be a statement that all such persons are duly licensed to practice nursing in North Carolina as a registered nurse, and stating that the corporation will be conducted in compliance with the Professional Corporation Act and these Rules, Regulations.
- (5) If the articles are changed in any manner before being filed with the Secretary of State, they shall be re-submitted to the ~~assistant of the~~ Board and shall not be filed with the Secretary of State until approved by the ~~assistant of the~~ Board.

Authority G.S. 55B-4; 55B-10; 55B-12; 90-171.20(6).

**21 NCAC 36 .0504 CERTIFICATE OF REGISTRATION**

The Certificate of Registration shall be issued as follows:

- (1) The Director or Assistant shall issue a Certificate of Registration (Corp. Form 2) for the professional corporation to become effective only when the professional corporation files the articles of incorporation with the Secretary of State and if:
  - (a) the Director or Assistant of the Board finds that no disciplinary action is pending before the Board against any of the licensed incorporators or persons who will be directors, officers, or shareholders of such corporation; and
  - (b) it appears to the Director or Assistant that such corporation will be conducted in compliance with the law and rules, regulations.

- (2) The proposed original articles of incorporation, and the Certification of Registration, will be returned to the incorporators for filing with the Secretary of State. ~~The~~ A copy of the articles of incorporation and a copy of the Certificate of Registration ~~certification~~ will be retained in the Board office ~~office of the assistant~~. If the required findings cannot be made, the registration fee shall be refunded to the incorporators.
- (3) The initial Certificate of Registration shall remain in effect until December 31, of the year in which it was issued unless suspended or terminated as provided by law. The Certificate of Registration shall be renewed annually thereafter.
- (4) At least 20 days prior to the date of expiration of the certificate, the corporation ~~should~~ shall submit its written application for renewal ~~upon~~ on a form ~~as~~ provided by the Board (Corp. Form 3), ~~said application to be accompanied by~~ along with a check in the amount of twenty-five dollars (\$25.00) in payment of the renewal fee.

Authority G.S. 55B-12; 90-171.20(6).

**21 NCAC 36 .0505 GENERAL AND ADMINISTRATIVE PROVISIONS**

The following general provisions shall apply to all incorporating professional ~~corporations~~ associations:

- (1) If the Director or Assistant ~~should decline~~ declines to issue a Certificate of Registration required by 21 NCAC 36 .0504 (a)(1), or ~~decline declines~~ to renew the same when properly requested, or ~~shall refuse~~ refuses to take any other ~~action~~ action ~~of him/her in writing by a professional corporation~~, the aggrieved party may request, in writing, a review of such action by the Board, and the Board shall provide a formal hearing for such aggrieved party before a majority of the Board.
- (2) All amendments to charters of professional corporations, all merger and consolidation agreements to which a professional corporation is a party, and all dissolution proceedings and similar changes in the corporate structure of a professional corporation shall be filed with the Director or Assistant of the Board for approval before being filed with the Secretary of State. A true copy of the changes filed with the Secretary of State shall be filed with the ~~assistant of the~~ Board within ten days after filing ~~the same are filed~~ with the Secretary of State.
- (3) The Director or ~~Assistant~~ assistant is authorized to issue the certificate (Corp. Form

4) required by G.S. 55B-6 when stock is transferred in a professional corporation, and such certificate shall be permanently attached to the stub of the transferee's certificate in the stock book of the professional corporation.

*Authority G.S. 55B-6; 55B-12; 90-171.20(6);*

#### **21 NCAC 36 .0506 FORMS**

The following forms may be ~~obtained~~~~secured~~ from the office of the Board of Nursing regarding professional corporations:

- (1) ~~Regulations~~~~Rules~~ adopted by the North Carolina Board of Nursing relating to Professional Corporations whose purpose is providing nursing related services;
- (2) Corp. Form 1 - Certificate of Incorporator(s) and Application for a Certificate of Registration for a Professional Corporation;
- (3) Corp. Form 2 - Certificate of Registration of a Professional Corporation for the Purpose of Providing Nursing Related Services;
- (4) Corp. Form 3 - Application for Renewal of Certificate of Registration; and
- (5) Corp. Form 4 - Certificate Authorizing Transfer of Stock in Professional Corporation Organized to Provide Nursing Related Services.

*Authority G.S. 55B-12; 90-171.20(6).*

### **SECTION .0600 - ARTICLES OF ORGANIZATION**

#### **21 NCAC 36 .0602 PREREQUISITES FOR ORGANIZATION**

(a) Before filing the articles of organization for a limited liability company with the Secretary of State, the organizing members shall submit the following to the Board:

- (1) a registration fee as set by Rule .0606 of this Section; and
- (2) a certificate certified by those registered nurse organizing members, setting forth the names, addresses, ~~social security~~ and license numbers of each person who will be employed by the limited liability company to practice nursing and related services as specified in G.S. 55B14(c)(2), (4) - (6), and stating that all such persons are duly licensed to practice nursing in North Carolina, and representing that the company will be conducted in compliance with law and these Rules~~the General Statutes of North Carolina Articles of Organization and this Subchapter~~.

(b) A certification that each of those organizing members who may provide nursing and related services as specified in G.S. 55B-14(c)(2), (4) - (6) is licensed to practice nursing in North Carolina shall be returned to the limited liability company for filing with the Secretary of State.

*Authority G.S. 55B-4; 55B-10; 55B-12; 55B-14; 57C-2-01.*

#### **21 NCAC 36 .0603 CERTIFICATE OF REGISTRATION**

(a) A Certificate of Registration for a Limited Liability Company shall remain effective until December 31 of the year in which it was issued unless suspended or terminated as provided by law.

(b) A Certificate of Registration shall be renewed annually on application forms supplied by the Board. The application shall be accompanied by a renewal fee as set by Rule .0605 ~~.0606~~ of this Section.

*Authority G.S. 55B-10; 55B-11; 57C-2-01.*

#### **21 NCAC 36 .0605 FEES**

(a) The ~~fee for an initial Certificate of Registration~~~~registration fee for a Limited Liability Company~~ is fifty dollars (\$50.00).

(b) The fee for renewal of a Certificate of Registration is twenty-five dollars (\$25.00).

*Authority G.S. 55B-10; 55B-11; 57C-2-01.*

### **SECTION .0800 – APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS**

#### **21 NCAC 36 .0803 NURSE PRACTITIONER REGISTRATION**

(a) The Board of Nursing shall register an applicant who:

- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
- (2) has successfully completed a nurse practitioner education program as outlined in Rule .0805 of this Section;
- (3) is certified as a nurse practitioner by a national credentialing body consistent with 21 NCAC 36 .0120(7) and (9); and
- (4) has supplied additional information necessary to evaluate the application as requested.

(b) Beginning January 1, 2005, new graduates of a nurse practitioner program, who are seeking first-time nurse practitioner registration in North Carolina shall:

- (1) hold a Master's ~~Degree or higher degree~~ in Nursing or related field with primary focus on Nursing;
- (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body; and
- (3) provide documentation of certification by a national credentialing body.

*Authority G.S. 90-18(13); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.83.*

**21 NCAC 36 .0804      PROCESS FOR APPROVAL TO PRACTICE**

(a) Prior to the performance of any medical acts, a nurse practitioner shall:

- (1) meet registration requirements as specified in 21 NCAC 36 .0803 of this Section;
- (2) submit an application for approval to practice; ~~practice on forms provided by the Board of Nursing and the Medical Board.~~
- (3) submit any additional information necessary to evaluate the application as requested; and
- (4) have a collaborative practice agreement with a primary supervising physician.

(b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(c) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.

(d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement, or experiences an interruption in her/his registered nurse licensure status, and the nurse practitioner shall notify both Boards in writing. The Boards may extend the nurse practitioner's approval to practice in cases of emergency such as injury, sudden illness or death of the primary supervising physician.

(e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0803 and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Paragraph (a) of this Rule.

(f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (1) addition or change of primary supervising physician shall be submitted to both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

(g) Interim status for a nurse practitioner applicant shall be granted to: a registered nurse who has met the registration requirements as set forth in Rules .0803 and .0805 of this Section with the following limitations:

- (1) no prescribing privileges;
- (2) primary or back-up physicians shall be continuously available for ongoing supervision, collaboration, consultation and countersigning of notations of medical acts in

all patient charts within two working days of nurse practitioner applicant-patient contact;

- (3) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0810(e)(3) of this Section; and
- (4) shall not exceed six months.

(h) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0808(c) of this Section; and
- (2) complete the appropriate application.

(i) Volunteer Approval to Practice. Both Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(j) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0813 of this Section.

(k) A Nurse Practitioner approved under this Section shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

*Authority G. S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b).*

**21 NCAC 36 .0806      ANNUAL RENEWAL**

(a) Each registered nurse who is approved to practice as a nurse practitioner in this state shall annually renew each approval to practice with the Medical Board of Nursing no later than 30 days after the nurse practitioner's birthday the last day of the nurse practitioner's birth month by:

- (1) Maintaining current RN licensure;
- (2) Submitting the fee required in Rule .0813 of this Section; and
- (3) Completing the renewal application form.

(b) A nurse practitioner with first-time approval to practice after January 1, 2000, shall provide evidence of certification or recertification by a national credentialing body.

(c) If the nurse practitioner has not renewed within 60 days of her/his birthday, by the last day of her/his birth month, the approval to practice as a nurse practitioner shall lapse.

*Authority G.S. 90-6; 90-18(14) 90-171.23(b); 90-171.83.*

**21 NCAC 36 .0809      PRESCRIBING AUTHORITY**

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0810(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal

- Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
- (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
  - (B) dosage units for schedules II, IIN, III, and IIIN are limited to a 30 day supply; and
  - (C) the prescription or order for schedules II, IIN, III, and IIIN may not be refilled.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
- (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
  - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year except for schedules II, IIN, III, and IIIN, which may not be refilled.
- (5) Each prescription shall be noted on the patient's chart and include the following information:
- (A) medication and dosage;
  - (B) amount prescribed;
  - (C) directions for use;
  - (D) number of refills; and
  - (E) signature of nurse practitioner.
- ~~(6) The prescribing number assigned by the Medical Board to the nurse practitioner shall appear on all prescriptions issued by the nurse practitioner.~~
- ~~(6)(7)~~ Prescription Format:
- (A) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval~~prescribing~~ number;
  - (B) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 36 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.
- Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(b)(14).*
- 21 NCAC 36 .0813 FEES**
- (a) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval to ~~practice,~~ practice and each subsequent application for approval to ~~practice.~~ practice and annual renewal of approval to practice. The application fee shall be twenty dollars (\$20.00) for volunteer approval.
- (b) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (c) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (d) No portion of any fee in this Rule is refundable.
- Authority G.S. 90-6; 90-171.23(b)(14).*

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**APPROVED RULES**

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*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 May 15, 2008.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****SOCIAL SERVICES COMMISSION**

<u>Forms</u>	10A NCAC	67A	.0107	22:14 NCR
<u>Scope</u>	10A NCAC	72	.0101	22:16 NCR
<u>Definitions</u>	10A NCAC	72	.0102*	22:16 NCR
<u>General Rule</u>	10A NCAC	72	.0201*	22:16 NCR
<u>Satisfactory Progress Requirement</u>	10A NCAC	72	.0202*	22:16 NCR
<u>Limitations of Award</u>	10A NCAC	72	.0203*	22:16 NCR
<u>Scholarship Application Procedures</u>	10A NCAC	72	.0301*	22:16 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Compliance With Emission Control Standards</u>	15A NCAC	02D	.0501*	22:08 NCR
<u>Fluoride Emissions from Primary Aluminum Reduction Plants</u>	15A NCAC	02D	.0529*	22:08 NCR
<u>Excess Emissions Reporting and Malfunctions</u>	15A NCAC	02D	.0535*	22:08 NCR
<u>Particulate Emissions From Electric Utility Boilers</u>	15A NCAC	02D	.0536*	22:08 NCR
<u>Control of Particulate Emissions From Cotton Ginning Oper...</u>	15A NCAC	02D	.0542*	22:08 NCR
<u>Sources Covered by Appendix P of 40 CFR 51</u>	15A NCAC	02D	.0606*	22:08 NCR
<u>Other Large Coal or Residual Oil Boilers</u>	15A NCAC	02D	.0608*	22:08 NCR
<u>Definitions</u>	15A NCAC	02D	.0901*	22:08 NCR
<u>General Provisions On Test Methods and Procedures</u>	15A NCAC	02D	.0912	22:08 NCR
<u>Determination of Volatile Content of Surface Coatings</u>	15A NCAC	02D	.0913	22:08 NCR
<u>Determination of Voc Emission Control System Efficiency</u>	15A NCAC	02D	.0914	22:08 NCR
<u>Determination of Solvent Metal Cleaning Voc Emissions</u>	15A NCAC	02D	.0915	22:08 NCR
<u>Determination: Voc Emissions from Bulk Gasoline Terminals</u>	15A NCAC	02D	.0916	22:08 NCR
<u>Gasoline Truck Tanks and Vapor Collection Systems</u>	15A NCAC	02D	.0932*	22:08 NCR
<u>Determination of Volatile Organic Compound Emissions</u>	15A NCAC	02D	.0939	22:08 NCR
<u>Determination of Leak Tightness and Vapor Leaks</u>	15A NCAC	02D	.0940	22:08 NCR
<u>Alternative Method for Leak Tightness</u>	15A NCAC	02D	.0941	22:08 NCR
<u>Determination of Solvent in Filter Waste</u>	15A NCAC	02D	.0942	22:08 NCR
<u>Synthetic Organic Chemical and Polymer Manufacturing</u>	15A NCAC	02D	.0943*	22:08 NCR

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**APPROVED RULES**

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<u>Petroleum Dry Cleaning</u>	15A NCAC	02D	.0945*	22:08 NCR
<u>Toxic Air Pollutant Guidelines</u>	15A NCAC	02D	.1104	22:08 NCR
<u>National Emission Standards For Hazardous Air Pollutants</u>	15A NCAC	02D	.1110	22:08 NCR
<u>Hazardous Waste Incinerators</u>	15A NCAC	02D	.1203	22:08 NCR
<u>Sewage Sludge and Incinerators</u>	15A NCAC	02D	.1204	22:08 NCR
<u>Hospital, Medical, and Infectious Waste Incinerators</u>	15A NCAC	02D	.1206	22:08 NCR
<u>Other Incinerators</u>	15A NCAC	02D	.1208*	22:08 NCR
<u>Commercial and Industrial Solid Waste Incineration Units</u>	15A NCAC	02D	.1210*	22:08 NCR
<u>Applicability</u>	15A NCAC	02D	.1402*	22:08 NCR
<u>Recordkeeping: Reporting: Monitoring</u>	15A NCAC	02D	.1404*	22:08 NCR
<u>Boilers and Indirect-Fired Process Heaters</u>	15A NCAC	02D	.1407*	22:08 NCR
<u>Stationary Combustion Turbines</u>	15A NCAC	02D	.1408*	22:08 NCR
<u>Stationary Internal Combustion Engines</u>	15A NCAC	02D	.1409*	22:08 NCR
<u>Emissions Averaging</u>	15A NCAC	02D	.1410	22:08 NCR
<u>Seasonal Fuel Switching</u>	15A NCAC	02D	.1411	22:08 NCR
<u>Petition for Alternative Limitations</u>	15A NCAC	02D	.1412	22:08 NCR
<u>Test Methods and Procedures</u>	15A NCAC	02D	.1415	22:08 NCR
<u>Emission Allocations for Utility Companies</u>	15A NCAC	02D	.1416	22:08 NCR
<u>Emission Allocations for Large Combustion Sources</u>	15A NCAC	02D	.1417	22:08 NCR
<u>New Electric Generating Units, Large Boilers, and Large L...</u>	15A NCAC	02D	.1418	22:08 NCR
<u>Nitrogen Oxide Budget Trading Program</u>	15A NCAC	02D	.1419	22:08 NCR
<u>Periodic Review and Reallocations</u>	15A NCAC	02D	.1420	22:08 NCR
<u>Allocations for New Growth of Major Point Sources</u>	15A NCAC	02D	.1421	22:08 NCR
<u>Compliance Supplement Pool Credits</u>	15A NCAC	02D	.1422	22:08 NCR
<u>Purpose and Scope</u>	15A NCAC	02D	.2601	22:08 NCR
<u>Number of Test Points</u>	15A NCAC	02D	.2604*	22:08 NCR
<u>Velocity and Volume Flow Rate</u>	15A NCAC	02D	.2605	22:08 NCR
<u>Molecular Weight</u>	15A NCAC	02D	.2606*	22:08 NCR
<u>Determination of Moisture Content</u>	15A NCAC	02D	.2607	22:08 NCR
<u>Number of Runs and Compliance Determination</u>	15A NCAC	02D	.2608*	22:08 NCR
<u>Particulate Testing Methods</u>	15A NCAC	02D	.2609*	22:08 NCR
<u>Opacity</u>	15A NCAC	02D	.2610*	22:08 NCR
<u>Sulfur Dioxide Testing Methods</u>	15A NCAC	02D	.2611*	22:08 NCR
<u>Nitrogen Oxide Testing Methods</u>	15A NCAC	02D	.2612	22:08 NCR
<u>Volatile Organic Compound Testing Methods</u>	15A NCAC	02D	.2613*	22:08 NCR
<u>Determination of Voc Emission Control System Efficiency</u>	15A NCAC	02D	.2614	22:08 NCR
<u>Determination of Leak Tightness and Vapor Leaks</u>	15A NCAC	02D	.2615*	22:08 NCR
<u>Fluorides</u>	15A NCAC	02D	.2616	22:08 NCR
<u>Total Reduced Sulfur</u>	15A NCAC	02D	.2617*	22:08 NCR
<u>Mercury</u>	15A NCAC	02D	.2618	22:08 NCR
<u>Arsenic, Beryllium, Cadmium, Hexavalent Chromium</u>	15A NCAC	02D	.2619	22:08 NCR
<u>Dioxins and Furans</u>	15A NCAC	02D	.2620	22:08 NCR

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**APPROVED RULES**

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<u>Determination of Fuel Heat Content Using F-Factor</u>	15A NCAC	02D	.2621	22:08 NCR
<u>Permit Content</u>	15A NCAC	02Q	.0508*	22:08 NCR
<u>Changes Not Requiring Permit Revisions</u>	15A NCAC	02Q	.0523*	22:08 NCR
<u>Emission Rates Requiring a Permit</u>	15A NCAC	02Q	.0711*	22:08 NCR
<u>Emergency Generators</u>	15A NCAC	02Q	.0903	22:08 NCR

**SOIL AND WATER CONSERVATION COMMISSION**

<u>Cost Share Agreement</u>	15A NCAC	06E	.0107*	22:09 NCR
<u>Cost Share Agreement</u>	15A NCAC	06I	.0107*	22:09 NCR

**WILDLIFE RESOURCES COMMISSION**

<u>Deer (White Tailed)</u>	15A NCAC	10B	.0203*	22:11 NCR
<u>Threatened Species</u>	15A NCAC	10I	.0104*	22:11 NCR

**BARBER EXAMINERS, BOARD OF**

<u>Physical and Mailing Address</u>	21	NCAC	06A	.0102*	22:12 NCR
<u>Office Hours</u>	21	NCAC	06A	.0103*	22:12 NCR
<u>Mailing Address</u>	21	NCAC	06A	.0104	22:12 NCR
<u>Location of Hearings</u>	21	NCAC	06B	.0301*	22:12 NCR
<u>Power to Issue</u>	21	NCAC	06B	.0401	22:12 NCR
<u>Length of Effectiveness</u>	21	NCAC	06B	.0402	22:12 NCR
<u>Request for Declaratory Ruling</u>	21	NCAC	06B	.0501*	22:12 NCR
<u>Request After Informal Efforts</u>	21	NCAC	06C	.0203	22:12 NCR
<u>Acknowledgement</u>	21	NCAC	06C	.0205*	22:12 NCR
<u>Bias of Board Member</u>	21	NCAC	06C	.0903	22:12 NCR
<u>Physical Structure</u>	21	NCAC	06F	.0101*	22:12 NCR
<u>Filing</u>	21	NCAC	06F	.0103*	22:12 NCR
<u>Instructions</u>	21	NCAC	06F	.0104*	22:12 NCR
<u>Roster and Student Records</u>	21	NCAC	06F	.0110*	22:12 NCR
<u>Copies of Barber School Records</u>	21	NCAC	06F	.0111*	22:12 NCR
<u>Student Permit</u>	21	NCAC	06F	.0113*	22:12 NCR
<u>Barber School Curricula</u>	21	NCAC	06F	.0120	22:12 NCR
<u>Penal Institutions</u>	21	NCAC	06F	.0121	22:12 NCR
<u>Duties and Responsibilities</u>	21	NCAC	06H	.0101*	22:12 NCR
<u>Apprentice Barber</u>	21	NCAC	06I	.0105*	22:12 NCR
<u>Registered Apprentice</u>	21	NCAC	06J	.0101*	22:12 NCR
<u>Identification</u>	21	NCAC	06J	.0109*	22:12 NCR
<u>Registered Barber</u>	21	NCAC	06K	.0101*	22:12 NCR
<u>Identification</u>	21	NCAC	06K	.0110*	22:12 NCR
<u>Measurements of Barber Shop</u>	21	NCAC	06L	.0102*	22:12 NCR
<u>Equipment</u>	21	NCAC	06L	.0103*	22:12 NCR
<u>Separation From Other Businesses; Residential Shops;</u>	21	NCAC	06L	.0106*	22:12 NCR
<u>Lavatory</u>	21	NCAC	06L	.0107*	22:12 NCR
<u>Where Barber Services May Be Performed</u>	21	NCAC	06L	.0111*	22:12 NCR

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**APPROVED RULES**

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<u>Rented Booth Space</u>	21	NCAC	06L	.0112	22:12 NCR
<u>Diseases</u>	21	NCAC	06L	.0113*	22:12 NCR
<u>Policy Prohibiting Pets</u>	21	NCAC	06L	.0114*	22:12 NCR
<u>Inspections of Shops</u>	21	NCAC	06L	.0115*	22:12 NCR
<u>Other Duties of Barber Shop Owners and Managers</u>	21	NCAC	06L	.0116*	22:12 NCR
<u>General Standards</u>	21	NCAC	06L	.0117	22:12 NCR
<u>Sanitary Ratings and Posting of Ratings</u>	21	NCAC	06L	.0118*	22:12 NCR
<u>Systems of Grading Barber Shops</u>	21	NCAC	06L	.0119*	22:12 NCR
<u>Duties and Responsibilities</u>	21	NCAC	06M	.0102*	22:12 NCR
<u>Fees</u>	21	NCAC	06N	.0101	22:12 NCR
<u>Identification</u>	21	NCAC	06O	.0112*	22:12 NCR
<u>Barber Shops in Residences and Mobile Homes</u>	21	NCAC	06O	.0113	22:12 NCR
<u>Animals in Barber Shops</u>	21	NCAC	06O	.0114*	22:12 NCR
<u>School Failing to Maintain or Falsifying Records</u>	21	NCAC	06O	.0115*	22:12 NCR
<u>Barbering</u>	21	NCAC	06P	.0101	22:12 NCR
<u>Barbering Exemptions</u>	21	NCAC	06P	.0102	22:12 NCR
<u>General Definitions</u>	21	NCAC	06P	.0103*	22:12 NCR
<u>Additional Grounds for Denial or Discipline</u>	21	NCAC	06Q	.0101*	22:12 NCR
<u>Effect of Child Support Default on License or Cert.</u>	21	NCAC	06Q	.0102*	22:12 NCR
<u>Registered Sex Offender</u>	21	NCAC	06Q	.0103	22:12 NCR
<u>Display of Sign or Barber Pole</u>	21	NCAC	06R	.0101*	22:12 NCR

**COMMUNITY COLLEGES, BOARD OF**

<u>Limitations in Reporting Student Membership Hours</u>	23	NCAC	02D	.0325*	22:07 NCR
<u>Training for Public Safety Agencies</u>	23	NCAC	02E	.0405*	22:06 NCR

**STATE PERSONNEL COMMISSION**

<u>Employment Contracts</u>	25	NCAC	01C	.0215*	22:14 NCR
<u>General Provisions</u>	25	NCAC	01H	.0701	22:14 NCR
<u>Claiming Veterans' Preference</u>	25	NCAC	01H	.1102	22:14 NCR
<u>Allegation of Denial of Veterans Preference</u>	25	NCAC	01H	.1103	22:14 NCR
<u>Application of Veterans Preference</u>	25	NCAC	01H	.1104*	22:14 NCR
<u>Just Cause for Disciplinary Action</u>	25	NCAC	01I	.2301	22:14 NCR

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**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES****10A NCAC 67A .0107 FORMS**

(a) In order to comply with the budgeting, planning and reimbursement requirements of G.S. Chapter 108A and 45 CFR 228.17, each county department of social services shall complete all forms specified by the Department of Health and Human Services.

(b) The forms, initial service client information record, and service client information change notice, shall be completed by the case manager for each client requesting social services. All required fields must be completed and required fields not properly completed shall be considered an error and returned to

the worker. Clients may refuse to provide their social security numbers and shall not be denied benefits, but the worker identification numbers of case managers are required in order to allocate costs for federal financial participation.

(c) The form, worker daily report of services to clients, shall be completed by the county services workers and division of services for the blind services workers. This form provides information to meet reporting requirements at the federal, state and local levels and will provide the basis for county reimbursement. All required fields must be completed and required fields not properly completed shall be considered an error and returned to the worker. The worker identification numbers of service workers are required in order to allocate costs for federal financial participation.



*History Note:* Authority G.S. 75-62; 143B-153; 45 CFR 228.17; 5 USC 552a;  
*Eff. August 15, 1980;*  
*Amended Eff. September 1, 2008; December 1, 2007; March 1, 1990; January 1, 1983.*

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**10A NCAC 72 .0101 SCOPE**

The rules in this Chapter implement the North Carolina Child Welfare Postsecondary Educational Support Program established by section 10.34(a) of Session Law 2007-323.

*History Note:* Authority S.L. 2007-323, s. 10.34;  
*Eff. June 1, 2008.*

**10A NCAC 72 .0102 DEFINITIONS**

Unless the context indicates some other meaning, the words and terms below have the following meanings:

- (1) "Academic Year" means a period of time in which a student normally completes the equivalent of at least two semesters or three quarters of academic work.
- (2) "Approved Institution" means one of the branches of the University of North Carolina or one of the North Carolina community colleges.
- (3) "Case Management Services" are a set of services provided by an agency contracting with the North Carolina Division of Social Services (DSS) for participating students and their families which are designed to support the student's successful postsecondary education experience. Such services include:
  - (a) processing and accepting applications for the program;
  - (b) certifying each eligible student and the amount of the Eligible Student's Scholarship and communicating this information to the North Carolina State Education Assistance Authority to authorize release of funds;
  - (c) compiling accurate databases of resources in the students' academic communities that can help students succeed in school;
  - (d) providing or arranging for counseling regarding academic issues as well as other concerns that may affect the performance of the student;
  - (e) communicating with and advising students on academic issues;
  - (f) providing consistent, regular contact with students throughout their postsecondary experience;
  - (g) being available to students experiencing crisis;
  - (h) providing or arranging for emergency housing up to two weeks for students

- (i) who have no safe place to live when school is out of session;
- (i) if allowed by the student, being available to consult with student's families and staff of local Departments of Social Services regarding student's postsecondary experiences;
- (j) monitoring grades and the individual's course of study, and evaluating progress toward goal achievement;
- (k) maintaining records for each individual student regarding their academic progress and assistance provided; and
- (l) providing quarterly program reports of case management services to the contract administrator at the Division of Social Services.
- (4) "Cost of Attendance" Costs of attendance are defined by the Higher Education Act of 1965(20 U.S.C. 108711), which includes tuition, fees, room, board, supplies, transportation, and personal expenses. This amount is established by each institution. This grant is limited to cost of attendance less other grants or scholarships from federal, state, or other sources.
- (5) "Education Training Voucher" (ETV) means the Federal scholarship program funded by the John Chafee Foster Care Independence Act 42 U.S.C. 677, which benefits young adults who were in the custody of the Department of Social Services at or after age 17 or were adopted from public foster care after the age of 12.
- (6) "Eligible Student" means a student who:
  - (a) has completed the requirements for secondary education (high school diploma or GED) and has not yet achieved his or her 26<sup>th</sup> birthday;
  - (b) is pursuing an undergraduate degree, diploma, or certificate at an approved institution on at least a half-time basis;
  - (c) was in the custody of a North Carolina local Department of Social Services on his or her 18<sup>th</sup> birthday, or was adopted from the North Carolina foster care system on or after his or her 12th birthday;
  - (d) is making satisfactory progress toward completion of the course of undergraduate study as defined in Rule .0201 of this Chapter.
- (7) "Fiscal Year" means each annual period which begins on July 1 in any calendar year and ends on June 30 the following calendar year.

- (8) "Higher Education Act" means Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070, et seq.
- (9) "Matriculated Status" means the student is recognized by the approved institution as a student in a defined program of study leading to an associate's degree, baccalaureate degree, diploma or certificate.
- (10) "Pell Grant" means the needs based scholarship program administered by the federal government to benefit low income baccalaureate and postgraduate students.
- (11) "Program" means the Postsecondary Educational Support Scholarship program (NC Reach) established by Section 10.34(a) of Session Law 2007-323.
- (12) "Residence Manual" means the most current edition of *A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes* as adopted by the Board of Governors of the University of North Carolina.
- (13) "Scholarship" means an award for education awarded to an eligible student under the program.

*History Note:* Authority S.L. 2007-323, s. 10.34;  
Eff. June 1, 2008.

**10A NCAC 72 .0201 GENERAL RULE**

Subject to availability of funds a student may receive a scholarship for an academic year if the approved institution at which the student is enrolled, or admitted for enrollment, determines that the student:

- (1) Meets all of the eligibility requirements established in this Chapter;
- (2) Is a North Carolina resident for tuition purposes under G.S. 116-143.1 and the Residence Manual;
- (3) Has complied with the registration requirements of the Military Selective Service Act (50 U.S.C. A. 451 et seq.) or is exempt from registration requirements;
- (4) Is not in default, or does not owe a refund, under any federal or state loan or grant program.

*History Note:* Authority S.L. 2007-323, s. 10.34;  
Eff. June 1, 2008.

**10A NCAC 72 .0202 SATISFACTORY PROGRESS REQUIREMENT**

An eligible student may receive a scholarship for the eligible student's subsequent academic years provided that, for each subsequent academic year, the eligible student meets the standards by which the approved institution measures a student's satisfactory academic progress toward completion of a program of study for the purposes of determining eligibility for federal

financial aid under the Higher Education Act. Any eligible student who is placed on academic probation may continue to receive a NC Reach scholarship for one additional semester if the approved institution allows the student to continue in matriculated status. If the student fails to make satisfactory academic progress in the semester or term subsequent to the term in which he received academic probation, NC Reach assistance shall be discontinued for at least one full academic year.

*History Note:* Authority S.L. 2007-323, s. 10.34;  
Eff. June 1, 2008.

**10A NCAC 72 .0203 LIMITATION OF AWARD**

An eligible student may not receive an NC Reach scholarship for more than a total of four school years, to include the Spring and Fall terms and summer school.

*History Note:* Authority S.L. 2007-323, s. 10.34;  
Eff. June 1, 2008.

**10A NCAC 72 .0301 SCHOLARSHIP APPLICATION PROCEDURES**

- (a) Method of Applying for Scholarships. Students shall apply directly for NC Reach through the agency which contracts with the Division of Social Services to provide case management services for the NC Reach recipients.
- (b) Determination of eligible students. Eligibility for the NC Reach program shall be verified by employees of the custodial county Department of Social Services or the State Division of Social Services.
- (c) Scholarships within an Academic Year. An Eligible Student may receive a scholarship for one or more semesters or quarters, provided that the eligible student's total financial aid from the Education Training Voucher and Pell Grant and the NC Reach scholarship does not exceed the total cost of attendance.
- (d) Denial of Scholarship Applications. The Case Management contractor shall notify any student whose application is denied regarding the reasons for the denial.

*History Note:* Authority S.L. 2007-323, s. 10.34;  
Eff. June 1, 2008.

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

**15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS**

- (a) Purpose and Scope. The purpose of this Rule is to assure orderly compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.
- (b) All new sources shall be in compliance prior to beginning operations.
- (c) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner

that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(d) The Bubble Concept. A facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than that required by the rules in this Section or Section .0900 of this Subchapter.

(1) In order for this mix of alternative controls to be permitted the Director shall determine that the following conditions are met:

(A) Sources to which Rules .0524, .0530, .0531, .1110 or .1111 of this Subchapter, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), regulations established pursuant to Section 111 (d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, shall have emissions no larger than if there were not an alternative mix of controls;

(B) The facility (or facilities) is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines (with reasonable further progress toward attainment) for those pollutants being considered;

(C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and

(D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required.

(2) The owner(s) or operator(s) of the facility (facilities) shall demonstrate to the satisfaction of the Director that the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and

(A) that the alternative mix approach does not interfere with attainment and

maintenance of ambient air quality standards and does not interfere with the PSD program; this demonstration shall include modeled calculations of the amount, if any, of PSD increment consumed or created;

(B) that the alternative mix approach conforms with reasonable further progress requirements in any nonattainment area;

(C) that the emissions under the alternative mix approach are in fact quantifiable, and trades among them are even;

(D) that the pollutants controlled under the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as The North Carolina State Implementation Plan for Air Quality demonstration of attainment for the area in question. Moreover, if the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall also take into account differences in the level of reliability of the control measures or other uncertainties.

(3) The emission rate limitations or control techniques of each source within the facility (facilities) subjected to the alternative mix of controls shall be specified in the facility's (facilities') permits(s).

(4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.

(5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph (e) of this Rule supports any waiver or reduction of requirements. The Federal Register referenced in this Paragraph is hereby incorporated by reference and does not include subsequent amendments or editions.

(e) In a permit application for an alternative mix of controls under Paragraph (d) of this Rule, the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a request for public hearing following the procedures under 15A NCAC 02Q .0300 or .0500, as applicable.

- (1) If and when a permit containing these conditions is issued under 15A NCAC 02Q .0300 (non-Title V permits), it shall become a part of the state implementation plan (SIP) as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.
- (2) If and when a permit containing these conditions is issued under 15A NCAC 02Q .0500 (Title V permits), it shall be available for inspection at the department's regional offices. Until the EPA approves the Title V permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

The revision shall be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

If owner or operator of any combustion and non-combustion source or control equipment subject to the requirements of this Section is required to demonstrate compliance with a rule in this Section, the source testing procedures of Section .2600 of this Subchapter shall be used.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

*Eff.* February 1, 1976;

*Amended Eff.* August 1, 1991; October 1, 1989;

*Temporary Amendment Eff.* March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;

*Amended Eff.* June 1, 2008; April 1, 2001; April 1, 1999; July 1, 1996; February 1, 1995; July 1, 1994.

#### **15A NCAC 02D .0529 FLUORIDE EMISSIONS FROM PRIMARY ALUMINUM REDUCTION PLANTS**

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

- (1) "Fluoride" means elemental fluorine and all fluoride compounds as measured by the methods specified in 15A NCAC 02D .2616 or by equivalent or alternative methods approved by the Director or his delegate. The Director

may approve equivalent or alternative methods on an individual basis for sources or pollutants if equivalent or alternative methods can be demonstrated to determine compliance of permitted emission sources or pollutants.

- (2) "Prebake cell" is an aluminum reduction pot which uses carbon anodes that are formed, pressed, and baked prior to their placement in the pot.
- (3) "Primary aluminum reduction plant" means any facility manufacturing aluminum by electrolytic reduction.

(b) This Rule shall apply to prebake cells at all primary aluminum reduction plants not subject to Rule .0524 of this Section.

(c) An owner or operator of a primary aluminum reduction plant subject to this Rule shall not cause, allow, or permit the use of the rebake cells unless:

- (1) 95 percent of the fluoride emissions are captured; and
- (2) 98.5 percent of the captured fluoride emissions are removed before the exhaust gas is discharged into the atmosphere.

(d) The owner or operator of a primary aluminum reduction plant subject to this Rule shall:

- (1) ensure that hood covers are in good repair and positioned over the prebake cells;
- (2) minimize the amount of time that hood covers are removed during pot working operations;
- (3) if the hooding system is equipped with a dual low and high hood exhaust rate, use the high rate whenever hood covers are removed and return to the normal exhaust rate when the hood covers are replaced;
- (4) minimize the occurrence of fuming pots and correct the cause of a fuming pot as soon as practical; and
- (5) if the tapping crucibles are equipped with hoses which return aspirator air under the hood, ensure that the hoses are in good repair and that the air return system is functioning properly.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

*Eff.* June 1, 1981;

*Amended Eff.* June 1, 2008; July 1, 1988; January 1, 1985.

#### **15A NCAC 02D .0535 EXCESS EMISSIONS REPORTING AND MALFUNCTIONS**

(a) For this Rule the following definitions apply:

- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections .0500, .0900, .1200, or .1400 of this Subchapter; or by a permit condition; or that exceeds an emission limit established in a permit issued under 15A NCAC 02Q .0700.

- (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment are not considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source are not considered a malfunction.
- (3) "Start-up" means the commencement of operation of any source that has shut-down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess emission.
- (4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Rule does not apply to sources to which Rules .0524, .1110, or .1111 of this Subchapter applies unless excess emissions exceed an emission limit established in a permit issued under 15A NCAC 02Q .0700 that is more stringent than the emission limit set by Rules .0524, .1110 or .1111 of this Subchapter.

(c) Any excess emissions that do not occur during start-up or shut-down are considered a violation of the appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:

- (1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
- (2) Repairs have been made expeditiously when the emission limits have been exceeded;
- (3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
- (4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) The requirements of Paragraph (f) of this Rule have been met; and
- (7) If the source is required to have a malfunction abatement plan, it has followed that plan. All malfunctions shall be repaired as expeditiously as practicable. However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. The Director may require the

owner or operator of a facility to maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain:

- (1) a complete preventive maintenance program including:
  - (A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;
  - (B) a description of the items or conditions that will be inspected and maintained;
  - (C) the frequency of the inspection, maintenance services, and repairs; and
  - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and
- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule shall be established by the Director with the source. The owner or

operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs are subject to inspection by the Director or his designee upon request during business hours.

(e) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan carries out the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state his reasons for his disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Division's next business day of becoming aware of the occurrence and describe:
  - (A) name and location of the facility,
  - (B) the nature and cause of the malfunction or breakdown,
  - (C) the time when the malfunction or breakdown is first observed,
  - (D) the expected duration, and
  - (E) an estimated rate of emissions;
- (2) notify the Director or his designee immediately when the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the request a written report that includes:
  - (A) name and location of the facility,
  - (B) identification or description of the processes and control devices involved in the malfunction or breakdown,
  - (C) the cause and nature of the event,
  - (D) time and duration of the violation or the expected duration of the excess emission if the malfunction or breakdown has not been fixed,
  - (E) estimated quantity of pollutant emitted,

(F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken, and

(G) any other pertinent information requested by the Director. After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section .2600 of this Subchapter to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down are considered a violation of the appropriate rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during startup or shutdown the Director shall consider the items listed in Paragraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut-down. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5); Eff. March 1, 1983; Amended Eff. June 1, 2008; April 1, 2001; July 1, 1998; July 1, 1996; October 1, 1991; May 1, 1990; April 1, 1986; July 1, 1984.*

#### **15A NCAC 02D .0536 PARTICULATE EMISSIONS FROM ELECTRIC UTILITY BOILERS**

(a) The purpose of this Rule is to establish particulate and visible emission limits for the listed units by utilizing control technology to protect the public health and welfare of the State and its citizens.

(b) Notwithstanding Rule .0503 of this Section, emissions of particulate matter from the utility boiler units specified in the following table shall not exceed the maximum emission rate in the table as measured by a stack test conducted in accordance with Section .2600 of this Subchapter. The results of any stack test shall be reported within 30 days, and the test report shall be submitted within 60 days after the test. In addition to limitations contained in Rule .0521 of this Section, visible emissions from the utility boiler units specified in the table shall not exceed the annual average opacity limits in the table. Each day an annual average opacity value shall be calculated for each unit for the most recent 365-day period ending with the end of the previous day. The average is the sum of the measured non-overlapping six-minute averages of opacity determined only while the unit is in operation divided by the number of such measured non-overlapping six-minute averages. Start-up, shut-down, and non-operating time shall not be included in the annual average opacity calculation, but malfunction time shall be included, Rule

.0535 of this Section notwithstanding. The Director may approve an alternate method of calculating the annual average opacity if:

- (1) the alternate method is submitted by the electric utility company,
- (2) the director concludes that the alternate method will not cause a systematic or unacceptable difference in calculated values from the specified method, and
- (3) it is mutually agreed that the values calculated using the alternate method can be used for enforcement purposes.

The owner or operator of each unit shall submit a report to the Director by the 30th day following the end of each month. This report shall show for each day of the previous month the calculated annual average opacity of each unit and the annual average opacity limit. If a violation occurs, the owner or operator of the unit shall immediately notify the Director.

Facility	Boiler/Unit	Maximum Emission Rate (Lb/Million Btu of Heat Input)	Annual Average Opacity Limit (Percent)
Duke Power Comp.			
Allen	1	0.25	20
	2	0.25	20
	3	0.25	13
	4	0.25	14
	5	0.25	17
Belews Creek	1	0.15	17
	2	0.15	17
Buck	5	0.15	10
	6	0.15	10
	7	0.15	6
	8	0.15	8
	9	0.15	10
Cliffside	1	0.25	8
	2	0.25	12
	3	0.25	8
	4	0.25	8
	5	0.25	16
Dan River	1	0.15	7
	2	0.15	9
	3	0.25	20
Marshall	1	0.20	20
	2	0.20	20
	3	0.18	20
	4	0.18	20

Facility	Boiler/Unit	Maximum Emission Rate (Lb/Million Btu of Heat Input)	Annual Average Opacity Limit (Percent)
Riverbend	4	0.12	12
	5	0.12	12
	6	0.12	12
	7	0.12	12
Carolina Power & Light Company			
Asheville	1	0.12	10
	2	0.12	5
Cape Fear	5	0.20	17
	6	0.20	15
Lee	1	0.25	18
	2	0.13	11
	3	0.25	15
Roxboro	1	0.25	15
	2	0.16	20
	3	0.10	25
Sutton	1	0.11	14
	2	0.11	14
	3	0.11	20
Weatherspoon	1	0.14	8
	2	0.14	10
	3	0.15	23

(c) For the purpose of this Rule, the heat input shall be the total heat content of all fuels burned in the unit during the period of time for which the compliance determination is being made.

(d) Stack tests shall be conducted in accordance with Section .2600 of this Subchapter, and six-minute average opacity readings shall be recorded during the tests. If a stack test and opacity data are acceptable to the Director, the results shall be used by the owner or operator to update and refine the mass-opacity curve for that unit at least annually or when otherwise requested by the Director. The owner or operator of a unit shall notify the Director whenever an alteration in the equipment, method of operation, fuel, or other factors, may cause a systematic change in the mass-opacity curve expected to last more than one month.

(e) The owner or operator of units listed in Paragraph (b) of this Rule shall produce each year for each unit at least one stack test conducted in accordance Section .2600 of this Subchapter, the results of which are submitted to and accepted by the Director

and which demonstrate achievement of the maximum emission rate for that unit.

(f) Whenever a stack test shows emissions of particulate matter exceeding the maximum emission rate listed in Paragraph (b) of this Rule, all necessary steps shall be taken to ensure that the emissions of particulate matter do not continue to exceed the maximum emission rate and a retest shall be conducted before the 45th operating day following the day the excess was measured.

(g) Opacity shall be measured using an opacity monitoring system that meets the performance specifications of Appendix B of 40 CFR Part 60. The opacity monitoring system shall be subjected to a quality assurance program in accordance with Rule .0613 of this Section approved by the Director. The owner or operator of each unit subject to this Rule shall have on file with the Director an approved quality assurance program, and shall submit to the Director within the time period of his request for his approval a revised quality assurance program, including procedures and frequencies for calibration, standards traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program.

(h) The owner or operator of each unit subject to this Rule shall have on file with the Director an approved malfunction abatement plan, and shall submit to the Director within the time period of his request for his approval a revised malfunction abatement plan, in accordance with Rule .0535 (d) and (e) of this Section. The owner or operator shall submit each month for each malfunction and other equipment failures that occurred at each unit during the preceding month a report that meets the requirements of Rule .0535 (f)(3) of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*

*Eff. March 1, 1983;*

*Amended Eff. June 1, 2008; April 1, 2001; August 1, 1991; August 1, 1987; February 1, 1986.*

#### **15A NCAC 02D .0542 CONTROL OF PARTICULATE EMISSIONS FROM COTTON GINNING OPERATIONS**

(a) Purpose. The purpose of this Rule is to establish control requirements for particulate emissions from cotton ginning operations.

(b) Definitions. For the purposes of this Rule the following definitions apply:

- (1) "1D-3D cyclone" means any cyclone-type collector of the 1D-3D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 1D-3D cyclone has a cylinder length of 1xD and a cone length of 3xD.
- (2) "2D-2D cyclone" means any cyclone-type collector of the 2D-2D configuration. This designation refers to the ratio of the cylinder to cone length, where D is the diameter of the cylinder portion. A 2D-2D cyclone has a cylinder length of 2xD and a cone length of 2xD.

- (3) "Bale" means a compressed and bound package of cotton lint, nominally weighing 500 pounds.
- (4) "Existing facility" means a cotton ginning operation that operated prior to July 1, 2002.
- (5) "Ginning operation" means any facility or plant that removes seed, lint, and trash or one or more combination of these from raw cotton or bales of lint cotton.
- (6) "Ginning season" means the period of time during which the gin is in operation, which is generally from September of the current year through January of the following year.
- (7) "High pressure exhausts" means the exhaust air systems at a cotton gin that are not defined as "low pressure exhausts."
- (8) "Low pressure exhausts" means the exhaust cotton handling systems located at a cotton gin that handle air from the cotton lint handling system and battery condenser.

(c) Applicability. This rule applies to all existing, new, and modified cotton ginning operations. Existing facilities with a maximum rated capacity of less than 20 bales per hour that do not have cyclones on lint cleaners and battery condensers as of July 1, 2002 are not be required to add:

- (1) the emission control devices in Paragraph (d)(1) of this Rule to lint cleaning exhausts if emissions from the lint cleaning are controlled by fine mesh screens; and
- (2) the emission control devices in Paragraph (d)(2) of this Rule to battery condenser exhausts if the emissions from the battery condenser are controlled by fine mesh screens.

(d) Emission Control Requirements. The owner or operator of each cotton ginning operation shall control particulate emissions from the facility by controlling:

- (1) all high pressure exhausts and lint cleaning exhausts with an emission control system that includes:
  - (A) one or more 1D-3D or 2D-2D cyclones to achieve 95 percent efficiency; or
  - (B) a device with a minimum of 95 percent efficiency.
- (2) low pressure exhausts, except lint cleaning exhausts, by an emission control system that includes:
  - (A) one or more 1D-3D or 2D-2D cyclones to achieve 90 percent efficiency; or
  - (B) a device with at least a 90 percent efficiency.

Efficiency is based on the removal of particulate matter between the cyclone's inlet and outlet; it is measured using test methods in Section .2600 of this Subchapter.

(e) Raincaps. Exhausts from emission points or control devices shall not be equipped with raincaps or other devices that deflect the emissions downward or outward.



(f) Operation and Maintenance. To ensure that optimum control efficiency is maintained, the owner or operator shall establish, based on manufacturers recommendations, an inspection and maintenance schedule for the control devices, other emission processing equipment, and monitoring devices that are used pursuant to this Rule. The inspection and maintenance schedule shall be followed throughout the ginning season. The results of the inspections and any maintenance performed on the control equipment, emission processing equipment, or monitoring devices shall be recorded in the log book required in Paragraph (k) of this Rule.

(g) Fugitive Emissions. The owner or operator shall minimize fugitive emissions from cotton ginning operations as follows.

- (1) The owner or operator of a
  - (A) trash stacker shall:
    - (i) install, maintain, and operate a three sided enclosure with a roof whose sides are high enough above the opening of the dumping device to prevent wind from dispersing dust or debris; or
    - (ii) install, maintain, and operate a device to provide wet suppression at the dump area of the trash cyclone and minimize free fall distance of waste material exiting the trash cyclone; or
  - (B) trash stacker/trash composting system shall install, maintain, and operate a wet suppression system providing dust suppression in the auger box assembly and at the dump area of the trash stacker system. The owner or operator shall keep the trash material wet and compost it in place until the material is removed from the dump area for additional composting or disposal.
- (2) Gin Yard. The owner or operator shall clean and dispose of accumulations of trash or lint on the non-storage areas of the gin yard daily.
- (3) Traffic areas. The owner or operator shall clean paved roadways, parking, and other traffic areas at the facility as necessary to prevent re-entrainment of dust or debris. The owner or operator shall treat unpaved roadways, parking, and other traffic areas at the facility with wet or chemical dust suppressant as necessary to prevent dust from leaving the facility's property and shall install and maintain signs limiting vehicle speed to 10 miles per hour where chemical suppression is used and to 15 miles per hour where wet suppression is used.
- (4) Transport of Trash Material. The owner or operator shall ensure that all trucks transporting gin trash material are covered and

that the trucks are cleaned of over-spill material before trucks leave the trash hopper dump area. The dump area shall be cleaned daily.

(h) Alternative Control Measures. The owner or operator of a ginning operation may petition for use of alternative control measures to those specified in this Rule. The petition shall include:

- (1) the name and address of the petitioner;
- (2) the location and description of the ginning operation;
- (3) a description of the alternative control measure;
- (4) a demonstration that the alternative control measure is at least as effective as the control device or method specified in this Rule.

(i) Approval of Alternative Control Measure. The Director shall approve the alternative control measure if he finds that:

- (1) all the information required by Paragraph (h) of this Rule has been submitted; and
- (2) the alternative control measure is at least as effective as the control device or method specified in this Rule.

(j) Monitoring.

- (1) The owner or operator of each ginning operation shall install, maintain, and calibrate monitoring devices that measure pressures, rates of flow, and other operating conditions necessary to determine if the control devices are functioning properly.
- (2) Before or during the first week of operation of the 2002-2003 ginning season, the owner or operator of each gin shall conduct a baseline study of the entire dust collection system, without cotton being processed, to ensure air flows are within the design range for each collection device. For 2D-2D cyclones the air flow design range is 2600 to 3600 feet per minute. For 1D-3D cyclones the design range is 2800 to 3600 feet per minute. For other control devices the air flow design range is that found in the manufacturer's specifications. Gins constructed after the 2002-2003 ginning season shall conduct the baseline study before or during the first week of operation of the first ginning season following construction. During the baseline study the owner or operator shall measure or determine according to the methods specified in this Paragraph and record in a logbook:
  - (A) the calculated inlet velocity for each control device; and
  - (B) the pressure drop across each control device.

The owner or operator shall use Method 1 and Method 2 of 40 CFR Part 60 Appendix A to measure flow and static pressure and determine inlet velocity or the USDA method for determining duct velocity and static

- pressure in Agricultural Handbook Number 503, *Cotton Ginners Handbook*, dated December 1994. The Cotton Ginners Handbook method shall only be used where test holes are located a minimum of eight and one-half pipe diameters downstream and one and one-half pipe diameters upstream from elbows, valves, dampers, changes in duct diameter or any other flow disturbances. Where Method 2 is used a standard pitot tube may be used in lieu of the s-pitot specified in Method 2 subject to the conditions specified in Paragraph 2.1 of Method 2.
- (3) On a monthly basis following the baseline study, the owner or operator shall measure and record in the logbook the static pressure at each port where the static pressure was measured in the baseline study. Measurements shall be made using a manometer, a Magnahelic® gauge, or other device that the Director has approved as being equivalent to a manometer. If the owner or operator measures a change in static pressure of 20 percent or more from that measured in the baseline study, the owner or operator shall initiate corrective action. Corrective action shall be recorded in the logbook. If corrective action will take more than 48 hours to complete, the owner or operator shall notify the regional supervisor of the region in which the ginning operation is located as soon as possible, but by no later than the end of the day such static pressure is measured.
  - (4) When any design changes to the dust control system are made, the owner or operator shall conduct a new baseline study for that portion of the system and shall record the new values in the logbook required in Paragraph (k) of this Rule. Thereafter monthly static pressure readings for that portion of the system shall be compared to the new values.
  - (5) During the ginning season, the owner or operator shall daily inspect for structural integrity of the control devices and other emissions processing systems and shall ensure that the control devices and emission processing systems conform to normal and proper operation of the gin. If a problem is found, corrective action shall be taken and recorded in the logbook required in Paragraph (k) of this Rule.
  - (6) At the conclusion of the ginning season, the owner or operator shall conduct an inspection of the facility to identify all scheduled maintenance activities and repairs needed relating to the maintenance and proper operation of the air pollution control devices for the next season. Any deficiencies identified through the inspection shall be corrected before beginning operation of the gin for the next season.
  - (k) Recordkeeping. The owner operator shall establish and maintain on-site a logbook documenting the following items:
    - (1) Results of the baseline study as specified in Paragraph (j)(2) of this Rule;
    - (2) Results of new baseline studies as specified in Paragraph (j)(4) of this Rule;
    - (3) Results of monthly static pressure checks and any corrective action taken as specified in Paragraph (j)(3) of this Rule;
    - (4) Observations from daily inspections of the facility and any resulting corrective actions taken as required in Paragraph (j)(5) of this Rule; and
    - (5) A copy of the manufacturer's specifications for each type of control device installed.

The logbook shall be maintained on site and made available to Division representatives upon request.
  - (l) Reporting. The owner or operator shall submit by March 1 of each year a report containing the following:
    - (1) the name and location of the cotton gin;
    - (2) the number of bales of cotton produced during the previous ginning season;
    - (3) a maintenance and repair schedule based on inspection of the facility at the conclusion of the previous cotton ginning season required in Paragraph (j)(6) of this Rule; and
    - (4) signature of the appropriate official as identified in 15A NCAC 02Q .0304(j), certifying as to the truth and accuracy of the report.
  - (m) Compliance Schedule. Existing sources shall comply as specified in Paragraph (d) of this Rule. New and modified sources shall be in compliance upon start-up.
  - (n) Record retention. The owner or operator shall retain all records required to be kept by this Rule for three years from the date of recording.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. August 1, 2002; Amended Eff. June 1, 2008.*

**15A NCAC 02D .0606 SOURCES COVERED BY APPENDIX P OF 40 CFR PART 51**

(a) The following sources shall be monitored as described in Paragraph 2 of Appendix P of 40 CFR Part 51:

- (1) fossil fuel-fired steam generators,
- (2) nitric acid plants,
- (3) sulfuric acid plants, and
- (4) petroleum refineries.

Sources covered by Rule .0524 of this Subchapter are exempt from this Rule.

(b) The monitoring systems required under Paragraph (a) of this Rule shall meet the minimum specifications described in Paragraphs 3.3 through 3.8 of Appendix P of 40 CFR Part 51.

(c) The excess emissions recorded by the monitoring systems required to be installed under this Rule shall be reported no later

than 30 days after the end of the quarter to the Division in the manner described in Paragraphs 4 and 5.1 through 5.3.3 of Appendix P of 40 CFR Part 51 except that a six-minute time period is deemed as an appropriate alternative opacity averaging period as described in Paragraph 4.2 of Appendix P of 40 CFR Part 51. The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide or nitrogen oxides under any other state or federal rule with continuous emission monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule .0516 of this Subchapter and the nitrogen oxide emission standard in Rule .0519 or Section .1400 of this Subchapter with a continuous emission monitoring system. Compliance with sulfur dioxide and nitrogen oxide emission standards are determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values are summed, and the sum is divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points are determined by 40 CFR Part 75.

(d) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, the test methods described in Section .2600 of this Subchapter shall be used except that gross or composite samples, gross caloric value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Section .2600 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

(e) Wherever the language of the referenced portion of Appendix P of 40 CFR Part 51 speaks of the "state" or "state plan", the requirements described in Appendix P of 40 CFR Part 51 apply to those sources to which the requirements pertain.

(f) The owner or operator of the source shall conduct a daily zero and span check of the continuous opacity monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(g) The owner or operator of the source may request to use a different procedure or methodology than that required by this

Rule if one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists. The person requesting to use a different procedure or methodology shall submit the request to the Director along with a description of the different procedure or methodology proposed to be used, an explanation of why the procedure or methodology required by this Rule will not work, and a showing that the proposed procedure or methodology is equivalent to the procedure or methodology being replaced. The Director shall approve the use of this procedure or methodology if he finds that one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists, that the procedure or methodology required by this Rule will not work, and that the proposed procedure or methodology is equivalent to the procedure or methodology that it will replace.

(h) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

- (1) for fuel analysis per shipment:
  - (A) the quantity and type of fuels burned,
  - (B) the BTU value,
  - (C) the sulfur content in percent by weight, and
  - (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.
- (2) for continuous monitoring of emissions:
  - (A) the daily calculated sulfur dioxide and nitrogen oxide emission rates expressed in the same units as the applicable standard for each day, and
  - (B) other information required under Appendix P of 40 CFR Part 51.

(i) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

(j) If emission testing for compliance with the nitrogen oxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 7.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4);*

*Eff. February 1, 1976;*

*Amended Eff. June 1, 2008; January 1, 2005; April 1, 2003; April 1, 1999; May 1, 1985; July 1, 1983; December 1, 1976; June 18, 1976.*

#### **15A NCAC 02D .0608 OTHER LARGE COAL OR RESIDUAL OIL BURNERS**

(a) The owner or operator of any fuel burning unit shall determine sulfur dioxide emissions into the ambient air if the unit:

- (1) burns coal or residual oil;
- (2) is not required to monitor sulfur dioxide emissions by Rules .0524 or .0606 of this Subchapter;
- (3) has a total heat input of more than 250 million BTU per hour from coal and residual oil; and
- (4) has an annual average capacity factor greater than 30 percent as determined from the three

most recent calendar year reports to the Federal Power Commission or as otherwise demonstrated to the Director by the owner or operator. (If the unit has not been in existence for three calendar years, its three-calendar-year average capacity factor shall be determined by estimating its annual capacity factors for enough future years to allow a three-calendar-year average capacity factor to be computed. If this three-calendar-year average capacity factor exceeds 30 percent, the unit shall be monitored. If this three-calendar-year average capacity factor does not exceed 30 percent, the unit need not be monitored.)

(b) Once the unit is being monitored in accordance with Paragraph (a) of this Rule, it shall continue to be monitored until its most recent three-calendar-year average capacity factor does not exceed 25 percent. Once the unit is not being monitored in accordance with Subparagraph (a) of this Rule, it need not be monitored until its most recent three-calendar-year average capacity factor exceeds 35 percent.

(c) If units required to be monitored have a common exhaust or if units required to be monitored have a common exhaust with units not required to be monitored, then the common exhaust may be monitored, and the sulfur dioxide emissions need not be apportioned among the units with the common exhaust.

(d) The owner or operator of the source shall determine sulfur dioxide emissions by:

- (1) an instrument for continuous monitoring and recording of sulfur dioxide emissions, or
- (2) analyses of representative samples of fuels to determine BTU value and percent sulfur content.

(e) The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide under any other state or federal rule with continuous emission monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule .0516 of this Subchapter with a continuous emission monitoring system. Compliance with sulfur dioxide emission standards is determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values are summed, and the sum is divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points are determined by 40 CFR Part 75.

(f) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, then:

- (1) for coal, the test methods described in Section .2600 of this Subchapter shall be used except that gross or composite samples, gross caloric

value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Section .2600 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

(2) for residual oil, the test methods described in Section .2600 of this Subchapter shall be used except that sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Section .2600 of this Subchapter. Residual oil shall be collected in accordance with ASTM D4177 or D4057.

(g) The owner or operator of the source may request to use a different procedure or methodology than that required by this Rule if one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists. The person requesting to use a different procedure or methodology shall submit the request to the Director along with a description of the different procedure or methodology proposed to be used, an explanation of why the procedure or methodology required by this Rule will not work, and a showing that the proposed procedure or methodology is equivalent to the procedure or methodology being replaced. The Director shall approve the use of this procedure or methodology if he finds that one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists, that the procedure or methodology required by this Rule will not work, and that the proposed procedure or methodology is equivalent to the procedure or methodology that it will replace.

(h) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

- (1) for fuel analysis per shipment:
  - (A) the quantity and type of fuels burned,
  - (B) the BTU value,
  - (C) the sulfur content in percent by weight, and
  - (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.
- (2) for continuous monitoring of emissions:
  - (A) the daily calculated sulfur dioxide emission rates expressed in the same units as the applicable standard for each day, and
  - (B) other information required under Appendix P of 40 CFR Part 51.

(i) The owner or operator of the source shall conduct a daily zero and span check of the continuous emission monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(j) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4);*

*Eff. June 18, 1976;*

*Amended Eff. June 1, 2008; January 1, 2005; April 1, 2003; April 1, 1999; July 1, 1996; July 1, 1988; July 1, 1984.*

#### **15A NCAC 02D .0901 DEFINITIONS**

For the purpose of this Section, the following definitions apply:

- (1) "Coating" means a functional, protective, or decorative film applied in a thin layer to a surface.
- (2) "Coating applicator" means an apparatus used to apply a surface coating.
- (3) "Coating line" means one or more apparatus or operations in a single line wherein a surface coating is applied, dried, or cured and which include a coating applicator and flashoff area and may include an oven or associated control devices.
- (4) "Continuous vapor control system" means a vapor control system which treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.
- (5) "Delivered to the applicator" means the condition of coating after dilution by the user just before application to the substrate.
- (6) "Flashoff area" means the space between the application area and the oven.
- (7) "High solids coating" means a coating which contains a higher percentage of solids and a lower percentage of volatile organic

compounds and water than conventional organic solvent borne coatings.

(8) "Hydrocarbon" means any organic compound of carbon and hydrogen only.

(9) "Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

(10) "Intermittent vapor control system" means a vapor control system which employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device treats the accumulated vapors only during automatically controlled cycles.

(11) "Loading rack" means an aggregation or combination of loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

(12) "Low solvent coating" means a coating which contains a substantially lower amount of volatile organic compound than conventional organic solvent borne coatings; it usually falls into one of three major groups of high solids, waterborne, or powder coatings.

(13) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(14) "Oven" means a chamber within which heat is used to bake, cure, polymerize, or dry a surface coating.

(15) "Potential emissions" means the quantity of a pollutant which would be emitted at the maximum capacity of a stationary source to emit the pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is described or contained as a condition in the federally enforceable permit. Secondary emissions do not count in determining potential emissions of a stationary source. Fugitive emissions count, to the extent quantifiable, in determining the potential emissions only in these cases:

- (a) petroleum refineries;
- (b) chemical process plants; and

- (c) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (16) "Prime coat" means the first film of coating applied to a surface to protect it or to prepare it to receive subsequent coatings.
- (17) "Reasonably available control technology" (also denoted as RACT) means the lowest emission limit which a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. It may require technology which has been applied to similar, but not necessarily identical, source categories.
- (18) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Part 17, 1973, D-323-72 (reapproved 1977).
- (19) "Shutdown" means the cessation of operation of a source or a part thereof or emission control equipment.
- (20) "Solvent" means organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.
- (21) "Standard conditions" means a temperature of 68 degrees Fahrenheit and pressure of 29.92 inches of mercury.
- (22) "Startup" means the setting in operation of a source or emission control equipment.
- (23) "Substrate" means the surface to which a coating is applied.
- (24) "Topcoat" means the final films of coating applied in a multiple or single coat operation.
- (25) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.
- (26) "Vapor collection system" means a vapor transport system which uses direct displacement by the liquid loaded to force vapors from the tank into a vapor control system.
- (27) "Vapor control system" means a system which prevents release to the atmosphere of at least 90 percent by weight of organic compounds in the vapors displaced from a tank during the transfer of gasoline.
- (28) "Volatile organic compound" (also denoted as VOC) means any compound of carbon whose volatile content can be determined by the procedure described in Section .2600 of this Subchapter excluding any compound that is listed under 40 CFR 51.100(s) as having been

determined to have negligible photochemical reactivity.

*History Note:* Authority G.S. 143-215.3(a)(1);  
Eff. July 1, 1979;  
Amended Eff. June 1, 2008; July 1, 1996; December 1, 1993;  
July 1, 1991; March 1, 1991; December 1, 1989.

#### **15A NCAC 02D .0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES**

(a) The owner or operator of any volatile organic compound source required to comply with rules in this Section shall demonstrate compliance by the methods described in Section .2600 of this Subchapter. The owner or operator of a volatile organic compound source shall demonstrate compliance when the Director requests such demonstration.

(b) If the volatile organic compound emissions test shows noncompliance, the owner or operator of the volatile organic source shall submit along with the final test report proposed corrective action.

(c) Compliance shall be determined on a line-by-line basis using the more stringent of the following two:

- (1) Compliance shall be determined on a daily basis for each coating line using a weighted average, that is, dividing the sum of the mass (pounds) of volatile organic compounds in coatings consumed on that coating line, as received, and the mass (pounds) of volatile organic compound solvents added to the coatings on that coating line by the volume (gallons) of coating solids consumed during that day on that coating line; or
- (2) Compliance shall be determined as follows:
  - (A) When low solvent or high solids coatings are used to reduce emissions of volatile organic compounds, compliance shall be determined instantaneously.
  - (B) When add on control devices, e.g., solvent recovery systems or incinerators, are used to reduce emissions of volatile organic compounds, compliance shall be determined by averaging emissions over a one-hour period.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);  
Eff. July 1, 1979;  
Amended Eff. June 1, 2008; April 1, 2003; July 1, 1993; July 1, 1991; March 1, 1991; December 1, 1989; January 1, 1985; July 1, 1980.

#### **15A NCAC 02D .0913 DETERMINATION OF VOLATILE CONTENT OF SURFACE COATINGS**

#### **15A NCAC 02D .0914 DETERMINATION OF VOC EMISSION CONTROL SYSTEM EFFICIENCY**

#### **15A NCAC 02D .0915 DETERMINATION OF SOLVENT METAL CLEANING VOC EMISSIONS**

**15A NCAC 02D .0916 DETERMINATION: VOC  
EMISSIONS FROM BULK GASOLINE TERMINALS**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5); 150B-14(c);  
Eff. July 1, 1979;  
Amended Eff. July 1, 1998; March 1, 1991; December 1, 1989;  
July 1, 1988; April 1, 1986; January 1, 1985;  
Repealed Eff. June 1, 2008.

**15A NCAC 02D .0932 GASOLINE TRUCK TANKS AND  
VAPOR COLLECTION SYSTEMS**

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

- (1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.
- (2) "Bulk gasoline plant" means:
  - (A) breakout tanks of an interstate oil pipeline facility; or
  - (B) a gasoline storage and distribution facility that has an average daily throughput of less than 20,000 gallons of gasoline and usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.
- (3) "Bulk gasoline terminal" means a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of no less than 20,000 gallons of gasoline.
- (4) "Certified facility" means any facility that has been certified under Rule .0960 of this Section to perform leak tightness tests on truck tanks.
- (5) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 psia or greater.
- (6) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (7) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.
- (8) "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.
- (9) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline

vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.

- (10) "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

- (11) "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

(b) This Rule applies to gasoline truck tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations equipped with vapor balance or vapor control systems.

(c) Gasoline Truck Tanks

- (1) Gasoline truck tanks and their vapor collection systems shall be tested annually by a certified facility. The test procedure that shall be used is described in Section .2600 of this Subchapter and is according to Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 3.0 inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inches of water.
- (2) Each gasoline truck tank that has been certified leak tight, according to Subparagraph (1) of this Paragraph shall display a sticker near the Department of Transportation certification plate required by 49 CFR 178.340-10b.
- (3) There shall be no liquid leaks from any gasoline truck tank.
- (4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule .2615 of this Subchapter shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight according to Subparagraph (1) of this Paragraph.

(d) Vapor Collection System

- (1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.
- (2) During loading and unloading operations there shall be:
  - (A) no vapor leakage from the vapor collection system such that a reading

equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Rule .2615 of this Subchapter; and

(B) no liquid leaks.

- (3) If a leak is discovered that exceeds the limit in Part (2) (A) of this Paragraph, the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Part (2)(A) of this Paragraph.
- (4) The owner or operator of a vapor collection system at a bulk gasoline plant or a bulk gasoline terminal shall test, according to Rule .0912 of this Section, the vapor collection system at least once per year. If after two complete annual checks no more than 10 leaks are found, the Director may allow less frequent monitoring. If more than 20 leaks are found, the Director may require that the frequency of monitoring be increased.

(e) The owner or operator of a source subject to this Rule shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:

- (1) the gasoline truck tank identification number;
- (2) the initial test pressure and the time of the reading;
- (3) the final test pressure and the time of the reading;
- (4) the initial test vacuum and the time of reading;
- (5) the final test vacuum and the time of the reading, and
- (6) the date and location of the tests.

A copy of the most recent certification report shall be kept with the truck tank. The owner or operator of the truck tank shall also file a copy of the most recent certification test with each bulk gasoline terminal that loads the truck tank. The records shall be maintained for two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1980; Amended Eff. June 1, 2008; January 1, 2007; April 1, 2003; August 1, 2002; July 1, 1994; December 1, 1989; January 1, 1985.*

**15A NCAC 02D .0939 DETERMINATION OF VOLATILE ORGANIC COMPOUND EMISSIONS**  
**15A NCAC 02D .0940 DETERMINATION OF LEAK**

**TIGHTNESS AND VAPOR LEAKS**

**15A NCAC 02D .0941 ALTERNATIVE METHOD FOR LEAK TIGHTNESS**

**15A NCAC 02D .0942 DETERMINATION OF SOLVENT IN FILTER WASTE**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5); Eff. July 1, 1980; Amended Eff. December 1, 1989; July 1, 1988; May 1, 1985; January 1, 1985; Repealed Eff. June 1, 2008.*

**15A NCAC 02D .0943 SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING**

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

- (1) "Closed vent system" means a system which is not open to the atmosphere and which is composed of piping, connections, and if necessary, flow inducing devices that transport gas or vapor from a fugitive emission source to an enclosed combustion device or vapor recovery system.
- (2) "Enclosed combustion device" means any combustion device which is not open to the atmosphere such as a process heater or furnace, but not a flare.
- (3) "Fugitive emission source" means each pump, valve, safety/relief valve, open-ended valve, flange or other connector, compressor, or sampling system.
- (4) "In gas vapor service" means that the fugitive emission source contains process fluid that is in the gaseous state at operating conditions.
- (5) "In light liquid service" means that the fugitive emission source contains a liquid having:
  - (A) a vapor pressure of one or more of the components greater than 0.3 kilopascals at 201° C; and
  - (B) a total concentration of the pure components having a vapor pressure greater than 0.3 kilopascals at 201° C equal to or greater than 10 percent by weight, and the fluid is a liquid at operating conditions.
- (6) "Open-ended valve" means any valve, except safety/relief valves, with one side of the valve seat in contact with process fluid and one side that is open to the atmosphere, either directly or through open piping.
- (7) "Polymer manufacturing" means the industry that produces, as intermediates or final products, polyethylene, polypropylene, or polystyrene.
- (8) "Process unit" means equipment assembled to produce, as intermediates or final products, polyethylene, polypropylene, polystyrene, or one or more of the chemicals listed in 40 CFR



60.489. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the final product.

(9) "Quarter" means a three month period. The first quarter concludes at the end of the last full month during the 180 days following initial start-up.

(10) "Synthetic organic chemical manufacturing" means the industry that produces, as intermediates or final products, one or more of the chemicals listed in 40 CFR Part 60.489.

(b) This Rule applies to synthetic organic chemicals manufacturing facilities and polymer manufacturing facilities.

(c) The owner or operator of a synthetic organic chemical manufacturing facility or a polymer manufacturing facility shall not cause, allow or permit:

(1) any liquid leakage of volatile organic compounds; or

(2) any gaseous leakage of volatile organic compound of 10,000 ppm or greater from any fugitive emission source.

The owner or operator of these facilities shall control emissions of volatile organic compounds from open-ended valves as described in Paragraph (f) of this Rule.

(d) The owner or operator shall visually inspect each week every pump in light liquid service. If there are indications of liquid leakage, the owner or operator shall repair the pump within 15 days after detection except as provided in Paragraph (k) of this Rule.

(e) Using procedures in Section .2600 of this Section, the owner or operator shall monitor each pump, valve, compressor and safety/relief valve in gas/vapor service or in light liquid service for gaseous leaks at least once each quarter. The owner or operator shall monitor safety/relief valves after each overpressure relief to ensure the valve has properly reseated. If a volatile organic compound concentration of 10,000 ppm or greater is measured, the owner or operator shall repair the component within 15 days after detection except as provided in Paragraph (k) of this Rule. Exceptions to the quarterly monitoring frequency are provided for in Paragraphs (h), (i) and (j) of this Rule.

(f) The owner or operator shall install on each open-ended valve:

- (1) a cap,
- (2) a blind flange,
- (3) a plug, or
- (4) a second closed valve,

which shall remained attached to seal the open end at all times except during operations requiring process fluid flow through the opened line.

(g) If any fugitive emission source appears to be leaking on the basis of sight, smell, or sound, it shall be repaired within 15 days after detection except as provided in Paragraph (k) of this Rule.

(h) If after four consecutive quarters of monitoring no more than two percent of the valves in gas/vapor service or in light liquid service are found leaking more than 10,000 ppm of volatile organic compounds, then the owner or operator may monitor valves for gaseous leaks only every third quarter. If the number

of these valves leaking more than 10,000 ppm of volatile organic compounds remains at or below two percent, these valves need only be monitored for gaseous leaks every third quarter. However, if more than two percent of these valves are found leaking more than 10,000 ppm of volatile organic compounds, they shall be monitored every quarter until four consecutive quarters are monitored which have no more than two percent of these valves leaking more than 10,000 ppm of volatile organic compounds.

(i) When a fugitive emission source is unsafe to monitor because of extreme temperatures, pressures, or other reasons, the owner or operator of the facility shall monitor the fugitive emission source only when process conditions are such that the fugitive emission source is not operating under extreme conditions. The Director may allow monitoring of these fugitive emission sources less frequently than each quarter, provided they are monitored at least once per year.

(j) Any fugitive emission source more than 12 feet above a permanent support surface may be monitored only once per year.

(k) The repair of a fugitive emission source may be delayed until the next turnaround if the repair is technically infeasible without a complete or partial shutdown of the process unit.

(l) The owner or operator of the facility shall maintain records in accordance with Rule .0903 of this Section, which shall include:

- (1) identification of the source being inspected or monitored,
- (2) dates of inspection or monitoring,
- (3) results of inspection or monitoring,
- (4) action taken if a leak was detected,
- (5) type of repair made and when it was made, and
- (6) if the repair were delayed, an explanation as to why.

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

*143-215.107(a)(5); 150B-14(c);*

*Eff. May 1, 1985;*

*Amended Eff. June 1, 2008; March 1, 1991; December 1, 1989.*

#### **15A NCAC 02D .0945 PETROLEUM DRY CLEANING**

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

- (1) "Cartridge filter" means perforated canisters containing filtration paper or filter paper and activated carbon that are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden solvent, together with the piping and ductwork used in the installation of this device.
- (2) "Containers and conveyors of solvent" means piping, ductwork, pumps, storage tanks, and other ancillary equipment that are associated with the installation and operation of washers, dryers, filters, stills, and settling tanks.
- (3) "Dry cleaning" means a process for the cleaning of textiles and fabric products in which articles are washed in a non-aqueous solution (solvent) and then dried by exposure to a heated air stream.

- (4) "Dryer" means a machine used to remove petroleum solvent from articles of clothing or other textile or leather goods, after washing and removing of excess petroleum solvent, together with the piping and ductwork used in the installation of this device.
  - (5) "Perceptible leaks" means any petroleum solvent vapor or liquid leaks that are conspicuous from visual observation or that bubble after application of a soap solution, such as pools or droplets of liquid, open containers of solvent, or solvent laden waste standing open to the atmosphere.
  - (6) "Petroleum solvent" means organic material produced by petroleum distillation comprising a hydrocarbon range of eight to 12 carbon atoms per organic molecule that exists as a liquid under standard conditions.
  - (7) "Petroleum solvent dry cleaning" means a dry cleaning facility that uses petroleum solvent in a combination of washers, dryers, filters, stills, and settling tanks.
  - (8) "Settling tank" means a container which gravimetrically separates oils, grease, and dirt from petroleum solvent, together with the piping and ductwork used in the installation of the device.
  - (9) "Solvent filter" means a discrete solvent filter unit containing a porous medium which traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.
  - (10) "Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to condense and recover solvent vapors evaporated in a closed-loop stream of heated air, together with the piping and ductwork used in the installation of this device.
  - (11) "Still" means a device used to volatilize, separate, and recover petroleum solvent from contaminated solvent, together with the piping and ductwork used in the installation of this device.
  - (12) "Washer" means a machine which agitates fabric articles in a petroleum solvent bath and spins the articles to remove the solvent, together with the piping and ductwork used in the installation of this device.
- (b) This Rule applies to petroleum solvent washers, dryers, solvent filters, settling tanks, stills, and other containers and conveyors of petroleum solvent that are used in petroleum solvent dry cleaning facilities that consume 32,500 gallons or more of petroleum solvent annually.
- (c) The owner or operator of a petroleum solvent dry cleaning dryer subject to this Rule shall:
- (1) limit emissions of volatile organic compounds to the atmosphere to an average of 3.5 pounds of volatile organic compounds per 100 pounds dry weight of articles dry cleaned, or
  - (2) install and operate a solvent recovery dryer in a manner such that the dryer remains closed and the recovery phase continues until a final recovered solvent flow rate of 50 milliliters per minute is attained.
- (d) The owner or operator of a petroleum solvent filter subject to this Rule shall:
- (1) reduce the volatile organic compound content in all filter wastes to 1.0 pound or less per 100 pounds dry weight of articles dry cleaned, before disposal and exposure to the atmosphere; or
  - (2) install and operate a cartridge filter and drain the filter cartridges in their sealed housings for 8 hours or more before their removal.
- (e) The owner or operator of a petroleum solvent dry cleaning facility subject to this Rule shall inspect the facility every 15 days and shall repair all perceptible leaks within 15 working days after identifying the sources of the leaks. If necessary repair parts are not on hand, the owner or operator shall order these parts within 15 working days and repair the leaks no later than 15 working days following the arrival of the necessary parts. The owner or operator shall maintain records, in accordance with Rule.0903 of this Section, of when inspections were made, what was inspected, leaks found, repairs made and when repairs were made.
- (f) To determine compliance with Subparagraph (c)(1) of this Rule, the owner or operator shall use the test method in Section .2600 of this Subchapter and shall:
- (1) field calibrate the flame ionization analyzer with propane standards;
  - (2) determine in a laboratory the ratio of the flame ionization analyzer response to a given parts per million by volume concentration of propane to the response to the same parts per million concentration of the volatile organic compounds to be measured;
  - (3) determine the weight of volatile organic compounds vented to the atmosphere by:
    - (A) multiplying the ratio determined in Subparagraph (2) of this Paragraph by the measured concentration of volatile organic compound gas (as propane) as indicated by the flame ionization analyzer response output record,
    - (B) converting the parts per million by volume value calculated in Part (A) of this Subparagraph into a mass concentration value for the volatile organic compounds present, and
    - (C) multiplying the mass concentration value calculated in Part (B) of this Subparagraph by the exhaust flow rate, and
  - (4) Calculate and record the dry weight of articles dry cleaned. The test shall be repeated for normal operating conditions that encompass at least 30 dryer loads that total not less than

4,000 pounds dry weight and that represent a normal range of variation in fabrics, solvents, load weights, temperatures, flow rates, and process deviations.

(g) To determine compliance with Subparagraph (c)(2) of this Rule, the owner or operator shall verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery phase is no greater than 50 milliliters per minute. This one-time procedure shall be conducted for a duration of not less than two weeks during which not less than 50 percent of the dryer loads shall be monitored for their final

recovered solvent flow rate. Near the end of the recovery cycle, the flow of recovered solvent shall be diverted to a graduated cylinder. The cycle shall continue until the minimum flow of solvent is 50 milliliters per minute. The type of articles cleaned and the total length of the cycle shall be recorded.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. May 1, 1985; Amended Eff. June 1, 2008.*

**15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES**

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises (adjacent property boundary) to any significant ambient air concentration that may adversely affect human health. In determining these significant ambient air concentrations, the Division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure (except for asbestos):

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)	$1.5 \times 10^{-4}$			
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	$2.3 \times 10^{-7}$			
asbestos (1332-21-4)	$2.8 \times 10^{-11}$ fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	$1.2 \times 10^{-4}$			
benzidine and salts (92-87-5)	$1.5 \times 10^{-8}$			
benzo(a)pyrene (50-32-8)	$3.3 \times 10^{-5}$			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	$4.1 \times 10^{-6}$			
beryllium chloride (7787-47-5)	$4.1 \times 10^{-6}$			
beryllium fluoride (7787-49-7)	$4.1 \times 10^{-6}$			
beryllium nitrate (13597-99-4)	$4.1 \times 10^{-6}$			
bioavailable chromate pigments, as chromium (VI) equivalent	$8.3 \times 10^{-8}$			
bis-chloromethyl ether (542-88-1)	$3.7 \times 10^{-7}$			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	$4.4 \times 10^{-4}$			
cadmium (7440-43-9)	$5.5 \times 10^{-6}$			
cadmium acetate (543-90-8)	$5.5 \times 10^{-6}$			
cadmium bromide (7789-42-6)	$5.5 \times 10^{-6}$			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	$6.7 \times 10^{-3}$			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	$4.3 \times 10^{-3}$			
chloroprene (126-99-8)		0.44	3.5	

**APPROVED RULES**

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	$8.3 \times 10^{-2}$			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	$4.0 \times 10^{-4}$			
ethylene dichloride (107-06-2)	$3.8 \times 10^{-3}$			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	$2.7 \times 10^{-5}$			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	$7.6 \times 10^{-8}$			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	$2.4 \times 10^{-2}$		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	$2.1 \times 10^{-6}$			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	$5.0 \times 10^{-5}$			
non-specific chromium (VI)	$8.3 \times 10^{-8}$			

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
compounds, as chromium (VI) equivalent				
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	$1.9 \times 10^{-1}$			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	$8.3 \times 10^{-5}$			
soluble chromate compounds, as chromium (VI) equivalent		$6.2 \times 10^{-4}$		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	$3.0 \times 10^{-9}$			
1,1,1,2-tetrachloro-2,2- difluoroethane (76-11-9)		52		
1,1,2,2-tetrachloro-1,2- difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	$6.3 \times 10^{-3}$			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	$5.9 \times 10^{-2}$			
trichlorofluoromethane (75-69-4)			560	
1,1,2-trichloro-1,2,2- trifluoroethane (76-13-1)				950
vinyl chloride (75-01-4)	$3.8 \times 10^{-4}$			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282; S.L. 1989, c. 168, s. 45; Eff. May 1, 1990;

Amended Eff. September 1, 1992; March 1, 1992;

Temporary Amendment Eff. July 20, 1997;

Amended Eff. June 1, 2008; April 1, 2005; April 1, 2001; July 1, 1998.

#### **15A NCAC 02D .1110 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

(a) With the exception of Paragraph (b) of this Rule, sources subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in Section .0500 of this Subchapter that would be in conflict therewith.

(b) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not

the national emission standards for hazardous air pollutants promulgated under 40 CFR Part 61, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(c) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 61 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(d) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(e) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter.

(f) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6;*  
*Eff. July 1, 1996;*  
*Amended Eff. June 1, 2008; July 1, 1997.*

**15A NCAC 02D .1203 HAZARDOUS WASTE INCINERATORS**

(a) Applicability. This Rule applies to hazardous waste incinerators.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 260.10, 270.2, and 40 CFR 63.1201 shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (8) or (9) of this Paragraph or Paragraph (h) of this Rule 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.
- (2) Particulate Matter. Any incinerator subject to this Rule shall meet the particulate matter emission requirements of 40 CFR 264.343(c).
- (3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
- (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
- (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (6) Hydrogen Chloride. Any incinerator subject to this Rule shall meet the hydrogen chloride emission requirements of 40 CFR 264.343(b). Compliance with this Subparagraph shall be

determined by averaging emissions over a one-hour period.

(7) Mercury Emissions. The emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.

(8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700 for the control of toxic emissions.

(9) 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 degrees F (25 degrees 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:

- (i) arsenic and its compounds  $2.3 \times 10^{-7}$
- (ii) beryllium and its compounds  $4.1 \times 10^{-6}$
- (iii) cadmium and its compounds  $5.5 \times 10^{-6}$
- (iv) chromium (VI) and its compounds  $8.3 \times 10^{-8}$

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of 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 subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(d) Operational Standards.

- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
  - (2) Hazardous waste incinerators shall comply with 15A NCAC 13A .0101 through .0119, which are administered and enforced by the Division of Waste Management.
- (e) Test Methods and Procedures.
- (1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
  - (2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
- (f) Monitoring, Recordkeeping, and Reporting.
- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter, 40 CFR 270.31, and 40 CFR 264.347.
  - (2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.
- (g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule .0535,

Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Incinerators subject to this Rule shall comply with the emission limits, operational specifications, and other restrictions or conditions determined by the Division of Waste Management under 40 CFR 270.32, establishing Resource Conservation and Recovery Act permit conditions, as necessary to protect human health and the environment.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. October 1, 1991; Amended Eff. June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995.*

#### **15A NCAC 02D .1204 SEWAGE SLUDGE AND SLUDGE INCINERATORS**

(a) Applicability. This Rule applies to sewage sludge and sludge incinerators.

(b) Definitions. For the purpose of this Rule, the definitions in 40 CFR Part 503 shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

(1) The emission standards in this Paragraph apply to any incinerator subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However when Subparagraphs (11) or (12) 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.

(2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:

(A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation  $E=0.002P$ , calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate is 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by

- averaging emissions over a block three-hour period.
- (B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a block three-hour period.
- (3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
- (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
- (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (6) Hydrogen Chloride. Any incinerator subject to this Rule shall control hydrogen chloride emissions such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
- (7) Mercury Emissions. Emissions of mercury from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
- (8) Beryllium Emissions. Emissions of beryllium from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
- (9) Lead Emissions. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).
- (10) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).
- (11) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (12) 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 degrees F (25 degrees 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:
- (i) arsenic and its compounds  $2.3 \times 10^{-7}$
  - (ii) beryllium and its compounds  $4.1 \times 10^{-6}$
  - (iii) cadmium and its compounds  $5.5 \times 10^{-6}$
  - (iv) chromium (VI) and its compounds  $8.3 \times 10^{-8}$
- (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of 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 subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (d) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
- (2) Sewage Sludge Incinerators.
- (A) The maximum combustion temperature for a sewage sludge incinerator shall be specified as a permit condition and be based on



information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).

(B) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).

(C) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in Part (f)(3)(A) of this Rule.

(3) Sludge Incinerators. The combustion temperature in a sludge incinerator shall not be less than 1200°F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:

- (A) 12 percent (dry basis) for a multiple hearth sludge incinerator;
- (B) seven percent (dry basis) for a fluidized bed sludge incinerator;
- (C) nine percent (dry basis) for an electric sludge incinerator; and
- (D) 12 percent (dry basis) for a rotary kiln sludge incinerator.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
- (3) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant control efficiencies of any pollution control equipment and obtain information on

operational parameters, including combustion temperature, to be specified as a permit condition.

(f) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.

(2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

(3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a sewage sludge incinerator shall:

(A) install, operate, and maintain, for each incinerator, continuous emission monitors to determine the following:

- (i) total hydrocarbon concentration of the incinerator stack exit gas according to 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;
- (ii) oxygen content of the incinerator stack exit gas; and
- (iii) moisture content of the incinerator stack exit gas;

(B) monitor the concentration of beryllium and mercury from the sludge fed to the incinerator at least as frequently as required by Rule .1110 of this Subchapter but in no case less than once per year;

(C) monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and (3);

(D) determine mercury emissions by use of Method 101 or 101A of 40 CFR

- Part 61, Appendix B, where applicable to 40 CFR 61.55(a);
- (E) maintain records of all material required under Paragraph (e) of this Rule and this Paragraph according to 40 CFR 503.47; and
- (F) for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater, submit the information recorded in Part (D) of this Subparagraph to the Director on or before February 19 of each year.

(g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5); Eff. October 1, 1991; Amended Eff. June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993.*

**15A NCAC 02D .1206 HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS**

(a) Applicability. This Rule applies to any hospital, medical, and infectious waste incinerator (HMIWI), except:

- (1) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;
- (2) any pyrolysis unit;
- (3) any cement kiln firing hospital waste or medical and infectious waste;
- (4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;

- (5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:
  - (A) notifies the Director of an exemption claim; and
  - (B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or
- (6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:
  - (A) notifies the Director of an exemption claim;
  - (B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and
  - (C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51c shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) 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.
- (2) Particulate Matter.
  - (A) Emissions of particulate matter from a HMIWI shall not exceed:

Incinerator Size	Allowable Emission Rate (mg/dscm) [corrected to seven percent oxygen]
Small	115
Medium	69
Large	34

- (B) Emissions of particulate matter from any small remote HMIWI shall not exceed 197 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

- (3) Visible Emissions. On and after the date on which the initial performance test is completed, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI

- any gases that exhibit greater than 10 percent opacity (6-minute block average).
- (4) Sulfur Dioxide. Emissions of sulfur dioxide from any HMIWI shall not exceed 55 parts per million corrected to seven percent oxygen (dry basis).
- (5) Nitrogen Oxide. Emissions of nitrogen oxides from any HMIWI shall not exceed 250 parts per million by volume corrected to seven percent oxygen (dry basis).
- (6) Carbon Monoxide. Emissions of carbon monoxide from any HMIWI shall not exceed 40 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (7) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (8) Hydrogen Chloride.
- (A) Emissions of hydrogen chloride from any small, medium, or large HMIWI shall be reduced by at least 93 percent by weight or volume or to no more than 100 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (B) Emissions of hydrogen chloride from any small remote HMIWI shall not exceed 3100 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (9) Mercury Emissions.
- (A) Emissions of mercury from any small, medium, or large HMIWI shall be reduced by at least 85 percent by weight or shall not exceed 0.55 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (B) Emissions of mercury from any small remote HMIWI shall not exceed 7.5 milligrams per dry standard cubic meter, corrected to seven percent oxygen. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
- (10) Lead Emissions.
- (A) Emissions of lead from any small, medium, or large HMIWI shall be reduced by at least 70 percent by weight or shall not exceed 1.2 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.
- (B) Emissions of lead from any small remote HMIWI shall not exceed 10 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (11) Cadmium Emissions.
- (A) Emissions of cadmium from any small, medium, or large HMIWI shall be reduced by at least 65 percent by weight or shall not exceed 0.16 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.
- (B) Emissions of cadmium from any small remote HMIWI shall not exceed 4 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (12) Dioxins and Furans.
- (A) Emissions of dioxins and furans from any small, medium, or large HMIWI shall not exceed 125 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 2.3 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.
- (B) Emissions of dioxins and furans from any small remote HMIWI shall not exceed 800 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 15 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.
- (13) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (14) 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 degrees F (25 degrees 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:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>(i) arsenic and its compounds<br/>2.3x10<sup>-7</sup></li> <li>(ii) beryllium and its compounds<br/>4.1x10<sup>-6</sup></li> <li>(iii) cadmium and its compounds<br/>5.5x10<sup>-6</sup></li> <li>(iv) chromium (VI) and its compounds<br/>8.3x10<sup>-8</sup></li> </ul> | <ul style="list-style-type: none"> <li>(3) The owner or operator of any HMIWI, except small remote HMIWI, subject to this Rule shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the fugitive emissions testing requirements under 40 CFR 60.56c(b)(12) and (c)(3).</li> <li>(4) The owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:               <ul style="list-style-type: none"> <li>(A) conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11)(mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;</li> <li>(B) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and</li> <li>(C) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.</li> </ul> </li> </ul> |
|--|--|
- (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of 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 subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (d) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
  - (2) Each small remote HMIWI shall have an initial equipment inspection by July 1, 2000, and an annual inspection each year thereafter.
    - (A) At a minimum, the inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii).
    - (B) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period. The Director shall grant the extension if:
      - (i) the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not feasible; and
      - (ii) the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request.
  - (5) Except as provided in Subparagraph (3) of this Paragraph, operation of the HMIWI above the maximum charge rate and below the minimum secondary temperature, each measured on a three hour rolling average, simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and dioxin and furan emission limits.
  - (6) The owner or operator of a HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameters to demonstrate that the HMIWI is not in violation of the applicable emission limits. Repeat performance tests conducted pursuant to this Subparagraph shall be

conducted using the identical operating parameters that indicated a violation under Subparagraph (4) of this Paragraph.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.
- (3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7).
- (4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this

Paragraph, the owner or operator of a small remote HMIWI shall:

- (A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;
  - (B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and
  - (C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 02Q .0500, Title V Procedures.
- (5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan.
- (6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c.
- (7) The owner or operator of any small remote HMIWI shall:
- (A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.
  - (B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.
  - (C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste.

(g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Training and Certification.

- (1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g).
- (3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10).
- (4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The reviews of the information shall be conducted annually.
- (5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e;*

*Eff. October 1, 1991;*

*Amended Eff. June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993.*

## **15A NCAC 02D .1208 OTHER INCINERATORS**

(a) Applicability.

- (1) This Rule applies to any incinerator not covered under Rules .1203 through .1207, .1210, or .1219 of this Section.
- (2) If any incinerator subject to this Rule:
  - (A) is used solely to cremate pets; or
  - (B) if the emissions of all toxic air pollutants from an incinerator subject to this Rule and associated waste handling and storage are less than the levels listed in 15A NCAC 02Q .0711;
 the incinerator is exempt from Subparagraphs (b)(6) through (b)(9) and Paragraph (c) of this Rule.

(b) Emission Standards.

- (1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rules .0524, 1110, or .1111 of this

Subchapter apply. However, when Subparagraphs (8) or (9) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant applies notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

(2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:

(A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation  $E=0.002P$  calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate in 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.

(B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.

(3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.

- (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
  - (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
  - (6) Hydrogen Chloride. Any incinerator subject to this Rule shall control emissions of hydrogen chloride such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
  - (7) Mercury Emissions. Emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
  - (8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
  - (9) 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 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, apply aggregately to all incinerators at a facility subject to this Rule:
      - (i) arsenic and its compounds  $2.3 \times 10^{-7}$
      - (ii) beryllium and its compounds  $4.1 \times 10^{-6}$
      - (iii) cadmium and its compounds  $5.5 \times 10^{-6}$
      - (iv) chromium (VI) and its compounds  $8.3 \times 10^{-8}$
    - (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of 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 subject to this Rule as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.
- (c) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
  - (2) Crematory Incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600 degrees F for a period of not less than one second.
  - (3) Other Incinerators. All incinerators not subject to any other rule in this Section shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800 degrees F for a period of not less than one second. The temperature of 1800 degrees F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600 degrees F.
  - (4) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter. Any incinerator subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.
- (d) Test Methods and Procedures.
- (1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
  - (2) The Director shall require the owner or operator to test his incinerator to demonstrate

compliance with the emission standards listed in Paragraph (b) of this Rule if necessary to determine compliance with the emission standards of Paragraph (b) of this Rule.

**(e) Monitoring, Recordkeeping, and Reporting.**

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator, except an incinerator meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section, shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director shall require a temperature monitoring device for incinerators meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section if the incinerator is in violation of the requirements of Part .1201(c)(4)(D) of this Section. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director shall require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the incinerator.

(f) Excess Emissions and Start-up and Shut-down. Any incinerator subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); Eff. July 1, 1998; Amended Eff. June 1, 2008; July 1, 2007; January 1, 2005; August 1, 2002; July 1, 2000; July 1, 1999.*

**15A NCAC 02D .1210 COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS**

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to the commercial and industrial solid waste incinerators (CISWI).

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

- (1) incineration units covered under Rules .1203 through .1206 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, of agricultural waste, 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 of agricultural waste, pathological waste, low level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
- (3) small power production or cogeneration units 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)) or 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
  - (C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
- (4) units that combust waste for the primary purpose of recovering metals;
- (5) cyclonic barrel burners;
- (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;
- (7) cement kilns;
- (8) chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds as listed in 40 CFR 60.2555(n)(1) through (7);
- (9) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
- (10) air curtain burners covered under Rule .1904 of this Subchapter.

(c) The owner or operator of a chemical recovery unit not listed under 40 CFR 60.2555(n) may petition the Director to be exempted. The petition shall include all the information specified under 40 CFR 60.2559(a). The Director shall approve the exemption if he finds that all the requirements of 40 CFR 60.2555(n) are satisfied and that the unit burns materials to recover chemical constituents or to produce chemical compounds where there is an existing market for such recovered chemical constituents or compounds.



(d) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 apply in addition to the definitions in Rule .1202 of this Section.

(e) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where Rules .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 applies, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

- (1) Particulate Matter. Emissions of particulate matter from a CISWI unit shall not exceed 70 milligrams per dry standard cubic meter corrected to seven percent oxygen (dry basis).
- (2) Opacity. Visible emissions from the stack of a CISWI unit shall not exceed 10 percent opacity (6-minute block average).
- (3) Sulfur Dioxide. Emissions of sulfur dioxide from a CISWI unit shall not exceed 20 parts per million by volume corrected to seven percent oxygen (dry basis).
- (4) Nitrogen Oxides. Emissions of nitrogen oxides from a CISWI unit shall not exceed 368 parts per million by volume corrected to seven percent oxygen (dry basis).
- (5) Carbon Monoxide. Emissions of carbon monoxide from a CIWI unit shall not exceed 157 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from a CISWI unit shall not exceed 62 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (8) Mercury Emissions. Emissions of mercury from a CISWI unit shall not exceed 0.47 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (9) Lead Emissions. Emissions of lead from a CISWI unit shall not exceed 0.04 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (10) Cadmium Emissions. Emissions of cadmium from a CISWI unit shall not exceed 0.004 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (11) Dioxins and Furans. Emissions of dioxins and furans from a CISWI unit shall not exceed 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), corrected to seven percent oxygen. Toxic equivalency is given in Table 4 of 40 CFR part 60, Subpart DDDD.
- (12) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of

this Subchapter according to 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 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, apply aggregately to all incinerators at a facility subject to this Rule:

- (i) arsenic and its compounds  $2.3 \times 10^{-7}$
- (ii) beryllium and its compounds  $4.1 \times 10^{-6}$
- (iii) cadmium and its compounds  $5.5 \times 10^{-6}$
- (iv) chromium (VI) and its compounds  $8.3 \times 10^{-8}$

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of 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 Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(f) Operational Standards.

- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
- (2) If a wet scrubber is used to comply with emission limitations:
  - (A) operating limits for the following operating parameters shall be established:
    - (i) maximum charge rate, which shall be measured continuously, recorded every hour, and calculated using

- one of the following procedures:
- (I) for continuous and intermittent units, the maximum charge rate is 110 percent of the average charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; or
  - (II) for batch units, the maximum charge rate is 110 percent of the daily charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations;
- (ii) minimum pressure drop across the wet scrubber, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of:
- (I) the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations, or
  - (II) the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations;
- (iii) minimum scrubber liquor flow rate, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; and
- (iv) minimum scrubber liquor pH, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations.
- (B) A three hour rolling average shall be used to determine if operating parameters in Subparts (A)(i) through (A)(iv) of this Subparagraph have been met.
- (C) The owner or operator of the CISWI unit shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed.
- (3) If a fabric filter is used to comply with the emission limitations, then it shall be operated as specified in 40 CFR 60.2675(c);
- (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 (e) of this Rule, the owner or operator shall petition the Director 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 Director approves the petition. The petition shall include:
- (A) identification of the specific parameters to be used as additional operating limits;
  - (B) explanation of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants;
  - (C) explanation of establishing the upper and lower limits for these parameters,

which will establish the operating limits on these parameters;

- (D) explanation of the methods and instruments used to measure and monitor these parameters, as well as the relative accuracy and precision of these methods and instruments;
- (E) identification of the frequency and methods for recalibrating the instruments used for monitoring these parameters.

The Director shall approve the petition if he finds that the requirements of this Subparagraph have been satisfied and that the proposed operating limits will ensure compliance with the emission standards in Paragraph (e) of this Rule.

(g) Test Methods and Procedures.

- (1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director".
- (2) The test methods and procedures described in Section .2600 of this Subchapter, in 40 CFR Part 60 Appendix A, 40 CFR Part 61 Appendix B, and 40 CFR 60.2690 shall be used to determine compliance with emission standards in Paragraph (e) this Rule. Method 29 of 40 CFR Part 60 shall be used to determine emission standards for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (3) All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations. Compliance with emissions standards under Subparagraph (e)(1), (3) through (5), and (7) through (11) of this Rule shall be determined by averaging three one-hour emission tests. These tests shall be conducted within 12 months following the initial performance test and within every twelve month following the previous annual performance test after that.
- (4) The owner or operator of CISWI shall conduct an initial performance test as specified in 40 CFR 60.8 to determine compliance with the emission standards in Paragraph (e) of this Rule and to establish operating standards using the procedure in Paragraph (f) of this Rule.
- (5) The owner or operator of the CISWI unit shall conduct an annual performance test for particulate matter, hydrogen chloride, and opacity as specified in 40 CFR 60.8 to determine compliance with the emission standards for the pollutants in Paragraph (e) of this Rule.
- (6) If the owner or operator of CISWI unit has shown, using performance tests, compliance with particulate matter, hydrogen chloride, and

opacity for three consecutive years, the Director shall allow the owner or operator of CISWI unit to conduct performance tests for these three pollutants every third year. However, each test shall be within 36 months of the previous performance test. If the CISWI unit continues to meet the emission standards for these three pollutants the Director shall allow the owner or operator of CISWI unit to continue to conduct performance tests for these three pollutants every three years.

- (7) If a performance test shows a deviation from the emission standards for particulate matter, hydrogen chloride, or opacity, the owner or operator of the CISWI unit shall conduct annual performance tests for these three pollutants until all performance tests for three consecutive years show compliance for particulate matter, hydrogen chloride, or opacity.
- (8) The owner or operator of CISWI unit may conduct a repeat performance test at any time to establish new values for the operating limits.
- (9) The owner or operator of the CISWI unit shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.
- (10) If the Director has evidence that an incinerator is violating a standard in Paragraph (e) or (f) of this Rule or that the feed stream or other operating conditions have changed since the last performance test, the Director may require the owner or operator to test the incinerator to demonstrate compliance with the emission standards listed in Paragraph (e) of this Rule at any time.

(h) Monitoring.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator subject to the requirements of this Rule shall establish, install, calibrate to manufacturers specifications, maintain, and operate:
  - (A) devices or methods for continuous temperature monitoring and recording for the primary chamber and, where there is a secondary chamber, for the secondary chamber;
  - (B) devices or methods for monitoring the value of the operating parameters used to determine compliance with the operating parameters established under Paragraph (f)(2) of this Rule;

- (C) a bag leak detection system that meets the requirements of 40 CFR 60.2730(b) if a fabric filter is used to comply with the requirements of the emission standards in Paragraph (e) of this Rule; and
  - (D) equipment necessary to monitor compliance with the cite-specific operating parameters established under Paragraph (f)(4) of this Rule.
- (3) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.
- (4) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or less to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the CISWI unit.
- (5) The owner or operator of the CISWI unit shall conduct all monitoring at all times the CISWI unit is operating, except;
  - (A) malfunctions and associated repairs;
  - (B) required quality assurance or quality control activities including calibrations checks and required zero and span adjustments of the monitoring system.
- (6) The data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities shall not be used in assessing compliance with the operating standards in Paragraph (f) of this Rule.
- (i) Recordkeeping, and Reporting.
  - (1) The owner or operator of CISWI unit shall maintain records required by this Rule on site in either paper copy or electronic format that can be printed upon request for a period of five years.
  - (2) The owner or operator of CISWI unit shall maintain all records required under 40 CFR 60.2740.
  - (3) The owner or operator of CISWI unit shall submit as specified in Table 5 of 40 CFR 60, Subpart DDDD the following reports:
    - (A) Waste Management Plan;
    - (B) initial test report, as specified in 40 CFR 60.2760;
    - (C) annual report as specified in 40 CFR 60.2770;
    - (D) emission limitation or operating limit deviation report as specified in 40 CFR 60.2780;
  - (E) qualified operator deviation notification as specified in 40 CFR 60.2785(a)(1);
  - (F) qualified operator deviation status report, as specified in 40 CFR 60.2785(a)(2);
  - (G) qualified operator deviation notification of resuming operation as specified in 40 CFR 60.2785(b).
- (4) The owner or operator of the CISWI unit shall submit a deviation report if:
  - (A) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under Paragraph (f) of this Rule;
  - (B) the bag leak detection system alarm sounds for more than five percent of the operating time for the six-month reporting period; or
  - (C) a performance test was conducted that deviated from any emission standards in Paragraph (e) of this Rule.

The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).
- (5) The owner or operator of the CISWI unit may request changing semiannual or annual reporting dates as specified in this Paragraph, and the Director may approve the request change using the procedures specified in 40 CFR 60.19(c).
- (6) Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.
- (7) If the CISWI unit has been shut down by the Director under the provisions of 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.
- (j) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with 15A NCAC 2D .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
- (k) Operator Training and Certification.
  - (1) The owner or operator of the CISWI unit shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct

- supervisor of one or more CISWI unit operators.
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:
- (A) six month after CISWI unit startup; or
- (B) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.
- (3) Operator qualification is valid from the date on which the training course is completed and the operator passes the examination required in 40 CFR 60.2635(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;
- (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 (2) of this Paragraph for a lapse of three years or more.
- (6) The owner or operator of the CISWI unit shall:
- (A) have documentation specified in 40 CFR 60.2660(a)(1) through (10) and (c)(1) through (c)(3) available at the facility and accessible for all CISWI 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 CISWI unit operator:
- (i) the initial review of the documentation specified in Part (A) of this Subparagraph shall be conducted by the later of the two dates:
- (I) six month after CISWI unit startup; or
- (II) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; and
- (ii) subsequent annual reviews of the documentation specified 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 CISWI unit shall meet one of the two criteria specified in 40 CFR 60.2665(a) and (b), depending on the length of time, if all qualified operators are temporarily not at the facility and not able to be at the facility within one hour.
- (l) Prohibited waste. The owner or operator of a CISIW shall not incinerate any of the wastes listed in G.S. 130A-309.10(f1).
- (m) Waste Management Plan.
- (1) The owner or operator of the CISWI unit shall submit a waste management plan to the Director 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.
- (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) a description of how the materials listed in G.S. 130A-309.10(f1) are to be segregated from the waste stream for recycling or proper disposal;
- (C) identification of any additional waste management measures; and
- (D) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures and the emissions reductions expected to be achieved and the environmental or energy impacts that the measures may have.
- (n) The final control plan shall contain the information specified in 40 CFR 60.2600(a)(1) through (5), and a copy shall be maintained on site.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4),(5); 40 CFR 60.215(a)(4); Eff. August 1, 2002; Amended Eff. June 1, 2008; January 1, 2005.*

**15A NCAC 02D .1402 APPLICABILITY**

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.

(c) Rule .1409(b) of this Section apply applies statewide.

(d) The Rules .1407 through .1409 and .1413 of this Section apply to facilities with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:

- (1) Cabarrus County
- (2) Gaston County
- (3) Lincoln County
- (4) Mecklenburg County
- (5) Rowan County
- (6) Union County
- (7) Davidson Township and Coddle Creek Township in Iredell County

(e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the

specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in according to Rule .1403 of this Section.

(g) If EPA notifies the State that its nonattainment plan for ozone has failed to attain the ambient air quality standard for ozone in the Charlotte-Gastonia-Rock Hill ozone nonattainment area, the rules in this Section shall apply to facilities in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons but less than 100 tons of nitrogen oxides per year. Within 60 days of receipt of the notification from EPA, the Director shall notice the applicability of these rules to these sources in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(h) Regardless of any other statement of applicability of this Section, this Section does not apply to any:

- (1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant activity as defined at 15A NCAC 02Q .0103(19);
- (2) incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generator;
- (4) emergency use internal combustion engine;
- (5) source that is not covered under Rule .1418 of this Section and that is at a facility with a federally enforceable potential to emit nitrogen oxides of:
  - (A) less than 100 tons per year; and
  - (B) less than 560 pounds per calendar day beginning May 1 through September 30 of any year.
- (6) stationary internal combustion engine less than 2400 brake horsepower that operates no more than the following hours between May 1 and September 30:

- (A) for diesel engines:  
t = 833,333 / ES
  - (B) for natural gas-fired engines:  
t = 700,280 / ES
- where t equals time in hours and ES equals engine size in horsepower.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. June 1, 2008; July 1, 2007; March 1, 2007; July 18, 2002.*

**15A NCAC 02D .1404 RECORDKEEPING: REPORTING: MONITORING:**

- (a) General requirements. The owner or operator of any source shall comply with the monitoring, recordkeeping and reporting requirements in Section .0600 of this Subchapter and shall maintain all records necessary for determining compliance with all applicable limitations and standards of this Section for five years.
- (b) Submittal of information to show compliance status. The owner or operator of any source shall maintain and, when requested by the Director, submit any information required by this Section to determine the compliance status of an affected source.
- (c) Excess emissions reporting. The owner or operator shall report excess emissions following the procedures under Rule .0535 of this Subchapter.
- (d) Continuous emissions monitors.
  - (1) The owner or operator shall install, operate, and maintain a continuous emission monitoring system according to 40 CFR Part 75, Subpart H, with such exceptions as may be allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96 if the source is covered under Rule.1418 of this Section except internal combustion engines.
  - (2) The owner or operator of a source that is subject to the requirements of this Section but not covered under Subparagraph (1) of this Paragraph and that uses a continuous emissions monitoring system to measure emissions of nitrogen oxides shall operate and maintain the continuous emission monitoring system according to 40 CFR Part 60, Appendix B, Specification 2, and Appendix F or Part 75, Subpart H. If diluent monitoring is required, 40 CFR Part 60, Appendix B, Specification 3, shall be used. If flow monitoring is required, 40 CFR Part 60, Appendix B, Specification 6, shall be used.
  - (3) The owner or operator of the following sources is not required to use continuous emission monitors unless the Director

determines that a continuous emission monitor is necessary under Rule .0611 of this Subchapter to show compliance with the rules of this Section:

- (A) a boiler or indirect-fired process heater covered under Rule .1407 of this Section with a maximum heat input less than or equal to 250 million Btu per hour;
- (B) stationary internal combustion engines covered under Rule .1409 of this Section except for engines covered under Rules .1409(b) and .1418 of this Section.

(e) Missing data.

- (1) If data from continuous emission monitoring systems required to meet the requirements of 40 CFR Part 75 are not available at a time that the source is operated, the procedures in 40 CFR Part 75 shall be used to supply the missing data.
- (2) For continuous emissions monitors not covered under Subparagraph (1) of this Paragraph, data shall be available for at least 95 percent of the emission sources operating hours for the applicable averaging period, where four equally spaced readings constitute a valid hour. If data from continuous emission monitoring systems are not available for at least 95 percent of the time that the source is operated, the owner or operator of the monitor shall:
  - (A) use the procedures in 40 CFR 75.33 through 75.37 to supply the missing data; or
  - (B) document that the combustion source or process equipment and the control device were being properly operated (acceptable operating and maintenance procedures are being used, such as, compliance with permit conditions, operating and maintenance procedures, and preventative maintenance program, and monitoring results and compliance history) when the monitoring measurements were missing.

(f) Quality assurance for continuous emissions monitors.

- (1) The owner or operator of a continuous emission monitor required to meet 40 CFR Part 75, Subpart H, shall follow the quality assurance and quality control requirements of 40 CFR Part 75, Subpart H.
- (2) For a continuous emissions monitor not covered under Subparagraph (1) of this Paragraph, the owner or operator of the continuous emissions monitor shall follow the quality assurance and quality control

requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated annually under another rule. If the continuous emissions monitor is being operated only to satisfy the requirements of this Section, then the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, shall apply except that:

- (A) A relative accuracy test audit shall be conducted after January 1 and before May 1 of each year;
- (B) One of the following shall be conducted at least once between May 1 and September 30 of each year:
  - (i) a linearity test, according to 40 CFR Part 75, Appendix A, Section 3.2, 6.2, and 7.1;
  - (ii) a relative accuracy audit, according to 40 CFR Part 60, Appendix F, Section 5 and 6; or
  - (iii) a cylinder gas audit according to 40 CFR Part 60, Appendix F, Section 5 and 6; and
- (C) A daily calibration drift test shall be conducted according to 40 CFR Part 60, Appendix F, Section 4.0.

(g) Averaging time for continuous emissions monitors. When compliance with a limitation established for a source subject to the requirements of this Section is determined using a continuous emissions monitoring system, a 24-hour block average as described under Rule .0606 of this Subchapter shall be recorded for each day beginning May 1 through September 30 unless a specific rule requires a different averaging time or procedure. A 24-hour block average described in Rule .0606 of this Subchapter shall be used when a continuous emissions monitoring system is used to determine compliance with a short-term pounds-per-million-Btu standard in Rule .1418 of this Section.

(h) Heat input. Heat input shall be determined:

- (1) for sources required to use a monitoring system meeting the requirements of 40 CFR Part 75, using the procedures in 40 CFR Part 75; or
- (2) for sources not required to use a monitoring system meeting the requirements of 40 CFR Part 75 using:
  - (A) 40 CFR Part 75,
  - (B) a method in 15A NCAC 02D .0501, or

- (C) the best available heat input data if approved by the Director (the Director shall grant approval if he finds that the heat input data is the best available).

(i) Source testing. When compliance with a limitation established for a source subject to the requirements of this Section is determined using source testing, the source testing shall follow the procedures of Rule .1415 of this Section.

(j) Alternative monitoring and reporting procedures. The owner or operator of a source covered under this Rule may request alternative monitoring or reporting procedures under Rule .0612, Alternative Monitoring and Reporting Procedures.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5),(7),(10);*

*Eff. April 1, 1995;*

*Amended Eff. April 1, 1999;*

*Temporary Amendment Eff. November 1, 2000;*

*Amended Eff. April 1, 2001;*

*Temporary Amendment Eff. August 1, 2001;*

*Amendment Eff. January 1, 2009; December 1, 2005; January 1, 2005; May 1, 2004; July 15, 2002.*

#### **15A NCAC 02D .1407 BOILERS AND INDIRECT-FIRED PROCESS HEATERS**

(a) This Rule applies geographically according to Rule .1402 of this Section.

(b) The owner or operator of a boiler or indirect-fired process heater with a maximum heat input rate of less than or equal to 50 million Btu per hour shall comply with the annual tune-up requirements of Rule .1414 of this Section. The owner or operator of a boiler or indirect-fired process heater subject to the requirements of this Paragraph shall maintain records of all tune-ups performed for each source according to Rule .1404 of this Section.

(c) The owner or operator of a fossil fuel-fired boiler with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million Btu per hour, a boiler with a maximum heat input greater than 50 million Btu per hour that is not a fossil fuel-fired boiler, or an indirect-fired process heater with a maximum heat input greater than 50 million Btu per hour shall comply by:

- (1) installation of, if necessary, combustion modification technology or other NO<sub>x</sub> control technology and maintenance, including annual tune-ups and recordkeeping; and
- (2) demonstration through source testing or continuous emission monitoring that the source complies with the following applicable limitation:

#### **MAXIMUM ALLOWABLE NO<sub>x</sub> EMISSION RATES FOR BOILERS AND INDIRECT PROCESS HEATERS (POUNDS PER MILLION BTU)**

<u>Fuel/Boiler Type</u>	<u>Firing Method</u>		
	<u>Tangential</u>	<u>Wall</u>	<u>Stoker or Other</u>
Coal (Wet Bottom)	1.0	1.0	N/A
Coal (Dry Bottom)	0.45	0.50	0.40
Wood or Refuse	0.20	0.30	0.20



Oil	0.30	0.30	0.30
Gas	0.20	0.20	0.20

(d) If the emissions are greater than the applicable limitation in Paragraph (c) of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT, the owner or operator may petition the Director for an alternative limitation or standard in accordance with Rule .1412 of this Section.

(e) Compliance with the limitation established for a boiler or indirect-fired process heater under this Rule shall be determined:

- (1) using a continuous emission monitoring system if the boiler or indirect-fired process heater is required to use a continuous emissions monitoring system under Rule .0524 of this Section or 40 CFR Part 60 to measure emissions of nitrogen oxides; or
- (2) using annual source testing according to Rule .1415 of this Section for boilers or indirect-fired process heaters with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million BTU per hour with the exception allowed under Paragraph (f) of this Rule.

(f) If a source covered under this rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under Subparagraph (e)(2) this Rule shall not be required for that fuel.

(g) If two consecutive annual source tests show compliance, the Director may reduce the frequency of testing up to once every five years. In years that a source test is not done, the boiler or indirect-fired process heater shall comply with the annual tune-up requirements of Rule .1414 of this Section. If after the Director reduces the frequency of testing, a source test shows that the emission limit under this Rule is exceeded, the Director shall require the boiler or indirect-fired process heater to be tested annually until two consecutive annual tests show compliance. Then the Director may again reduce the frequency of testing.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. June 1, 2008; July 18, 2002.*

#### **15A NCAC 02D .1409 STATIONARY INTERNAL COMBUSTION ENGINES**

(a) This Rule applies geographically according to Rule .1402 of this Section.

(b) The owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more that is not covered under Paragraph (c) of this Rule or Rule .1418 of this Section shall not allow emissions of NO<sub>x</sub> from the stationary internal combustion engine to exceed the following limitations:

#### **MAXIMUM ALLOWABLE NO<sub>x</sub> EMISSION RATES FOR STATIONARY INTERNAL COMBUSTION ENGINES (GRAMS PER HORSEPOWER HOUR)**

Engine Type	Fuel Type	Limitation
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#### **15A NCAC 02D .1408 STATIONARY COMBUSTION TURBINES**

(a) This Rule applies geographically according to Rule .1402 of this Section.

(b) Unless the owner or operator chooses the option of emission averaging under Rule .1410 of this Section, the owner or operator of a stationary combustion turbine with a heat input rate greater than 100 million Btu per hour but less than or equal to 250 million Btu per hour shall comply with the following limitations:

- (1) Emissions of NO<sub>x</sub> shall not exceed 75 ppm by volume corrected to 15 percent oxygen for gas-fired turbines, or
- (2) Emissions of NO<sub>x</sub> shall not exceed 95 ppm by volume corrected to 15 percent oxygen for oil-fired turbines.

If necessary, the owner or operator shall install combustion modification technology or other NO<sub>x</sub> control technology to comply with the applicable limitation set forth in this Paragraph.

(c) If the emissions are greater than the applicable limitation in Paragraph (b) of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT for the particular stationary combustion turbine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(d) Compliance with the limitation established for a stationary combustion turbine under this Rule shall be determined:

- (1) using a continuous emissions monitoring system, or
- (2) using annual source testing according to Rule .1415 of this Section.

(e) If a source covered under this rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under this Rule is not required for that fuel.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. June 1, 2008; July 18, 2002.*

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**APPROVED RULES**

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Rich-burn	Gaseous	2.5
Lean-burn	Gaseous	2.5
Compression Ignition	Liquid	8.0

(c) Engines identified in the table in this Paragraph shall not exceed the emission limit in the table during the ozone season.

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**SUM OF MAXIMUM ALLOWABLE OZONE SEASON NO<sub>x</sub> EMISSIONS**

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(tons per ozone season)

FACILITY	REGULATED SOURCES	ALLOWABLE EMISSIONS
Transcontinental Gas Pipeline Station 150	Mainline engines #12, 13, 14, and 15	76
Transcontinental Gas Pipeline Station 155	Mainline engines #2, 3, 4, 5, and 6	127
Transcontinental Gas Pipeline Station 160	Mainline engines #11, 12, 13, 14, and 15	149

Compliance shall be determined by summing the actual emissions from the engines listed in the table at each facility for the ozone season and comparing those sums to the limits in the table. Compliance may be achieved through trading under Paragraph (g) of this Rule if the trades are approved before the ozone season.

(d) If the emissions from that stationary internal combustion engine are greater than the applicable limitation in Paragraph (b) of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT for the particular stationary internal combustion engine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(e) For the engines identified in Paragraph (c) of this Rule and any engine involved in emissions trading with one or more of the engines identified in Paragraph (c) of this Rule, the owner or operator shall determine compliance using:

- (1) a continuous emissions monitoring system which meets the applicable requirements of Appendices B and F of 40 CFR part 60 and Rule .1404 of this Section; or
- (2) an alternate monitoring and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

The installation, implementation, and use of this alternate procedure allowed under Subparagraph (e)(2) of this Paragraph shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can show the compliance status of the engine.

(f) If a stationary internal combustion engine is permitted to operate more than 475 hours during the ozone season, compliance with the limitation established for a stationary internal combustion engine under Paragraph (b) of this Rule shall be determined using annual source testing according to Rule .1415 of this Section. If a source covered under this rule can burn more than one fuel, then the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the source testing required under this Rule is not required for that fuel.

(g) If a stationary internal combustion engine is permitted to operate no more than 475 hours during the ozone season, the owner or operator of the stationary internal combustion engine shall show compliance with the limitation under Paragraph (b) of this Rule with source testing during the first ozone season of operation according to Rule .1415 of this Section. Each year after that, the owner or operator of the stationary internal combustion engine shall comply with the annual tune-up requirements of Rule .1414 of this Section.

(h) The owner or operator of a source covered under Paragraph (c) of this Rule may offset part or all of the emissions of that source by reducing the emissions of another stationary internal combustion engine at that facility by an amount equal to or greater than the emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations may be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:

- (1) identification of the source, including permit number, providing the offset and what the new allowable emission rate for the source will be;
- (2) identification of the source, including permit number, receiving the offset and what the new allowable emission rate for the source will be;
- (3) the amount of allowable emissions in tons per ozone season being offset;
- (4) a description of the monitoring, recordkeeping, and reporting that shall be used to show compliance; and
- (5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations.

The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations.

If the Director approves the offset, he shall put the new allowable emission rates in the respective permits.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10);

*Eff.* April 1, 1995;

*Temporary Amendment Eff.* August 1, 2001; November 1, 2000;

*Amended Eff.* June 1, 2008; June 1, 2004; July 18, 2002.

#### **15A NCAC 02D .1410 EMISSIONS AVERAGING**

(a) This Rule shall not apply to sources covered under Rule .1418 of this Section. Sources that have obtained an alternative limitation as provided by Rule .1412 of this Section or that apply seasonal fuel switching as provided by Rule .1411 of this Section are not eligible to participate in an emissions averaging plan under this Rule.

(b) With the exceptions in Paragraph (a) of this Rule, the owner or operator of a facility with two or more sources with comparable plume rise and subject to the requirements of this Section for all such sources as determined by Rule .1402 of this Section may elect to apply an emissions averaging plan according to Paragraph (c) of this Rule. An emission averaging plan may be used if the total NO<sub>x</sub> emissions from the averaged set of sources based on the total heat input are equal to or less than the NO<sub>x</sub> emissions that would have occurred if each source complied with the applicable limitation.

(c) To request approval of an emissions averaging plan to comply with the requirements of this Section, the owner or operator of a facility shall submit a written request to the Director including the following information:

- (1) the name and location of the facility;
- (2) information identifying each source to be included under the averaging plan;
- (3) the maximum heat input rate for each source;
- (4) the fuel or fuels combusted in each source;
- (5) the maximum allowable NO<sub>x</sub> emission rate proposed for each averaging source;
- (6) a demonstration that the nitrogen oxide emissions of the sources being averaged when operated together at the maximum daily heat input rate, will be less than or equal to the total NO<sub>x</sub> emissions if each source complied with the applicable limitation of this Section individually;
- (7) an operational plan to provide reasonable assurance that the sources being averaged will satisfy Subparagraph (5) of this Paragraph when the combined maximum daily heat input rate is less than the permitted maximum heat input rate; and
- (8) the method to be used to determine the actual NO<sub>x</sub> emissions from each source.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10);

*Eff.* April 1, 1995;

*Temporary Amendment Eff.* August 1, 2001; November 1, 2000;

*Amended Eff.* January 1, 2009; July 18, 2002.

#### **15A NCAC 02D .1411 SEASONAL FUEL SWITCHING**

(a) This Rule shall not apply to sources covered under Rule .1418 of this Section.

(b) The owner or operator of a coal-fired or oil-fired boiler subject to the requirements of Rule .1407 of this Section may elect to comply by applying seasonal combustion of natural gas according to Paragraph (c) of this Rule. This option is not available to a boiler that used natural gas as its primary fuel in or since 1990. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(c) The owner or operator electing to comply with the requirements of this Section through the seasonal combustion of natural gas shall establish a NO<sub>x</sub> emission limit beginning October 1 and ending April 30 that will result in annual NO<sub>x</sub> emissions of less than or equal to the NO<sub>x</sub> that would have been emitted if the source complied with the applicable limitation for the combustion of coal for the entire calendar year. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(d) To comply with the requirements of this Section through the seasonal combustion of natural gas, the owner or operator shall submit to the Director the following information:

- (1) the name and location of the facility;
- (2) information identifying the source to use seasonal combustion of natural gas for compliance;
- (3) the maximum heat input rate for each source;
- (4) a demonstration that the source will comply with the applicable limitation for the combustion of coal during the ozone season
- (5) a demonstration that the source will comply with the NO<sub>x</sub> emission limitation established under Paragraph (c) of this Rule beginning October 1 and ending April 30; and
- (6) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available beginning during the ozone season.

*History Note:* Authority G.S. 143-215.3(a)(1) 143-215.65; 143-215.107(a)(5), (7), (10);

*Eff.* April 1, 1995;

*Temporary Amendment Eff.* November 1, 2000;

*Amended Eff.* April 1, 2001;

*Temporary Amendment Eff.* August 1, 2001;

*Amended Eff.* June 1, 2008; July 18, 2002.

#### **15A NCAC 02D .1412 PETITION FOR ALTERNATIVE LIMITATIONS**

(a) If the owner or operator of a source subject to the requirements of Rule .1407, .1408, or .1409(b) of this Section:

- (1) cannot achieve compliance with the applicable limitation after reasonable effort to satisfy the requirements of Rules .1407, .1408, or .1409 of this Section or if the requirements of Rules .1407, .1408, or .1409 of this Section are not RACT for the particular source; and

- (2) cannot provide reasonable assurance for overall compliance at a facility through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section;

the owner or operator may petition the Director for an alternative limitation according to Paragraph (b) or (c) of this Rule.

(b) To petition the Director for an alternative limitation, the owner or operator of the source shall submit;

- (1) the name and location of the facility;
- (2) information identifying the source for which an alternative limitation is being requested;
- (3) the maximum heat input rate for the source;
- (4) the fuel or fuels combusted in the source;
- (5) the maximum allowable NO<sub>x</sub> emission rate proposed for the source for each fuel;
- (6) a demonstration that the source has satisfied the requirements to apply for an alternative limitation under Paragraph (a) of this Rule; and
- (7) a demonstration that the proposed alternative limitation is RACT for that source.

(c) If the source is required to comply with best achievable control technology under Rule .0530, Prevention of Significant Deterioration, of this Subchapter, the owner or operator of the source shall provide the information required under Subparagraphs (b)(1) through (6) of this Rule and documentation that the source is required to use best available control technology and is complying with that requirement. For this source, its best available control technology shall be considered RACT without any further demonstrations.

(d) The Director shall approve the alternative limitation if he finds that:

- (1) all the information required by Paragraph (b) of this Rule has been submitted,
- (2) the requirements of Paragraph (a) of this Rule have been satisfied, and
- (3) the proposed alternative limitation is RACT for that source.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10);*

*Eff. April 1, 1995;*

*Temporary Amendment Eff. August 1, 2001; November 1, 2000;*

*Amended Eff. June 1, 2008; July 18, 2002.*

#### **15A NCAC 02D .1415 TEST METHODS AND PROCEDURES**

(a) When source testing is used to determine compliance with rules in this Section, the methods and procedures in Section .2600 of this Subchapter shall be used.

(b) The owner or operator shall maintain records of tests performed to demonstrate compliance with this Section according to Rule .1404 of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);*

*Eff. April 1, 1995;*

*Temporary Amendment Eff. August 1, 2001; November 1, 2000;*

*Amended Eff. June 1, 2008; July 18, 2002.*

#### **15A NCAC 02D .1416 EMISSION ALLOCATIONS FOR UTILITY COMPANIES**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);*

*Eff. April 1, 2001;*

*Temporary Amendment Eff. August 1, 2001; November 1, 2000;*

*Amended Eff. June 1, 2004; July 18, 2002;*

*Repealed Eff. January 1, 2009.*

#### **15A NCAC 02D .1417 EMISSION ALLOCATIONS FOR LARGE COMBUSTION SOURCES**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);*

*Temporary Adoption Eff. November 1, 2000;*

*Temporary Adoption Eff. August 1, 2001;*

*Eff. July 18, 2002;*

*Amended Eff. June 1, 2004;*

*Repealed Eff. January 1, 2009.*

#### **15A NCAC 02D .1418 NEW ELECTRIC GENERATING UNITS, LARGE BOILERS, AND LARGE I/C ENGINES**

(a) Electric generating units. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system permitted after October 31, 2000, serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity shall not exceed:

- (1) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(b) Large boilers. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system having a maximum design heat input greater than 250 million Btu per hour which is permitted after October 31, 2000, and not covered under Paragraph (a) of this Rule, shall not exceed:

- (1) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration)

or .0531 (nonattainment area major new source review) of this Subchapter;

- (2) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(c) Internal combustion engines. The following reciprocating internal combustion engines permitted after October 31, 2000, shall comply with the applicable requirements in Rule .1423 of this Section if the engine is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major source review) of this Subchapter:

- (1) rich burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,
- (2) lean burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,
- (3) diesel stationary internal combustion engines rated at equal to or greater than 3,000 brake horsepower, or
- (4) dual fuel stationary internal combustion engines rated at equal to or greater than 4,400 brake horsepower,

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of Rule .1423 of this Section or the best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction. If the engine is covered under Rule .0531 of this Subchapter, it shall comply with lowest available emission rate technology requirements of Rule .0531 of this Subchapter.

(d) Monitoring. The owner or operator of a source subject to this Rule except internal combustion engines shall show compliance using a continuous emission monitor that meets the requirements of Rule .1404(d) of this Section. Internal combustion engines shall comply with the monitoring requirements in Rule .1423 of this Section. Monitors shall be installed before the first ozone season in which the source will operate and shall be operated each day during the ozone season that the source operates.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. August 1, 2001; November 1, 2000; Eff. July 18, 2002; Amended Eff. January 1, 2009; June 1, 2004.*

#### **15A NCAC 02D .1419 NITROGEN OXIDE BUDGET TRADING PROGRAM**

#### **15A NCAC 02D .1420 PERIODIC REVIEW AND REALLOCATIONS**

#### **15A NCAC 02D .1421 ALLOCATIONS FOR NEW**

### **GROWTH OF MAJOR POINT SOURCES**

#### **15A NCAC 02D .1422 COMPLIANCE SUPPLEMENT POOL CREDITS**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Adoption Eff. August 1, 2001; Eff. July 18, 2002; Amended Eff. June 1, 2004; Repealed Eff. January 1, 2009.*

#### **15A NCAC 02D .2601 PURPOSE AND SCOPE**

(a) The purpose of this Section is to assure consistent application of testing methods and methodologies to demonstrate compliance with emission standards.

(b) This Section shall apply to all air pollution sources.

(c) Emission compliance testing shall be by the procedures of this Section, except as may be otherwise required in Rules .0524, .0912, .1110, .1111, or .1415 of this Subchapter.

(d) The Director may approve using test methods other than those specified in this Section under Paragraph (i) of Rule .2602 of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); Eff. June 1, 2008.*

#### **15A NCAC 02D .2604 NUMBER OF TEST POINTS**

(a) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the following situations:

- (1) particulate testing,
- (2) volatile organic compounds,
- (3) velocity and volume flow rate measurements,
- (4) testing for acid mist or other pollutants that occur in liquid droplet form,
- (5) any sampling for which velocity and volume flow rate measurements are necessary for computing final test results, or
- (6) any sampling that specifies isokinetic sampling.

(b) Method 1 of Appendix A of 40 CFR Part 60 shall be used as written with the following clarifications:

- (1) Testing installations with multiple breechings may be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then Method 1 shall be applied to each breeching individually.
- (2) If test ports in a duct are less than two diameters downstream from any disturbance (fan, elbow, change in diameter, or any other physical feature that may disturb the gas flow) or less than one-half diameter upstream from any disturbance, the acceptability of the test location shall be determined by the Director before the test and after his review of technical and economic factors.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2605 VELOCITY AND VOLUME FLOW RATE**

Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity and volume flow rate measurements are required.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2606 MOLECULAR WEIGHT**

(a) With the exceptions allowed under Paragraph (b), Method 3 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method when necessary to determine the molecular weight of the gas being sampled by determining the fraction of carbon dioxide, oxygen, carbon monoxide, and nitrogen.

(b) The grab sample technique may be substituted using instruments such as Bacharach Fyrite™ with the following restrictions:

- (1) Instruments such as the Bacharach Fyrite™ may only be used for the measurement of carbon dioxide.
- (2) Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. At least four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.
- (3) The total concentration of gases other than carbon dioxide, oxygen, and nitrogen shall be less than one percent.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2607 DETERMINATION OF MOISTURE CONTENT**

Method 4 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method requiring determination of gas moisture content.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2608 NUMBER OF RUNS AND COMPLIANCE DETERMINATION**

Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For determining compliance with an applicable emission standard, the average of results of all repetitions applies. On a case-by-case basis, compliance may be determined using the arithmetic average of two run results if the Director determines that an unavoidable

and unforeseeable event happened beyond the owner's or operator's or tester's control and that a third run could be not be completed.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2609 PARTICULATE TESTING METHODS**

(a) With the exception allowed under Paragraph (b) of this Rule, Method 5 of Appendix A of 40 CFR Part 60 and Method 202 of Appendix M of 40 CFR Part 51 shall be used to demonstrate compliance with particulate emission standards. The owner or operator may request an exemption from using Method 202 and the Director shall approve the exemption if the Director determines that the demonstration compliance with an applicable emission standard is unlikely to change with or without the Method 202 results included.

(b) Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 if:

- (1) The stack gas temperature does not exceed 320° F,
- (2) Particulate matter concentrations are known to be independent of temperature over the normal range of temperatures characteristic of emissions from a specified source category, and
- (3) The stack does not contain liquid droplets or is not saturated with water vapor.

(c) Particulate testing on steam generators that use soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:

- (1) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, only one of the test runs shall include a soot blowing cycle.
- (2) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle. Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = S(E_S)\{(A+B)/AR\} + E_N\{((R-S)/R) - (BS/AR)\}$$

where:

- (A) EAVG equals the average emission rate in pounds per million Btu for daily operating time.
- (B) ES equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing.
- (C) EN equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing.

- (D) A equals hours of soot blowing during sample(s).
- (E) B equals hours without soot blowing during sample(s) containing soot blowing.
- (F) R equals average hours of operation per 24 hours.
- (G) S equals average hours of soot blowing per 24 hours.

The Director may approve an alternate method of prorating the emission rate during soot blowing if the owner or operator of the source demonstrates that changes in boiler load or stack flow occur during soot blowing that are not representative of normal soot blowing operations.

(d) Unless otherwise specified by an applicable rule or federal subpart, the minimum time per test point for particulate testing shall be two minutes, and the minimum time per test run shall be one hour.

(e) Unless otherwise specified by an applicable rule or federal subpart, the sample gas drawn during each test run shall be at least 30 cubic feet.

(f) Method 201 or Method 201A in combination with Method 202 of Appendix M of 40 CFR Part 51 shall be used to determine compliance with PM10 emission standards. If the exhaust gas contains entrained moisture droplets, Method 5 of Appendix A of 40 CFR Part 60 in combination with Method 202 of Appendix M of 40 CFR Part 51 shall be used to determine PM10 emission compliance.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2610 OPACITY**

(a) Method 9 of Appendix A of 40 CFR 60 shall be used to show compliance with opacity standards when opacity is determined by visual observation.

(b) Method 22 Appendix A of 40 CFR 60 shall be used to determine compliance with opacity standards when such standards are based upon the frequency of fugitive emissions from stationary sources as specified in the applicable rule or by permit condition.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2611 SULFUR DIOXIDE TESTING METHODS**

(a) If compliance is to be demonstrated for a combustion source through stack sampling the procedures described in Method 6 or Method 6C of Appendix A of 40 CFR Part 60 shall be used. When Method 6 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. The 20-minute run requirement only applies to Method 6 not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously.

(b) Fuel burning sources not required to use continuous emissions monitoring to demonstrate compliance with sulfur dioxide emission standards, may determine compliance with sulfur dioxide emission standards by stack sampling or by analyzing sulfur content of the fuel.

(c) For stationary gas turbines, Method 20 of 40 CFR Part 60 shall be used to demonstrate compliance with applicable sulfur dioxide emissions standards.

(d) When compliance is to be demonstrated for a combustion source by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be according to the following American Society of Testing and Materials (ASTM) methods. The Director may approve ASTM methods different from those described in this Paragraph if they will provide equivalent or more reliable results. The Director may prescribe alternate ASTM methods on an individual basis if that action is necessary to secure reliable test data.

##### **(1) Coal Sampling:**

(A) Sampling Location. Coal shall be collected from a location in the handling or processing system that provides a sample representative of the fuel bunkered or burned during a boiler operating day. For the purpose of this method, a fuel lot size is defined as the weight of coal bunkered or consumed during each boiler-operating day. For reporting and calculation purposes, the gross sample shall be identified with the calendar day on which sampling began. The Director may approve alternate definitions of fuel lot sizes if the alternative will provide a more representative sample.

(B) Sample Increment Collection. A coal sampling procedure shall be used that meets the requirements of ASTM D 2234 Type I, condition A, B, and C, and systematic spacing for collection of sample increments. All requirements and restrictions regarding increment distribution and sampling device constraints shall be observed.

(C) Gross Samples. ASTM D 2234, 7.1.2, Table 2 shall be used except as provided in 7.1.5.2 to determine the number and weight of increments (composite or gross samples).

(D) Preparation. ASTM D 2013 shall be used for sample preparation from a composite or gross sample.

(E) Gross Caloric Value (GCV). ASTM D 2015 or D 3286 shall be used to determine GCV on a dry basis from a composite or gross sample.

- (F) Moisture Content. ASTM D 3173 shall be used to determine moisture from a composite or gross sample.
- (G) Sulfur Content. ASTM D 3177 or D 4239 shall be used to determine the percent sulfur on a dry basis from a composite or gross sample.
- (2) Oil Sampling
  - (A) Sample Collection. A sample shall be collected at the pipeline inlet to the fuel-burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line.
  - (B) Heat Of Combustion. ASTM Method D 240 or D 2015 shall be used to determine the heat of combustion.
  - (C) Sulfur Content. ASTM Method D 129 or D 1552 shall be used to determine the sulfur content.

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Subparagraph (d)(1) or (d)(2) of this Rule are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

(e) When compliance is shown for sulfuric acid manufacturing plants or spodumene ore roasting plants with Rules .0517 and .0527, respectively, of this Section through stack sampling, the procedures described in Method 8 of Appendix A of 40 CFR Part 60 shall be used. When Method 8 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging emissions measured by three one-hour test runs unless otherwise specified in the applicable rule or federal subpart.

(f) When compliance is shown for a combustion source emitting sulfur dioxide not covered under Paragraph (a) through (e) of this Rule through stack sampling, the procedures described in Method 6 or Method 6C of Appendix A of 40 CFR Part 60 shall be used. When using Method 6 procedures to show compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. The 20-minute run requirement only applies to Method 6 not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### 15A NCAC 02D .2612 NITROGEN OXIDE TESTING METHODS

(a) Combustion sources not required to use continuous emissions monitoring to demonstrate compliance with nitrogen oxide emission standards shall demonstrate compliance with nitrogen oxide emission standards using Method 7 or Method 7E of Appendix A of 40 CFR Part 60.

(b) Method 20 of Appendix A of 40 CFR Part 60 shall be used to demonstrate compliance with nitrogen oxide emissions standards for stationary gas turbines.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### 15A NCAC 02D .2613 VOLATILE ORGANIC COMPOUND TESTING METHODS

(a) For surface coating material, such as paint, varnish, stain, and lacquer, the volatile matter content, water content, density, volume of solids, and weight of solids shall be determined by Method 24 of Appendix A of 40 CFR Part 60.

(b) For printing inks and related coatings, the volatile matter and density shall be determined by Method 24A of Appendix A of 40 CFR Part 60.

(c) For solvent metal cleaning equipment, the following procedure shall be followed to perform a material balance test:

- (1) clean the degreaser sump before testing;
- (2) record the amount of solvent added to the tank with a flow meter;
- (3) record the weight and type of workload degreased each day;
- (4) at the end of the test run, pump out the used solvent and measure the amount with a flow meter; also, estimate the volume of metal chips and other material remaining in the emptied sump;
- (5) bottle a sample of the used solvent and analyze it to find the percent that is oil and other contaminants; the oil and solvent proportions may be estimated by weighing samples of used solvent before and after boiling off the solvent; and
- (6) compute the volume of oils in the used solvent. The volume of solvent displaced by this oil along with the volume of makeup solvent added during operations is equal to the solvent emissions.

(d) For bulk gasoline terminals, emissions of volatile organic compounds shall be determined by the procedures set forth in 40 CFR 60.503.

(e) For organic process equipment, leaks of volatile organic compounds shall be determined by Method 21 of Appendix A of 40 CFR Part 60. Organic process equipment includes valves, flanges and other connections, pumps and compressors, pressure relief devices, process drains, open-ended valves, pump and compressor seal system degassing vents, accumulator vessel vents, access door seals, and agitator seals.

(f) For determination of solvent in filter waste (muck and distillation waste) in accordance with Rule .0912 of this Section,



the tester shall derive the quantity of volatile organic compounds per quantity of discarded filter muck. The procedure to be used in making this determination is the test method described by the American National Standards Institute's "Standard Method of Test for Dilution of Gasoline-Engine Crankcase Oils" (ASTM 322-67 or IP 23/68) except that filter muck is to be used instead of crankcase oil.

(g) For sources of volatile organic compounds not covered under the methods specified in Paragraphs (b) through (e) of this Rule, one of the applicable test methods in Appendix M in 40 CFR Part 51 or Appendix A in 40 CFR Part 60 shall be used to determine compliance with volatile organic compound emission standards.

(h) Compounds excluded from the definition of volatile organic compound under Rule .0901 of this Subchapter shall be treated as water.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2614 DETERMINATION OF VOC EMISSION CONTROL SYSTEM EFFICIENCY**

(a) The provisions of this Rule are applicable to any test method employed to determine the collection or control efficiency of any device or system designed, installed, and operated for the purpose of reducing volatile organic compound emissions.

(b) The following procedures shall be used to determine efficiency:

- (1) The volatile organic compound containing material shall be sampled and analyzed using the procedures contained in this Section.
- (2) Samples of the gas stream containing volatile organic compounds shall be taken simultaneously at the inlet and outlet of the emissions control device.
- (3) The efficiency of the control device shall be expressed as the fraction of total combustible carbon content reduction achieved.
- (4) The volatile organic compound mass emission rate shall be the sum of emissions from the control device and emissions not collected by the capture system.

(c) Capture efficiency performance of volatile organic compound emission control systems shall be determined using the EPA recommended capture efficiency protocols and test methods as described in the EPA document, EMTIC GD-035, "Guidelines for Determining Capture Efficiency."

(d) The EPA document, EMTIC GD-035, "Guidelines for Determining Capture Efficiency" cited in this Rule is hereby incorporated by reference including any subsequent amendments or editions. A copy of the referenced materials may be obtained free of charge via the Internet from the EPA TTN website at <http://www.epa.gov/ttn/emc/guidlnd.html>.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2615 DETERMINATION OF LEAK TIGHTNESS AND VAPOR LEAKS**

(a) Leak Testing. One of the following test methods from the EPA document "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System," EPA-450/2-78-051, published by the U.S. Environmental Protection Agency, December 1978, shall be used to determine compliance with Rule .0932 Gasoline Truck Tanks And Vapor Collector Systems of this Section:

- (1) The gasoline vapor leak detection procedure by combustible gas detector described in Appendix B of EPA-450/2-78-051 shall be used to determine leakage from gasoline truck tanks and vapor control systems.
- (2) The leak detection procedure for bottom-loaded truck tanks by bag capture method described in Appendix C of EPA-450/2-78-051 shall be used to determine the leak tightness of truck tanks during bottom loading.

(b) Annual Certification. The pressure-vacuum test procedures for leak tightness of truck tanks described in Method 27 of Appendix A of 40 CFR Part 60 shall be used to determine the leak tightness of gasoline truck tanks in use and equipped with vapor collection equipment. Method 27 of Appendix A of 40 CFR Part 60 is changed to read:

- (1) 8.2.1.2 "Connect static electrical ground connections to tank."
- (2) 8.2.1.3 "Attach test coupling to vapor return line."
- (3) 16.0 No alternative procedure is applicable.

(c) Copies of Appendix B and C of the EPA document, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection System," EPA-450/2-78-051, cited in this Rule, are hereby incorporated with subsequent amendments and editions by reference and are available on the Division's Website <http://daq.state.nc.us/enf/sourcetest>.

*History Note:* Authority G.S. 143-215.3(a)(1), 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2616 FLUORIDES**

The procedures for determining compliance with fluoride emissions standards shall be by using:

- (1) Method 13A or 13B of Appendix A of 40 CFR Part 60 for sampling emissions from stacks; or
- (2) Method 14 of Appendix A of 40 CFR Part 60 for sampling emissions from roof monitors not employing stacks or pollutant collection systems.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2617 TOTAL REDUCED SULFUR**

(a) Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60 shall be used to show compliance with total reduced sulfur emission standards.

(b) Method 15 of Appendix A of 40 CFR Part 60 may be used as an alternative method to determine total reduced sulfur emissions from tail gas control units of sulfur recovery plants, hydrogen sulfide in fuel gas for fuel gas combustion devices, and where specified in other applicable federal subparts.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2618 MERCURY**

Method 101 or 102 of Appendix b of 40 CFR Part 61 shall be used to show compliance with mercury emission standards.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2619 ARSENIC, BERYLLIUM, CADMIUM, HEXAVALENT CHROMIUM**

(a) Method 29 of 40 CFR Part 60 of Appendix A shall be used to show compliance for arsenic, beryllium, cadmium, and hexavalent chromium metals emission standards.

(b) SW 846 Method 3060 shall be used for the analysis to differentiate hexavalent from total chromium. The EPA publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," cited in this Rule is hereby incorporated by reference including any subsequent amendments or editions. A copy of the EPA publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," may be obtained free of charge via the Internet from the EPA website at <http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm>.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2620 DIOXINS AND FURANS**

Method 23 of Appendix A of 40 CFR Part 60 shall be used to show compliance with polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans emission standards.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02D .2621 DETERMINATION OF FUEL HEAT CONTENT USING F-FACTOR**

(a) Emission rates for wood or fuel burning sources that are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in Section 5 of Method 19 of Appendix A of 40 CFR Part 60. Other procedures described in Method 19 may be used if appropriate. To provide data of sufficient accuracy for use with the F-factor methods, an integrated (bag) sample shall be taken for the duration of each test run. For simultaneous testing of multiple ducts, there shall be a separate bag sample for each sampling train. The bag sample shall be analyzed with an Orsat

analyzer by Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications stated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.

(b) A continuous oxygen (O<sub>2</sub>) and carbon dioxide (CO<sub>2</sub>) monitor under Method 3E of Appendix A of 40 CFR Part 60 may be used if the average of all values during the run are used to compute the average concentrations.

(c) The Director may approve the use of alternative methods according to Rule .2602 of this Section if they meet the requirements of Method 3 of Appendix A of 40 CFR Part 60.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5);  
Eff. June 1, 2008.

#### **15A NCAC 02Q .0508 PERMIT CONTENT**

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 02D .0501 (d) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

- (1) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
  - (A) on forms obtained from the Division at the address in Rule .0104 of this Subchapter,
  - (B) in a manner as specified by a permit condition, or
  - (C) on other forms that contain the information required by this Subchapter or as specified by a permit condition; and
- (2) the permittee to report malfunctions, emergencies, and other upset conditions as

prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111 and to report by the next business day deviations from permit requirements not covered under 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 02D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

(g) At the request of the permittee, the Director may allow records to be maintained in computerized form in lieu of maintaining paper records if computerized records contain the same information as the paper records would contain.

(h) The permit for facilities covered under 15A NCAC 02D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement;
- (2) conditions that require the owner or operator of the facility to submit:
  - (A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or
  - (B) as part of the compliance certification under Paragraph (t) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

(i) The permit shall:

- (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV; but shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement;
- (2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;
- (3) state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
- (4) state that the permittee may not use as a defense in an enforcement action that it would

have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit; state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section;

- (5)
- (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;
- (7) specify the conditions under which the permit shall be reopened before the expiration of the permit;
- (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
- (9) state that the permittee shall furnish to the Division, in a timely manner:

- (A) any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and
- (B) copies of records required to be kept by the permit when such copies are requested by the Director.

(For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.)

- (10) contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter;
- (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section;
- (12) include all applicable requirements for all sources covered under the permit;
- (13) include fugitive emissions, if regulated, in the same manner as stack emissions;
- (14) contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter;
- (15) include all sources including insignificant activities; and
- (16) contain other provisions the Director considers appropriate.

(j) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted

- facility a record of the operating scenario under which it is operating;
- (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
- (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.

(k) The permit shall identify which terms and conditions are enforceable by:

- (1) both EPA and the Division;
- (2) the Division only;
- (3) EPA only; and
- (4) citizens under the federal Clean Air Act.

(l) The permit shall state that the permittee shall allow personnel of the Division to:

- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
- (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
- (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
- (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.

(m) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
- (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.

(n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA under Title V of the federal Clean Air Act , including emissions limitations, standards, or work practices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements) of submissions of compliance certifications;

- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; and
- (3) a requirement that the compliance certification include:

- (A) the identification of each term or condition of the permit that is the basis of the certification;
- (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR 64 occurred;
- (C) whether compliance was continuous or intermittent;
- (D) the identification of the method(s) or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include the methods and means required under 40 CFR Part 70.6(a)(3); and
- (E) such other facts as the Director may require to determine the compliance status of the source;

- (4) that all compliance certifications be submitted to EPA as well as to the Division.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;*

*Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;*

*Eff. July 1, 1994;*

*Amended Eff. July 1, 1996;*

*Temporary Amendment Eff. December 1, 1999;*

*Amended Eff. June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001; July 1, 2000.*

### **15A NCAC 02Q .0523 CHANGES NOT REQUIRING PERMIT REVISIONS**

(a) Section 502(b)(10) changes:

- (1) The permittee may make Section 502(b)(10) changes without having his permit revised if:
  - (A) The changes are not a modification under 15A NCAC 02D or Title I of the federal Clean Air Act;
  - (B) The changes do not cause the emissions allowed under the permit to be exceeded;

- (C) The permittee notifies the Director and EPA with written notification at least seven days before the change is made; and
- (D) The permittee attaches the notice to the relevant permit.
- (2) The written notification required under Part (a)(1)(C) of this Rule shall include:
  - (A) a description of the change,
  - (B) the date on which the change will occur,
  - (C) any change in emissions, and
  - (D) any permit term or conditions that is no longer applicable as a result of the change.
- (3) Section 502(b)(10) changes shall be made in the permit the next time that the permit is revised or renewed, whichever comes first.
- (b) Off-permit changes. A permittee may make changes in his operation or emissions without revising his permit if:
  - (1) The change affects only insignificant activities and the activities remain insignificant after the change, or
  - (2) The change is not covered under any applicable requirement.
- (c) Emissions trading.
  - (1) To the extent that emissions trading is allowed under 15A NCAC 02D, including subsequently adopted maximum achievable control technology standards, emissions trading is allowed without permit revisions provided that:
    - (A) All applicable requirements are met;
    - (B) The permittee complies with all terms and conditions of the permit in making the emissions trade; and
    - (C) The permittee notifies the Director and EPA with written notification at least seven days before the trade is made; this notification requirement does not apply to trades made under 15A NCAC 02D .1419, Nitrogen Oxide Budget Trading Program, 15A NCAC .02D .2408, Trading Program and Banking (CAIR), or 15A NCAC 02D .2510, Trading and Banking (CAMR).
  - (2) If an emissions cap has been established by a permit condition for the purposes of limiting emissions below that allowed by an otherwise applicable requirement, emissions trading is allowed to the extent allowed by the permit if:
    - (A) An emissions cap is established in the permit to limit emissions;
    - (B) The permit specifies the emissions limits with which each source shall comply under any applicable requirement;
- (C) The permittee complies with all permit terms that ensure the emissions trades are enforceable, accountable, and quantifiable;
- (D) The permittee complies with all applicable requirements;
- (E) The permittee complies with the emissions trading procedures in the permit; and
- (F) The permittee notifies the Director and EPA with written notification at least seven days before the trade is made.
- (3) The written notification required under Subparagraph (1) of this Paragraph shall include:
  - (A) a description of the change,
  - (B) the date on when the change will occur,
  - (C) any change in emissions,
  - (D) the permit requirement with which the facility or source will comply using the emissions trading provision of the applicable provision of 15A NCAC 02D, and
  - (E) the pollutants emitted subject to the emissions trade.

This Subparagraph does not apply to trades made under 15A NCAC 02D .1419, Nitrogen Oxide Budget Trading Program, 15A NCAC .02D .2408 Trading Program and Banking, or 15A NCAC 02D .2510, Trading and Banking.
- (4) The written notification required under Subparagraph (2) of this Paragraph shall include:
  - (A) a description of the change,
  - (B) the date on when the change will occur,
  - (C) changes in emissions that will result and how the increases and decrease in emissions will comply with the terms and conditions of the permit.
- (d) The permit shield allowed under Rule .0512 of this Section does not apply to changes made under Paragraphs (a), (b), or (c) of this Rule.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. June 1, 2008; December 1, 2005.*

**15A NCAC 02Q .0711 EMISSION RATES REQUIRING****A PERMIT**

(a) A permit to emit toxic air pollutants is required for any facility whose actual (or permitted if higher) rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)	10			
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.016			
asbestos (1332-21-4)	$1.9 \times 10^{-6}$			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	11			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			

**APPROVED RULES**

ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)		1.7		
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
n-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36- 3)	5.6			
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746- 01-6)	0.00020			
1,1,1,2-tetrachloro-2,2,- difluoroethane (76-11-9)		1100		
1,1,2,2-tetrachloro-1,2- difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate,2,4-(584-84-9) and 2,6- (91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	

1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

(b) For the following pollutants, the highest emissions occurring for any 15-minute period shall be multiplied by four and the product shall be compared to the value in Paragraph (a). These pollutants are:

- (1) acetaldehyde (75-07-0)
- (2) acetic acid (64-19-7)
- (3) acrolein (107-02-8)
- (4) ammonia (7664-41-7)
- (5) bromine (7726-95-6)
- (6) chlorine (7782-50-5)
- (7) formaldehyde (50-00-0)
- (8) hydrogen chloride (7647-01-0)
- (9) hydrogen fluoride (7664-39-3)
- (10) nitric acid (7697-37-2)

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;*

*Rule originally codified as part of 15A NCAC 02H .0610;*

*Eff. July 1, 1998;*

*Amended Eff. June 1, 2008; April 1, 2005; February 1, 2005; April 1, 2001.*

#### **15A NCAC 02Q .0903 EMERGENCY GENERATORS**

(a) For the purposes of this Rule, "emergency generator" means a stationary internal combustion engine used to generate electricity only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance. An emergency generator may be operated periodically to ensure that it will operate.

(b) This Rule applies to emergency generators at a facility whose only sources that would require a permit are emergency generators and whose emergency generators consume less than:

- (1) 322,000 gallons per calendar year of diesel fuel,
- (2) 48,000,000 cubic feet per calendar year of natural gas,
- (3) 1,200,000 gallons per calendar year of liquified petroleum gas,
- (4) 25,000 gallons per calendar year of gasoline for gasoline-powered generators, or
- (5) any combination of the fuels listed in this Paragraph provided the facility-wide actual emissions of each regulated air pollutant does not exceed 100 tons per calendar year.

(c) The owner or operator of emergency generators covered under this Rule shall comply with .0516 (sulfur dioxide emissions from combustion sources), .0521 (control of visible emissions), and .0524 (new source performance standard).

(d) The owner or operator of an emergency generator covered under this Rule shall maintain records of the amount of fuel burned in the generator for each calendar year so that the

Division can determine upon review of these records that the emergency generator qualifies to be covered under this Rule.

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. June 1, 2008.*

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#### **15A NCAC 06E .0107 COST SHARE AGREEMENT**

(a) The landowner shall be required to sign the agreement for all practices other than agronomic practices and land application of animal wastes. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.

(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible. Soil testing shall be required a minimum of every two years on all cropland affected by cost share payments. Failure to soil test shall not constitute noncompliance with the cost share agreement.

(d) As a condition for receiving cost share payments for waste management systems, the applicant shall agree to have the waste material analyzed once every year to determine its nutrient content. If the waste is land applied, the applicant shall agree to soil test the area of application and to apply the waste as close as reasonably and practically possible to recommended rates. When waste is land applied, waste analysis and soil testing shall be conducted annually.

(e) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications as defined for the respective program year in the USDA-Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina, according to other specifications approved by the Commission pursuant to 15A NCAC 06H .0103, or according to specifications approved by the Division for district BMP's based on the criteria established in 15A NCAC 06H .0103(c). The district shall be responsible for making an annual spot check of five percent of all the cost share agreements to ensure proper maintenance. Waste management systems shall be included as part of the annual five percent check except for systems on farms without certified



waste management plans. In those cases, the districts shall conduct annual status reviews for five years following implementation.

(f) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district

may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.

(g) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.

Table 1  
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE  
OF COST SHARE PAYMENTS

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

(h) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.

(i) An applicant shall have 180 days to make repayment to the Division following the final appeals process.

(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.

(k) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (g) of this Rule.

*History Note: Authority G.S. 139-4; 139-8; 143-215.74; Eff. May 1, 1987; Amended Eff. July 1, 1992; Recodified from 15A NCAC 6E .0007 Eff. December 20, 1996; Amended Eff. June 1, 2008; April 1, 1999; November 1, 1997.*

**15A NCAC 06I .0107 COST SHARE AGREEMENT**

(a) The landowner shall be required to sign the agreement for all practices. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature,

provided the control runs the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.

(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible.

(d) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications approved by the Commission pursuant to 15A NCAC 06H .0103 or by the Division for district BMP's based on the criteria established in 15A NCAC 06H .0103(c). The district shall be responsible for making an annual spot check of five percent of all cost share agreements for which the required BMP maintenance period has not expired.

(e) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.

(f) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the

Division a prorated refund for cost share BMPs as shown in Table 1 and 100 percent of the cost share incentive payments received.

Table 1  
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE  
OF COST SHARE PAYMENTS

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

(g) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.

(h) An applicant shall have 180 days to make repayment to the Division following the final appeals process.

(i) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.

(j) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100% of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in paragraph (f) of this rule.

*History Note: Authority G.S. 139-4; 139-8; 143-215.74(M); Eff. June 1, 2008.*

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**15A NCAC 10B .0203 DEER (WHITE-TAILED)**

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to white-tailed deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden,

Carteret, Chowan, Columbus\*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond\*\*, Robeson, Sampson, Scotland\*\*, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Moore\*\*: All of the county except that part north of NC 211 and west of US 1.

\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

\*\*Refer to 15A NCAC 10D .0103(h) for seasons on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(B) Saturday before Thanksgiving through the fourth Saturday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes\*, and Yadkin counties.

\* Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood,

- Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.
- (D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:  
Moore: That part north of NC 211 and west of US 1.
- (E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties, except for South Mountain Game Land.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D . 0103 for either sex seasons on Game Lands):
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Buncombe, Haywood, Henderson, Madison and Transylvania counties and the following parts of counties:  
Avery: That part south of the Blue Ridge Parkway;  
Scotland: That part south of US 74; and  
Yancey: That part south of US 19 and US 19E.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, McDowell, Mitchell, Polk and the following parts of counties:  
Avery: That part north of the Blue Ridge Parkway;  
Dare, except that part of the county located on the Outer Banks north of Whalebone; and  
Yancey: That part north of US 19 and US 19E.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in

all of Catawba, Cleveland, Gaston, Lincoln, Robeson, Rutherford, and Watauga counties and in the following parts of counties:

Scotland: That part north of US 74.

- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Cumberland, Currituck, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne, Wilson, and Yadkin counties, and in the following parts of counties:

Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280;

Dare: That part of the Outer Banks north of Whalebone;

Henderson. That part east of NC 191 and north and west of NC 280.

(c) Open Seasons (Bow and Arrow)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (f) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:

- (A) Saturday on or nearest September 10 to the fourth Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands and the area known as the Outer Banks in Currituck County.
- (B) Saturday on or nearest September 10 to the second Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers

specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.

- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.

- (D) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles, Shotguns and Bow and Arrow)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms and, on private lands only, bow and arrow (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:

- (A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Lands and the area known as the Outer Banks in Currituck County.
- (B) The second Saturday preceding Thanksgiving until the following Friday in the counties\* and parts of counties having the open seasons for

Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule.

\* Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.

(C) Monday on or nearest October 8 to the following Saturday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (b)(1) of this Rule

(D) The third Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

(A) Deer of either sex may be taken during muzzle-loading firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms and bow and arrow season in all other counties.

(B) Dogs shall not be used for hunting deer during the muzzle-loading firearms and bow and arrow seasons.

(C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms and bow and arrow seasons.

(e) Open Season (Urban Season)

(1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (f) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the state, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.

(2) Participation. Cities that intend to participate in the urban season must send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee. Cities must also submit a map of the city's boundaries within which the urban season shall apply.

(3) Restrictions:

(A) Dogs shall not be used for hunting deer during the urban season.

(B) It is unlawful to carry any type of firearm while hunting with a bow during the urban season.

(C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(f) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. In addition to the bag limits described above, a hunter may obtain multiple bonus antlerless deer harvest report cards from the Wildlife Resources Commission or any Wildlife Service Agent to allow the harvest of two additional antlerless deer per card on private lands during any open deer season in all counties and parts of counties of the State identified in Part (G) of Subparagraph (b)(2) of this Rule. Antlerless deer harvested and reported on the bonus antlerless harvest report card shall not count as part of the possession and season limit, however the daily bag limit shall be two. Hunters may also use the bonus antlerless harvest report cards for deer harvested during the season described in Paragraph (e) of this Rule within the boundaries of participating municipalities, except on state-owned game lands. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The bag limits described above do not apply to deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season bag limits shall be set by the number of tags available. All deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

*History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;*

*Eff. February 1, 1976;*

*Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;*

*Temporary Amendment Eff. July 1, 1999;*

*Amended Eff. July 1, 2000;*

*Temporary Amendment Eff. July 1, 2002; July 1, 2001;*

*Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);*

*Temporary Amendment Eff. June 1, 2003;*

*Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);*

*Amended Eff. June 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.*

**15A NCAC 10I .0104 THREATENED SPECIES**

**LISTED**

(a) The following species of resident wildlife are designated as federally-listed threatened species:

- (1) Amphibians: None Listed At This Time.
- (2) Birds: Piping plover (*Charadrius melodus melodus*).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
  - (A) Spotfin chub (*Cyprinella monacha*);
  - (B) Waccamaw silverside (*Menidia extensa*).
- (5) Mammals: None Listed At This Time.
- (6) Mollusks: Noonday globe (*Patera clarki nantahala*).
- (7) Reptiles:
  - (A) Bog turtle (*Glyptemys muhlenbergii*);
  - (B) American alligator (*Alligator mississippiensis*);
  - (C) Green seaturtle (*Chelonia mydas*);
  - (D) Loggerhead seaturtle (*Caretta caretta*).

(b) The following species of resident wildlife are designated as state-listed threatened species:

- (1) Amphibians:
  - (A) Carolina gopher frog (*Rana capito capito*);
  - (B) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*);
  - (C) Junaluska salamander (*Eurycea junaluska*);
  - (D) Wehrle's salamander (*Plethodon wehrlei*).
- (2) Birds:
  - (A) Bald eagle (*Haliaeetus leucocephalus*);
  - (B) Gull-billed tern (*Sterna nilotica aranea*);
  - (C) Northern saw-whet owl (*Aegolius acadicus*).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
  - (A) American brook lamprey (*Lampetra appendix*);
  - (B) Banded sculpin (*Cottus carolinae*);
  - (C) Bigeye jumprock (*Scartomyzon ariommus*);
  - (D) Blackbanded darter (*Percina nigrofasciata*);
  - (E) Carolina madtom (*Noturus furiosus*);
  - (F) Carolina pygmy sunfish (*Elassoma boehlkei*);
  - (G) Carolina redhorse (*Moxostoma sp.*) (Pee Dee River and its tributaries and Cape Fear River and its tributaries);
  - (H) Least brook lamprey (*Lampetra aepyptera*);
  - (I) Logperch (*Percina caprodes*);
  - (J) Rosyface chub (*Hybopsis rubrifrons*);

- (K) Sharphead darter (*Etheostoma acuticeps*);
- (L) Sicklefin redhorse (*Moxostoma sp.*) (Hiwassee River and its tributaries and Little Tennessee River and its tributaries);
- (M) Turquoise darter (*Etheostoma inscriptum*);
- (N) Waccamaw darter (*Etheostoma perlongum*).
- (5) Mammals:
  - (A) Eastern woodrat (*Neotoma floridana floridana*);
  - (B) Rafinesque's big-eared bat (*Corynorhinus rafinesquii rafinesquii*).
- (6) Mollusks:
  - (A) Alewife floater (*Anodonta implicata*);
  - (B) Big-tooth covert (*Fumonelix jonesiana*);
  - (C) Cape Fear threetooth (*Triodopsis soelneri*);
  - (D) Carolina fatmucket (*Lampsilis radiata conspicua*);
  - (E) Clingman covert (*Fumonelix wheatleyi clingmanicus*);
  - (F) Eastern lampmussel (*Lampsilis radiata radiata*);
  - (G) Eastern pondmussel (*Ligumia nasuta*);
  - (H) Engraved covert (*Fumonelix orestes*);
  - (I) Mountain creekshell (*Villosa vanuxemensis*);
  - (J) Roan supercoil (*Paravitrea varidens*);
  - (K) Roanoke slabshell (*Elliptio roanokensis*);
  - (L) Sculpted supercoil (*Paravitrea ternaria*);
  - (M) Seep mudalia (*Leptoxis dilatata*);
  - (N) Smoky Mountain covert (*Inflectarius ferrissi*);
  - (O) Squawfoot (*Strophitus undulatus*);
  - (P) Tidewater mucket (*Leptodea ochracea*);
  - (Q) Triangle floater (*Alasmidonta undulata*);
  - (R) Waccamaw ambersnail (*Catinella waccamawensis*);
  - (S) Waccamaw fatmucket (*Lampsilis fullerikati*);
  - (T) Waccamaw spike (*Elliptio waccamawensis*).
- (7) Reptiles: None Listed At This Time.

*History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333; Eff. March 17, 1978; Amended Eff. June 1, 2008; April 1, 2001; November 1, 1991; April 1, 1991; June 1, 1990; September 1, 1989.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 06 - BOARD OF BARBER EXAMINERS**

**21 NCAC 06A .0102 PHYSICAL AND MAILING ADDRESS**

The address of the Board is 5809-102 Departure Drive, Raleigh, North Carolina 27616.

*History Note: Authority G.S. 86A-6;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06A .0103 OFFICE HOURS**

The office hours of the Board are 8:00 a.m. to 4:30 p.m., Monday through Friday. The office is closed on the recognized State holidays set forth in 25 NCAE 01E .0901.

*History Note: Authority G.S. 86A-6;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06A .0104 MAILING ADDRESS**

*History Note: Authority G.S. 86A-6;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. May 1, 1989;  
Repealed Eff. June 1, 2008.*

**21 NCAC 06B .0301 LOCATION OF HEARINGS**

Unless otherwise stated in a particular rule-making notice, hearings before the Board shall be held at the office of the Board.

*History Note: Authority G.S. 86A-5; 150B-21.2;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06B .0401 POWER TO ISSUE  
21 NCAC 06B .0402 LENGTH OF EFFECTIVENESS**

*History Note: Authority G.S. 150B-13;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. May 1, 1989;  
Repealed Eff. June 1, 2008.*

**21 NCAC 06B .0501 REQUEST FOR DECLARATORY RULING**

All requests for declaratory rulings shall be in writing and mailed to the Chairman at the office address.

*History Note: Authority G.S. 86A-4; 150B-4;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06C .0203 REQUEST AFTER INFORMAL EFFORTS**

Following informal contact with the Board as set out in 21 NCAC 06C .0202, if still dissatisfied, the person may file a written request for an administrative hearing with the Board.

*History Note: Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06C .0205 ACKNOWLEDGEMENT**

Requests for administrative hearings shall be promptly acknowledged by the Board or its legal counsel and, a hearing shall be scheduled.

*History Note: Authority G.S. 150B-38;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06C .0903 BIAS OF BOARD MEMBER**

If for any reason a member of the Board determines that personal bias or other factors would keep him from being able to hear a contested case and perform all duties in an impartial manner, he shall submit in writing to the Chairman his disqualification and the reasons therefore as required by Chapter 138A of the General Statutes.

*History Note: Authority G.S. 138A-36; 150B-38; 150B-40;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06F .0101 PHYSICAL STRUCTURE**

(a) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 linear feet wide;
- (2) be equipped with a minimum of ten barber chairs in sanitary and safe condition sufficient for the number of students enrolled;
- (3) have a minimum of 896 square feet in the practical area for the first ten chairs;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over the required ten;
- (5) have at least five linear feet of space between each chair, center to center;
- (6) have no more than two students enrolled per barber chair;
- (7) be equipped with toilet facilities with hand-washing sink or basin sufficient to serve the number of people at the school;

- (8) have concrete or wood floors covered with smooth, nonporous materials;
- (9) have instructional materials, for example, blackboard space, slide programs, sufficient to teach barbering;
- (10) have a workstand, with mirror, for each barber chair in the practical work area, constructed of material that renders it easily cleaned;
- (11) have a tool cabinet for each barber chair, with a door as nearly air tight as possible;
- (12) have a towel cabinet, or other method of storage, such that clean towels are stored separate from used towels;
- (13) have at least one fully functional sink or lavatory, with hot and cold water, for each two barber chairs;
- (14) have the school separate from any other place or type of business by a substantial wall of ceiling height;
- (15) have a classroom area, separate from the practical area; and
- (16) have desk chairs sufficient to serve the number of students enrolled, and a desk and chair for the instructor.

This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo modifications or structural renovations after that date.

(b) Barber schools permitted prior to December 1, 1994, must have a minimum of 896 square feet for ten chairs and must have 70 square feet for each additional barber chair over the required ten, and have no more than one student enrolled per barber chair. They must be equipped with toilet facilities sufficient to serve the number of people attending the school. They must have desk chairs separate from the practical area.

(c) Barber schools permitted on or after July 1, 2008, shall have a minimum of 20 square feet per student in the classroom area.

*History Note: Authority G.S. 86A-15; 86A-22;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; December 1, 1994; May 1, 1989.*

#### **21 NCAC 06F .0103 FILING**

- (a) Each barber school shall file with the Board the name of the manager or managers of the school.
- (b) When a change in the management of a barber school occurs, the school must report the change at least 30 days before the change is effective, except in emergencies. If such change is due to an emergency, the filing shall be made not later than ten days after the change of management has occurred.

*History Note: Authority G.S. 86A-22;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989; March 1, 1983.*

#### **21 NCAC 06F .0104 INSTRUCTORS**

- (a) Each barber school required by G.S. 86A-22(2) to employ at least two instructors shall have at least two instructors present at all times during instructional hours.
- (b) At least one barber instructor shall actively monitor students engaged in barbering activities at all times.
- (c) While present on the premises of the barber school, barber instructors shall not barber for compensation and shall barber only for the purpose of instruction or demonstration.

*History Note: Authority G.S. 86A-22;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

#### **21 NCAC 06F .0110 ROSTER AND STUDENT RECORDS**

Each barber school shall:

- (1) maintain an up-to-date written roster system which shall be used to ensure that each student serves substantially equal numbers of patrons;
- (2) maintain a complete record of each student including a weekly record of the number of days and hours the student attended classes in practical work and theory;
- (3) maintain a separate daily record of the number of patrons the student served for haircuts, shaves and other clinical services;
- (4) maintain a weekly record of the subject matter taught the student in theory classes; and
- (5) provide the list of students required by G.S. 86A-22(5) by the 15<sup>th</sup> day of each month.

*History Note: Authority G.S. 86A-22;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989; March 1, 1983.*

#### **21 NCAC 06F .0111 COPIES OF BARBER SCHOOL RECORDS**

Barber schools shall furnish to the Board upon request copies of all records or reports required to be kept by barber schools, either by the North Carolina General Statutes or by the rules of the Board, including time sheets for instructors to verify compliance with 21 NCAC 06F .0104, shall be furnished to the Board upon request.

*History Note: Authority G.S. 86A-22;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989.*

#### **21 NCAC 06F .0113 STUDENT PERMIT**

- (a) An application for a student permit shall be submitted to the Board at least 10 days prior to the student beginning classes.
- (b) A student shall be deemed enrolled for the purposes of compliance with the G.S. 86A-22 only from and after the date of issuance of a student permit by the Board. The student shall receive no credit for training received in barber school until a



student permit has been issued for the student and received by the school.

(c) Within five working days of the date on which any student completes his course of study, drops out of school or transfers to another school, the barber school shall return to the Board the student permit issued for the student when the student enrolled in the school.

*History Note: Authority G.S. 86A-22;*

*Eff. February 1, 1976;*

*Readopted Eff. February 8, 1978;*

*Amended Eff. June 1, 2008; May 1, 1989; March 1, 1983.*

**21 NCAC 06F .0120 BARBER SCHOOL CURRICULA**

(a) The following categories and courses shall comprise the minimum course work for all students at barber schools:

	Hours
Classroom Lecture and Study Periods:	
Hygiene and Good Grooming, Professional Ethics	25
Bacteriology, Sterilization, Sanitation	50
Implements, Honing, Stropping and Shaving	30
Men's Haircutting	20
Cutting and Styling Curly Hair, Mustaches and Beards	10
Shampooing and Rinsing, Scalp and Hair Treatments	10
Theory of Massage and Facial Treatments	5
Men's Razor Cutting, Women's Razor and Shear Cutting	30
Finger Waving Men's Hair, Air Waving and Curling Iron Techniques	5
Permanent Waving For Men, Chemical Hair Relaxing and Blow Drying	25
Hair Coloring	10
Men's Hair Pieces	5
The Skin, Scalp and Hair	30
Disorders of the Skin, Scalp and Hair	15
Anatomy and Physiology	10
Electricity Therapy, Light Therapy and Chemistry	10
Barber Styling, Shop Management, and Product Knowledge	70
Licensing Laws and Rules and History of Barbering	20
Supervised Practice in Barbering:	
Shampooing and Scientific Hair and Scalp Treatments	55
Shaving 50	
Tapered Hair Cutting	250
Hair Styling of Men and Women	400
Facials, Massages and Packs	10
Bleaching, Frosting, Hair Coloring and Body Permanents	90
Cutting and Fitting Hair Pieces	5
Hair Straightening	5
The Analyzing and Treatment of Hair and Skin Disorders	10
Lectures and Demonstrations on Practical Work:	
Shampooing and Scientific Hair and Scalp Treatments	15
Shaving 20	
Tapered Hair Cutting	70
Hair Styling of Men and Women	100
Facials, Massages and Packs	5
Bleaching, Frosting, Hair Coloring and Permanent Waving	30
Cutting and Fitting Hair Pieces	5
Hair Straightening	3
The Analyzing and Treating of Hair and Skin Disorders	10
Men's and Women's Razor Cutting	15
Total Hours	1528

(b) All barber schools shall use course books and training materials specifically created for the purpose of teaching barbering skills. Unless the course book or training material has separate and distinct sections covering the practice of barbering, cosmetology course books and training materials are not acceptable.

*History Note: Authority G.S. 86A-22(1); 86A-22(4);*

*Eff. March 1, 1983;*

*Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06F .0121 PENAL INSTITUTIONS**

- (a) The Board may enter into memoranda of understanding or other agreements with the North Carolina Department of Correction, Division of Prisons for the approval of schools of barbering at penal institutions within North Carolina.
- (b) With the exception of the requirement regarding toilet facilities set forth in 21 NCAC 06F .0101(7) and a tool cabinet set forth in 21 NCAC 06F .0101(11), the Division of Prisons shall otherwise comply with the same requirements as other barber schools.

*History Note: Authority G.S. 86A-22;  
Eff. June 1, 2008.*

**21 NCAC 06H .0101 DUTIES AND RESPONSIBILITIES**

Barber school managers shall:

- (1) file for a school permit at least 30 days before opening the school for business;
- (2) ensure that all students are instructed as nearly alike as possible;
- (3) ensure compliance with the North Carolina General Statutes governing barber schools and barbering and the administrative rules of the Board.

*History Note: Authority G.S. 86A-13; 86A-15; 86A-22;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; May 1, 1989; March 1, 1983.*

**21 NCAC 06I .0105 APPRENTICE BARBER**

(a) A student who has trained in another state may take the examination to become a registered apprentice barber provided:

- (1) he proves satisfactorily to the Board that his hours of training in the out-of-state barber school are the substantive equivalent to those in North Carolina;
- (2) he provides proof of completion of barber school training;
- (3) he completes and furnishes to the Board Form BAR-7;
- (4) he pays the required fee according to 21 NCAC 06N .0101; and
- (5) he furnishes a copy of any court record involving a felony conviction.

(b) An applicant who has trained in another state and who is licensed in another state shall report this to the Board. In determining whether the applicant has the required training to be an apprentice barber, the Board shall consider experience as a licensed barber in another state. An applicant licensed in another state must provide certified verification of the licensure from the out-of-state licensing Board.

(c) The Board does not recognize any training obtained through on the job training and any such experience shall be made up in an approved North Carolina barber school before obtaining a license or sitting for an exam.

*History Note: Authority G.S. 86A-5; 86A-18; 86A-24; 86A-25;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. March 1, 1983;  
Legislative Objection Lodged Eff. March 7, 1983;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06J .0101 REGISTERED APPRENTICE**

In order to become a registered apprentice barber, an applicant shall:

- (1) attend an approved barber school for a period of at least 1528 hours or the equivalent as determined by the Board. (For curriculum requirements see 21 NCAC 06F .0120);
- (2) furnish the Board with Form BAR-4 and pay the fee according to 21 NCAC 06N .0101; and
- (3) make a score of at least 70 percent on both a written and practical apprentice examination.

*History Note: Authority G.S. 86A-3; 86A-10; 86A-24; 86A-25;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. March 1, 1983;  
Legislative Objection Lodged Eff. March 7, 1983;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06J .0109 IDENTIFICATION**

All apprentice barbers and student barbers with permission to work shall maintain their license, which includes government-issued photo identification, as defined in 21 NCAC 06P .0103(7) in their possession at all times while performing barbering services and produce the identification to the Executive Director or inspector upon request.

*History Note: Authority G.S. 86A-1; 86A-10;  
Eff. June 1, 2008.*

**21 NCAC 06K .0101 REGISTERED BARBER**

To become a registered barber an applicant must:

- (1) meet the qualifications in G.S. 86A-3;
- (2) furnish the Board with Form BAR-5 and pay the fee according to 21 NCAC 06N .0101; and
- (3) make a score of at least 70 percent or better on the clinical portion of the registered barber examination.

*History Note: Authority G.S. 86A-3; 86A-15; 86A-25;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. March 1, 1983;  
Legislative Objection Lodged Eff. March 7, 1983;  
Curative Amended Eff. April 6, 1983;  
Amended Eff. June 1, 2008; May 1, 1989.*

**21 NCAC 06K .0110 IDENTIFICATION**

All registered barbers shall maintain their permit, which includes government-issued photo identification, as defined in 21 NCAC 06P .0103(7) in their possession at all times while performing barbering and produce the identification to the Executive Director or inspector upon request.

*History Note: Authority G.S. 86A-1; 86A-10;  
Eff. June 1, 2008.*

**21 NCAC 06L .0102 MEASUREMENTS OF BARBER SHOP**

(a) Each barber shop shall be a minimum of 196 square feet measured from the inside walls of the shop, not including common areas shared with other businesses or residents. In addition, each chair shall be located in an area where there is no less than 12 linear feet from front wall to back wall, measured through the center of the chair, with the back wall being the wall or plain to which the backstand is affixed. There shall be a minimum of five linear feet of space between each barber chair, from center to center of each chair and there shall be no less than three linear feet from the center of any chair to any side wall. There shall be an unobstructed aisle in front of each chair of no less than four feet. This Paragraph applies to barber shops which are permitted on or after December 1, 1994 or which undergo modification or structural renovations on or after that date.

(b) Barber shops permitted prior to February 1, 1976, must be a minimum of 12 feet in width and 14 feet in length.

(c) Barber shops permitted between February 1, 1976 and November 30, 1994, must be a minimum of 14 feet in width and 14 feet in length.

(d) Barber shops permitted within the Division of Prisons prior to May 1, 2008, are exempt from the requirements of this Rule.

*History Note: Authority G.S. 86A-15;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; December 1, 1994; May 1, 1989.*

**21 NCAC 06L .0103 EQUIPMENT**

(a) Each barber shall have a cabinet for barbering equipment. The cabinets shall be constructed of material that may be easily cleaned.

(b) Each shop shall have smooth finished walls, ceilings and floors, and no exposed pipes.

(c) Each barber chair shall be covered with a smooth, non-porous surface, such as vinyl or leather, which is easily cleaned.

(d) Each shop shall have within the shop or building functioning toilet facilities for employees and patrons.

(e) Each barber shop shall have a cabinet, or other method of storage, such that clean towels are stored separate from used towels.

(f) In addition to the requirements of Paragraph (d) of this Rule, barber shops which are permitted on or after January 1, 1995 or which undergo modifications or structural renovations after that date must have within the shop or building a hand-washing sink or lavatory for patrons with hot and cold water, soap and disposable towels.

(g) Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the toilet facility and sink may be shared with the cosmetology shop.

(h) Paragraphs (a) and (d) of this Rule do not apply to barber shops operated by the Division of Prisons.

*History Note: Authority G.S. 86A-15;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; January 1, 1995; May 1, 1989;  
March 1, 1983.*

**21 NCAC 06L .0106 SEPARATION FROM OTHER BUSINESSES; RESIDENTIAL SHOPS; MOBILE HOMES**

(a) When a building or room is used for both a barber shop and for some other business and the building or room has limited air conditioning, ventilation, or heat outlets, or air circulation, the required partition between the shop and the other business may be completed from the floor up to a minimum of six feet with some open-like material from six feet to the ceiling to permit good air circulation.

(b) Notwithstanding Paragraph (a) of this Rule and 21 NCAC 06L .0102 and where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners and which is permitted on or after January 1, 1995, or which undergoes modifications or structural renovations after that date, the area where the barber chair or chairs are located must comply with all sanitary rules and laws not inconsistent with this Rule.

(c) For barber shops permitted on or after July 1, 2008, a barber shop in a residential building shall maintain a separate entrance which shall not open off the living quarters, and which shall not have any doors or openings leading to the living quarters which are unlocked during business hours. Entrance through garages or any other rooms is not permitted.

(d) The toilet facilities or any sink in the living quarters of any residence shall not be considered in the toilet facility and sink requirements in 21 NCAC 06L .0103 or the sink distance requirement 21 NCAC 06L .0105.

(e) For barber shops permitted on or after July 1, 2008, mobile homes, motor homes, trailers or any type of recreational vehicle must be permanently affixed so it cannot be moved or they shall not be approved. Any such structure approved for a barber shop shall maintain a separate entrance which shall not open off the living quarters, and shall not have any doors or openings to the living quarters which are unlocked during business hours.

*History Note: Authority G.S. 86A-1; 86A-15;  
Eff. February 1, 1976;  
Readopted Eff. February 8, 1978;  
Amended Eff. June 1, 2008; January 1, 1995; May 1, 1989;  
March 1, 1983.*

**21 NCAC 06L .0107 LAVATORY**

(a) Each barber in a barber shop permitted before January 1, 1995 which is not modified or structurally renovated after that date shall be provided with a functioning sink with hot and cold water, located within his immediate barbering area.

(b) For barber shops permitted on or after January 1, 1995 or which undergo modifications or structural renovation after that date, the sink shall be located within seven unobstructed linear feet of each barbering area.

*History Note:* Authority G.S. 86A-15;

*Eff. February 1, 1976;*

*Readopted Eff. February 8, 1978;*

*Amended Eff. June 1, 2008; January 1, 1995; May 1, 1989.*

**21 NCAC 06L .0111 WHERE BARBER SERVICES MAY BE PERFORMED**

All barber services as defined in G.S. 86A-2 and 21 NCAC 06P .0103 shall only be performed at a location permitted by the Board as a barber shop.

*History Note:* Authority G.S. 86A-15;

*Eff. June 1, 2008.*

**21 NCAC 06L .0112 RENTED BOOTH SPACE**

(a) Where a barber shop rents or leases space to another licensee, the Board shall hold the barbershop manager responsible for the barbering services performed in the rented or leased space and for the sanitary conditions of the rented or leased space.

(b) The Board's inspectors shall examine the entire premises of each shop irrespective of booth space allotments.

*History Note:* Authority G.S. 86A-15;

*Eff. June 1, 2008.*

**21 NCAC 06L .0113 DISEASES**

(a) No holder of a Registered Barber permit, apprentice or student barber permit shall serve a patron with an open sore or sores, exhibiting symptoms of an infectious dermatologic disease or disorder or parasitic infestations of the skin or hair or a communicable disease.

(b) No holder of a Registered Barber permit, apprentice or student barber with a permission to work who knowingly has an infectious dermatologic disease, infectious disease with open sore or sores on the hand or hands, or parasitic infestation of the skin or hair in a communicable stage or any other communicable disease shall provide barber service in a barber shop.

(c) The Board shall have the right to require a physical examination of any person employed in any barber shop who is suspected of having an infectious dermatologic disease, infectious disease with open sore or sores on the hand or hands, or parasitic infestation of the skin or hair in a communicable stage.

*History Note:* Authority G.S. 86A-15;

*Eff. June 1, 2008.*

**21 NCAC 06L .0114 POLICY PROHIBITING PETS**

(a) With the exception of trained guide or assistance animals no animals are permitted in a barber shop. However, the Board shall grant a one year exemption for only one animal per barber shop if the following requirements are met:

- (1) A written request applying for the exemption is made by the owner or manager of the barber shop;
  - (2) The barber shop owner or manager is also the owner of the animal to be exempted;
  - (3) The owner of the barber shop submits to the Board written documentation from a veterinarian, licensed by the State of North Carolina, indicating that the animal is in good health and has received all appropriate vaccinations and related medical treatment;
  - (4) The owner of the barber shop submits to the Board proof of a general liability (or equivalent) insurance policy which contains coverage in an amount which totals at least one million dollars. The policy shall include coverage for any actions taken by the animal;
  - (5) The barber shop manager submits to the Board written documentation that the animal would not be a danger to the general health, safety and welfare of the public; and
  - (6) The barber shop manager submits a photograph of the animal which is the subject of the proposed exemption.
- (b) If granted, the barber shop manager shall maintain the photograph of the animal exempted at the barber shop.
- (c) Such exemption may be renewed.

*History Note:* Authority G.S. 86A-15;

*Eff. June 1, 2008.*

**21 NCAC 06L .0115 INSPECTIONS OF SHOPS**

(a) The Board's Executive Director and its inspectors may enter and make reasonable inspections of any shop during its regular business hours for the purpose of determining whether or not the Board's law and administrative rules are being observed. Persons authorized to make an inspection of shops shall prepare a report of such inspections on forms provided by the Board. The report shall be signed by the inspector and by the owner of the shop or by a person authorized to sign for the owner. The carbon copy of such inspection report shall be left with the owner or manager, and posted within the barbering area until the next inspection. The carbon copy of any violation notice shall be left with the owner or manager, and posted within the barbering area until the violation is resolved with the Board.

(b) The Board's Executive Director and its inspectors may inspect all aspects of the shop including the backstand and its drawers and cabinets, and any other drawers, closets or other enclosures within the permitted shop.

(c) The Board's Executive Director and its inspectors may determine and assign numerical and letter sanitary grades to a shop following inspections as set forth in 21 NCAC 06L .0118 and 21 NCAC 06L .0119. The grade shall be displayed on the sanitary rules required to be posted by G.S. 86A-15(b).

(d) The shop manager shall keep the entire shop open for inspection, including space rented or leased to another licensee.

(e) The shop manager is responsible for the general sanitary condition of the entire shop.

*History Note:* Authority G.S. 86A-5(a)(1); 86A-15;  
Eff. June 1, 2008.

**21 NCAC 06L .0116 OTHER DUTIES OF BARBER SHOP OWNERS AND MANAGERS**

All barber shop owners and managers shall positively identify any licensee to determine that the licensee is, in fact, the person whose name appears on the license or Registered Barber permit prior to allowing the licensee to perform barbering services in the shop, and maintain a record of the identifying information about the licensee.

*History Note:* Authority G.S. 86A-1; 86A-10; 86A-11;  
Eff. June 1, 2008.

**21 NCAC 06L .0117 GENERAL SANITATION**

All barber shops shall remain free of any visible signs of rodents, vermin or insects or signs of mold, mildew or water damage.

*History Note:* Authority G.S. 86A-15;  
Eff. June 1, 2008.

**21 NCAC 06L .0118 SANITARY RATINGS AND POSTING OF RATINGS**

(a) The sanitary rating of a barber shop shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments will be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded a grade B.

(b) Every barber shop shall be given a sanitary rating. A barber school shall be graded two-to-four times a year, and a barber shop shall be graded two-to-four times a year.

(c) The sanitary rating given to a barber shop establishment shall be posted in a conspicuous place at all times.

(d) No barber shop shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 80 percent.

(e) Barber inspectors shall give each barber shop a new sanitary rating card each year.

(f) Violation of Chapter 86A or any administrative rule adopted by the Board or the operation of a barber shop which fails to receive a sanitary rating of at least 80 percent (grade B) shall be sufficient cause for revoking or suspending the letter of approval or permit.

(g) A re-inspection for the purpose of raising the sanitary rating of a barber shop shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.

*History Note:* Authority G.S. 86A-5(a)(1); 86A-15;  
Eff. June 1, 2008.

**21 NCAC 06L .0119 SYSTEMS OF GRADING BARBER SHOPS**

The system of grading the sanitary rating of all barber shops and schools, shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

- (1) clean and well-repaired entrance and waiting area 2;
- (2) general condition of the barber shop 5;
- (3) water system; hot and cold running water 2;
- (4) walls, ceiling and floors:
  - (a) construction and covering 4;
  - (b) clean 4;
  - (c) good repair 3;
- (5) lighting and ventilation (windows included); their adequacy and cleanliness 3;
- (6) public toilet:
  - (a) clean and well ventilated 5;
  - (b) soap and individual towels furnished 5;
  - (c) hot and cold running water 2;
- (7) cleanliness as to person and dress 1;
- (8) linens:
  - (a) supply of clean towels 2;
  - (b) soiled towels 3;
  - (c) hair cloth 1;
- (9) soiled towel receptacle 4;
- (10) tools and instruments 4;
  - (a) disinfectants selected from those approved by the Federal Environmental Protection Agency 4;
  - (b) disinfectants used properly 4;
  - (c) all implements cleaned, disinfected, and property stored 8;
- (11) working area
  - (a) work stand clean 3;
  - (b) lavatories clean 2;
  - (c) jars and containers clean and disinfected 1;
  - (d) no unnecessary articles in work area 1;
- (12) certificate posted; 10;
- (13) sanitary law posted; 1;
- (14) sterilizing solution/container 20;

*History Note:* Authority G.S. 86A-5(a)(1); 86A-15;  
Eff. June 1, 2008.

**21 NCAC 06M .0102 DUTIES AND RESPONSIBILITIES**

Barber shop inspectors shall:

- (1) regularly inspect existing barber shops and barber schools and to inspect new barber shops and barber schools prior to opening;
- (2) inspect any business that advertises or holds itself out as possibly offering barbering

- services or employing barbers on the premises, whether licensed or unlicensed;
- (3) investigate complaints in the inspector's assigned inspection area;
- (4) file weekly reports with the Board which contain a summary of the inspector's activities of the past week and make necessary recommendations to the Board;
- (5) write receipts for all money collected, providing duplicate copies to the payor and to the Board office;
- (6) issue notices of violations and warnings for violations of the Board's law or administrative rules; and
- (7) administer examinations as directed by the Board office.

*History Note:* Authority G.S. 86A-7; 86A-13; 86A-15; 86A-22;  
*Eff. February 1, 1976;*  
*Readopted Eff. February 8, 1978;*  
*Amended Eff. June 1, 2008; December 1, 1994; May 1, 1989;*  
*March 1, 1983.*

#### **21 NCAC 06N .0101 FEES**

The Board charges the following amounts for the fees authorized by G.S. 86A-25:

- (1) Certificate of registration or renewal as a barber \$ 35.00
- (2) Certificate of registration or renewal as an apprentice barber \$ 35.00
- (3) Barbershop permit or renewal \$ 40.00
- (4) Examination to become a registered barber \$ 85.00
- (5) Examination to become a registered apprentice barber \$ 85.00
- (6) Late fee for restoration of an expired barber certificate within first year after expiration \$ 35.00
- (7) Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration \$ 70.00
- (8) Late fee for restoration of an expired apprentice certificate within the first year after expiration \$ 35.00
- (9) Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate \$ 45.00
- (10) Late fee for restoration of an expired barber shop certificate \$ 45.00
- (11) Examination to become a barber school instructor \$150.00
- (12) Student permit \$ 20.00
- (13) Issuance of any duplicate copy of a license, certificate or permit \$ 10.00
- (14) Barber school permit or renewal \$ 85.00

- (15) Late fee for restoration of an expired barber school certificate \$ 85.00
- (16) Barber school instructor certificate or renewal \$ 60.00
- (17) Late fee for restoration of an expired barber school instructor certificate within first year after expiration \$ 45.00
- (18) Late fee for restoration of an expired barber school instructor certificate after first year after expiration but within three years after expiration \$ 85.00
- (19) Inspection of newly established barbershop \$120.00
- (20) Inspection of newly established barber school \$220.00
- (21) Issuance of a registered barber or apprentice certificate by certification \$ 85.00
- (22) Charge for certified copies of public documents \$10.00 for first page, \$0.25 per page thereafter
- (23) Charge for duplication services and material \$5.00 for first page, \$0.25 for each page thereafter
- (24) Certificate of registration or renewal as a barber for barbers over 70 years of age \$ 0.00
- (25) Administrative fee for paying any required fee for renewal or restoration, or a civil penalty and attorney fee, where the licensee or Registered Barber is subject to a pick-up order issued to an inspector. \$70.00

*History Note:* Authority G.S. 86A-25; 86A-27(d);  
*Eff. February 1, 1976;*  
*Readopted Eff. February 8, 1978;*  
*Amended Eff. June 1, 2008; April 1, 2005; May 1, 1989; March 1, 1983.*

#### **21 NCAC 06O .0112 IDENTIFICATION**

(a) The presumptive civil penalty for a barber shop owner or manager failing to positively identify a Registered Barber, apprentice or holder of permission to work:

- (1) 1<sup>st</sup> offense \$50.00
- (2) 2<sup>nd</sup> offense \$100.00
- (3) 3<sup>rd</sup> offense \$200.00

(b) The presumptive civil penalty for a Registered Barber, apprentice or holder of permission to work failing to maintain and produce a license or permit, including identification, as defined in 21 NCAC 06P .0103(7):

- (1) 1<sup>st</sup> offense \$50.00
- (2) 2<sup>nd</sup> offense \$100.00
- (3) 3<sup>rd</sup> offense \$200.00

*History Note:* Authority G.S. 86A-1; 86A-10; 86A-11; 86A-27;  
*Eff. June 1, 2008.*

**21 NCAC 06O .0113 BARBER SHOPS IN RESIDENCES AND MOBILE HOMES**

(a) The presumptive civil penalty for operating a barber shop in a residence in violation of 21 NCAC 06L .0106(c):

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$100.00 |
| (2) | 2 <sup>nd</sup> offense | \$200.00 |
| (3) | 3 <sup>rd</sup> offense | \$500.00 |

(b) The presumptive civil penalty for operating a barber shop in a mobile home in violation of 21 NCAC 06L .0106(d):

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$150.00 |
| (2) | 2 <sup>nd</sup> offense | \$250.00 |
| (3) | 3 <sup>rd</sup> offense | \$500.00 |

*History Note:* Authority G.S. 86A-15; 86A-27;  
*Eff. June 1, 2008.*

**21 NCAC 06O .0114 ANIMALS IN BARBER SHOPS**

(a) The presumptive civil penalty for allowing an animal in a barber shop in violation of 21 NCAC 06L .0114 without first obtaining an exemption from the Board:

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$50.00  |
| (2) | 2 <sup>nd</sup> offense | \$100.00 |
| (3) | 3 <sup>rd</sup> offense | \$200.00 |

(b) The presumptive civil penalty for allowing an animal in a barber shop in violation of 21 NCAC 06L .0114 with an expired exemption:

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$100.00 |
| (2) | 2 <sup>nd</sup> offense | \$250.00 |
| (3) | 3 <sup>rd</sup> offense | \$500.00 |

*History Note:* Authority G.S. 86A-15; 85A-27;  
*Eff. June 1, 2008.*

**21 NCAC 06O .0115 SCHOOL FAILING TO MAINTAIN OR FALSIFYING RECORDS**

(a) The presumptive civil penalty for failing to maintain records by a barber school:

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$150.00 |
| (2) | 2 <sup>nd</sup> offense | \$200.00 |
| (3) | 3 <sup>rd</sup> offense | \$500.00 |

(b) The presumptive civil penalty for falsifying records by a barber school:

- |     |                         |          |
|-----|-------------------------|----------|
| (1) | 1 <sup>st</sup> offense | \$200.00 |
| (2) | 2 <sup>nd</sup> offense | \$350.00 |
| (3) | 3 <sup>rd</sup> offense | \$500.00 |

*History Note:* Authority G.S. 86A-22; 86A-27;  
*Eff. June 1, 2008.*

**21 NCAC 06P .0101 BARBERING**

Unless specifically exempted by statute, "the practice of barbering" or "barbering services" means any one or more of the activities defined in G.S. 86A-2 when performed upon the public for compensation, free, or otherwise.

*History Note:* Authority G.S. 86A-2;  
*Eff. June 1, 2008.*

**21 NCAC 06P .0102 BARBERING EXEMPTIONS**

"The practice of barbering" or "barbering services" does not include the practice of natural hair styling or braiding.

*History Note:* Authority G.S. 86A-2;  
*Eff. June 1, 2008.*

**21 NCAC 06P .0103 GENERAL DEFINITIONS**

For purposes of the rules in this Chapter, the following definitions shall apply:

- (1) "Barber" means any person who engages in or attempts to engage in the practice of barbering or provide barbering services.
- (2) "Barber school" means any establishment that engages in or attempts to engage in the teaching of the practice of barbering.
- (3) "Barber instructor" means any person who engages in or attempts to engage in the teaching of the practice of barbering.
- (4) "Barber pole" means a cylinder or pole with alternating stripes of any combination including red and white, and red, white, and blue, which run diagonally along the length of the cylinder or pole.
- (5) "Board" means the State Board of Barber Examiners.
- (6) "Braiding" means intertwining the hair in a systematic motion to create patterns in a three-dimensional form, inverting the hair against the scalp along part of a straight or curved row of intertwined hair, or twisting the hair in a systematic motion, and includes extending the hair with natural or synthetic hair fibers, and which work does not include cutting the hair or the application of dyes, reactive chemicals, or other preparations to alter the color or to straighten, curl, or alter the structure of the hair, or the application of heat to alter, straighten or curl the hair.
- (7) "License" or "permit" or "registration" means the actual license or permit issued by the Board and valid government issued photo identification depicting the licensee's or permittee's photograph and legal name.
- (8) "Pickup Order" means an order issued by the Board and signed by the Executive Director authorizing an inspector to physically retrieve a permit or license.
- (9) "The practice of barbering" and "barber services" means all activities set forth in G.S. 86A-2, and the sanitary requirements of Chapter 86A and the sanitary rules adopted by the Board.
- (10) "The practice of natural hair styling" means work done for a fee or other form of compensation, by any person, utilizing techniques performed by hand that result in tension on the hair strands or roots such as twisting, wrapping, weaving, extending,

locking, or braiding of the hair by hand or mechanical device, and which work does not include cutting the hair or the application of dyes, reactive chemical(s), or other preparations to alter the color or to straighten, curl, or alter the structure of the hair, or the application of heat to alter, straighten or curl the hair.

- (11) "Sanitary" means free of infectious agents, diseases, or infestation by insects or vermin and free of soil, dust, or foreign material.

*History Note:* Authority G.S. 86A-2; 86A-5; 86A-13; 86A-15; 86A-22; 86A-23;  
Eff. June 1, 2008.

**21 NCAC 06Q .0101 ADDITIONAL GROUNDS FOR DENIAL OR DISCIPLINE**

Except as provided in Chapter 86A of the General Statutes, no person shall do any of the following:

- (1) Operate or attempt to operate a barber shop without a permit;
- (2) Advertising barbering services unless the establishment and personnel employed therein are licensed or permitted;
- (3) Use or display a barber pole for the purpose of offering barber services to the consuming public without a barber shop permit;
- (4) Fail to positively identify a Registered Barber, apprentice barber, or student barber with a right to work permit prior to allowing the person to perform barbering services;
- (5) Fail to maintain and produce a license or permit as defined by 21 NCAC 06P .0103(7) upon the request of the Executive Director or an inspector during an inspection;
- (6) Violate a Settlement Agreement entered into with the Board; or
- (7) Violate the Board's law or any administrative rule adopted by the Board or a local department of health for barbers, barber shops or barber schools.

*History Note:* Authority G.S. 86A-1; 86A-2; 86A-5(a); 86A-10; 86A-11; 86A-13; 86A-15; 86A-16; 86A-17; 86A-18; 86A-20; 86A-22; 86A-23; 86A-24;  
Eff. June 1, 2008.

**21 NCAC 06Q .0102 EFFECT OF CHILD SUPPORT DEFAULT ON LICENSE OR CERTIFICATE**

The provisions of Chapter 93B, Section 13 of the General Statutes applies to all licensees and permittees of the Board and on receipt of a notice, the Board shall comply with G.S. 110-142.1 and any administrative rules with respect to a license or permit issued pursuant to Chapter 86A.

*History Note:* Authority G.S. 93B-13; 110-142.1;  
Eff. June 1, 2008.

**21 NCAC 06Q .0103 REGISTERED SEX OFFENDER**

The Board shall refuse to issue or renew, or shall revoke any license or permit issued pursuant to Chapter 86A of the General Statutes, where the applicant, licensee or permittee has been adjudicated a felony sexual offender and is required to register pursuant to Chapter 14, Section 208.5 of the General Statutes or any similar statutes or ordinances.

*History Note:* Authority G.S. 86A-17;  
Eff. June 1, 2008.

**21 NCAC 06R .0101 DISPLAY OF SIGN OR BARBER POLE**

Every establishment permitted to practice barbering shall display at its main entrance a sign which is visible from the street, and whose lettering is no smaller than three inches, stating "barber shop," "barber salon," "barber styling" or similar use of the designation, "barber," or shall display a "barber pole" as defined in 21 NCAC 06P .0103(e).

*History Note:* Authority G.S. 86A-1; 86A-2; 86A-13;  
Eff. June 1, 2008.

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**TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES**

**23 NCAC 02D .0325 LIMITATIONS IN REPORTING STUDENT MEMBERSHIP HOURS**

(a) Student hours shall not be reported for budget/FTE which result from:

- (1) Conferences or visits.
- (2) Seminars or Meetings.
- (3) Programs of a service nature rather than instructional classes.
- (4) Enrollment of high school students not in compliance with 23 NCAC 02C .0301 and 02C .0305.
- (5) Unsupervised classes.
- (6) Proficiency or challenge exams except that the actual time required to take the exam may be counted in membership; students shall be registered in the class consistent with Paragraph (a) of Rules .0202 and .0203 of this Subchapter.
- (7) Homework assignments.
- (8) Inter-institutional or intramural sports activities including those of prison inmates.
- (9) Effective July 1, 1993, no budget/FTE shall be generated by occupational extension students after their first repetition of an occupational extension course. Students who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be



taught. These students shall not generate budget/FTE. The funds collected from these students shall be used by the colleges to offer additional educational courses. This Subparagraph does not apply to fire, rescue, or law enforcement training courses taken by fire, rescue, or law enforcement personnel.

(10) Learn and Earn Online Courses.

(b) A statement on occupational extension course repetitions consistent with the requirements of this rule shall be included in college advertisements, schedules and catalogs. Students shall be notified during registration that they will be charged the full cost of courses which they have taken twice within a five-year period and in which they wish to enroll. Students shall be primarily responsible for monitoring course repetitions; however, the colleges shall review records and charge students full cost for courses taken more than twice.

(c) Senior citizens who are legal residents of North Carolina and who wish to enroll in an occupational extension course, shall not be required to pay for taking the course twice. Senior citizens who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be taught. These senior citizens shall not generate budget/FTE. The funds collected from these senior citizens shall be used by the colleges to offer additional educational courses.

(d) Students may repeat occupational extension courses more than once if the repetitions are required for certification, licensure, or recertification. The colleges shall submit annual reports to the State Board of Community Colleges naming the students and the certification, licensure or recertification requirements that necessitated the repetition.

(e) Self-supporting classes shall not be reported for regular budget purposes (those classes supported by student fees or a class in which instruction is provided gratis); all recreational extension classes fall in this category.

(f) Occupational extension instruction shall not be offered in sheltered workshops and adult developmental activity centers (ADAP) except sheltered workshops and ADAP centers may contract with the community college to provide occupational extension courses on a self-supporting basis.

(g) Educational programs offered in a correctional department setting shall report full-time equivalent (FTE) student hours on the basis of contact hours.

*History Note: Authority G.S. 115D-5;  
Eff. September 1, 1988;  
Temporary Amendment Eff. October 15, 1992, for a period of 180 days to expire on April 15, 1993;  
Amended Eff. September 1, 1993;  
Temporary Amendment Eff. November 1, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Amended Eff. June 1, 2008; April 1, 1997; June 1, 1994.*

**23 NCAC 02E .0405 TRAINING FOR PUBLIC SAFETY AGENCIES**

(a) Training for Public Law Enforcement Agencies.

(1) When a college is an accredited and designated direct delivery agency for initial certification training for public law enforcement agencies and funds 50% or greater of the instructional cost and the school director's salary, the college shall report the hours generated from the instruction for full budget FTE when the training is delivered in accordance with all other budget FTE and program requirements. For the purposes of this Subparagraph, the college shall supervise the school director and instructors. The college must also maintain full authority and control over the curriculum. Enrollment for any training course shall be open to all students who satisfy any course prerequisites, and who meet the requirements for admission of trainees imposed by the NC Criminal Justice Education and Training Standards Commission in 12 NCAC 09B .0203. Enrollment shall not be limited or restricted to the members, employees, associates, or trainees of any direct delivery agent or agents unless required by the NC Criminal Justice Education and Training Standards Commission.

(2) When a public law enforcement agency external to a college is the accredited and designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.

(A) A college shall provide initial certification law enforcement training for an accredited and designated direct delivery public law enforcement agency under a written agreement. The agreement shall:

- (i) confirm that the public law enforcement agency does not have the funds to provide the training;
- (ii) designate the source of funds for the training;
- (iii) list the courses to be taught;
- (iv) state the total hours of instruction to be delivered; and
- (v) be signed by the president or the president's designee, and the senior official of the public law enforcement agency.

- (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.
- (3) A college may deliver in-service training for designated direct delivery public law enforcement agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budget FTE and program requirements. A college providing in-service training for public law enforcement agencies is not subject to subparagraph (a)(1) or (a)(2) of this Rule.
- (b) Training for Public Fire and Rescue Agencies.
  - (1) When a college is a designated direct delivery agency for initial certification training for public fire and rescue services agencies and funds 50% or greater of the instructional cost, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements. For the purposes of this Subparagraph, the college shall supervise the school director and instructors. The college must also maintain full authority and control over the curriculum. Enrollment for any training course shall be open to all students who satisfy any course prerequisites. Enrollment shall not be limited or restricted to the members, employees, associates, or trainees of any direct delivery agent or agents.
  - (2) When a public fire and rescue agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.
    - (A) A college shall provide initial fire and rescue training for a designated direct delivery public fire and rescue agency under a written agreement. The agreement shall:
      - (i) confirm that the public fire and rescue agency does not have the funds to provide the training;
      - (ii) designate the source of funds for the training;
      - (iii) list the courses to be taught;
    - (iv) state the total hours of instruction to be delivered; and
    - (v) be signed by the president or the president's designee, and the senior official of the public fire and rescue agency.
- (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.
- (3) A college may deliver in-service training for public designated direct delivery fire and rescue agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public fire and rescue agencies is not subject to subparagraph (b)(1) or (b)(2) of this Rule.
- (c) Training for Emergency Medical Services Agencies.
  - (1) When a college is a designated direct delivery agency for initial certification training for public emergency medical services training and funds 50% or greater of the instructional costs, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements. For the purposes of this Subparagraph, the college shall supervise the school director and instructors. The college must also maintain full authority and control over the curriculum. Enrollment for any training course shall be open to all students who satisfy any course prerequisites. Enrollment shall not be limited or restricted to the members, employees, associates, or trainees of any direct delivery agent or agents.
  - (2) When a public emergency medical services agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.
    - (A) A college shall provide initial emergency medical services training for a direct delivery public emergency medical services agency under a

written agreement. The agreement shall:

- (i) confirm that the public emergency medical services agency does not have the funds to provide the training;
- (ii) designate the source of funds for the training;
- (iii) list the courses to be taught;
- (iv) state the total hours of instruction to be delivered; and
- (v) be signed by the president or the president's designee, and the senior official of the emergency medical services agencies.

(B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.

(3) A college may deliver in-service training for designated direct delivery public emergency medical services agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public emergency medical services agencies is not subject to subparagraphs (c)(1) or (c)(2) of this Rule.

*History Note: Authority G.S. 115D-5; Eff. August 1, 2004; Amended Eff. June 1, 2008.*

## **TITLE 25 – OFFICE OF STATE PERSONNEL**

### **25 NCAC 01C .0215 EMPLOYMENT CONTRACTS**

(a) Except as to apprenticeship agreements executed according to the provisions of G.S. Chapter 94 and except as to provisions of Paragraph (b) of this Rule, the following provisions apply to employment contracts:

- (1) No employee shall be required, as a condition of employment subject to N.C.G.S. Chapter 126 to enter into a contractual arrangement with any state agency as defined in 25 NCAC 01A .0103 for employment with that agency. No state agency may require, as a condition of employment, that an employee agree, in

writing or otherwise, to a minimum specified length of employment.

- (2) No state agency may prohibit, as a condition of initial or continued employment, any employee from transferring to another state agency or university.
- (3) No state agency may require, as a condition of employment, that an employee agree, in writing or otherwise, that a payment be made to the employing agency if a minimum specified period of employment is not met.
- (4) No agency may require the repayment of the cost of job training required by the employing agency as a condition of continued employment.

(b) An agency that provides all or part of the cost of professional development seminars or other educational opportunities to employees that are not a requirement for the job and that are in excess of five thousand dollars (\$5000) may condition the provision of agency funds upon agreement of the employee to repay the funds subject to the following conditions:

- (1) The employee is informed about the repayment provisions in advance,
- (2) The amount of time that the agency expects the employee to remain employed is clearly specified and does not exceed one year,
- (3) The prorated amount that the employee will have to repay for each month the employee leaves prior to the end of the term is specified in the agreement, and
- (4) The terms of the agreement are reduced to writing and the employee and the human resources director both sign the agreement.

*History Note: Authority G.S. 126-4(6); Eff. September 1, 1989; Amended Eff. June 1, 2008; November 1, 1990.*

### **25 NCAC 01H .0701 GENERAL PROVISIONS**

(a) It is recognized that certain applicants for positions of State employment may receive a priority over other applicants for the position. Priority consideration in certain situations may be accorded to the following applicants:

- (1) Career State employees applying for a position that is a higher salary grade (or salary grade equivalency) as provided in 25 NCAC 01H .0800;
- (2) Career State employees who have received written notification of imminent separation due to a reduction in force;
- (3) Eligible employees in positions which are designated as exempt policymaking and who have less than 10 years of cumulative State service in subject positions as provided in 25 NCAC 01H .1000;
- (4) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service in subject positions and who have been

removed from the exempt position for reasons other than cause but not because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000;

- (5) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service and who have been removed from the exempt managerial position because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000; and
- (6) Eligible veterans applying for initial employment or subsequent employment in State government, as provided in 25 NCAC 01H .1100.

(b) The priority consideration listed in Subparagraph (a)(6) of this Rule may only be asserted against substantially equal or less qualified non-veteran outside applicants or other State employees who do not fall into any of the categories listed in Subparagraphs (a)(1) – (a)(5) of this Rule.

(c) The priority consideration listed in Subparagraphs (a)(3), (a)(4) and (a)(5) of this Rule may be defeated by an employee with the priority listed in Subparagraph (a)(2) of this Rule or by a current State employee who has greater cumulative State service in positions subject to the State Personnel Act. The selected applicant must meet the minimum qualifications, including training, experience, competencies and knowledge, skills and abilities.

*History Note:* G.S. 126-4; 126-82; 128-15;  
*Eff. February 1, 2007;*  
*Amended Eff. June 1, 2008.*

#### **25 NCAC 01H .1102 CLAIMING VETERANS' PREFERENCE**

In order to claim veterans' preference, all eligible persons shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, along with a State Application for Employment (PD-107 or its equivalent) to the appointing authority. Appointing authorities are responsible for verifying eligibility and may request additional documentation as is necessary to ascertain eligibility. Eligible veterans shall meet the minimum qualifications, as defined in 25 NCAC 01H .0635, for the position.

*History Note:* Authority G.S. 126-4(4); 126-4(10); 128-15;  
*Eff. September 1, 1987;*  
*Recodified from 25 NCAC 01H .0612 Eff. October, 5, 2004;*  
*Amended Eff. June 1, 2008; February 1, 2007.*

#### **25 NCAC 01H .1103 ALLEGATION OF DENIAL OF VETERANS' PREFERENCE**

Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall be filed with the State Personnel Commission through the contested case procedures of the Office of Administrative Hearings. Such claims shall be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to G.S. 150B, Article 3. The State Personnel

Commission may, upon a finding that veterans' preference was denied in violation of these Rules, order the employment, subsequent employment, promotion, reassignment or horizontal transfer of any affected person, as well as any other remedy necessary to correct the violation.

*History Note:* Authority G.S. 126-4(10); 126-4(11); 126-34.1(b)(4); 126-37; 126-38; 150B-2(2); 150B, Article 3;  
*Eff. September 1, 1987;*  
*Recodified from 25 NCAC 01H .0613 Eff. October 5, 2004;*  
*Amended Eff. June 1, 2008; February 1, 2007.*

#### **25 NCAC 01H .1104 APPLICATION OF THE VETERANS' PREFERENCE**

(a) Veterans' preference shall be accorded eligible veterans, as defined in 25 NCAC 01H .1105, by giving additional credit as follows:

- (1) In initial employment, subsequent employment, promotion, reassignment, and horizontal transfer procedures, where numerically scored examinations are used in determining the relative ranking of candidates, 10 points shall be awarded to eligible veterans.
- (2) In initial employment, subsequent employment, promotion, reassignment, and horizontal transfer procedures where structured interview, assessment center, in-basket, or any other procedure, not numerically scored, is used to qualitatively assess the relative ranking of candidates, the veteran who has met the minimum qualification requirements for the vacancy, and who has less than four years of related military experience beyond that necessary to minimally qualify, shall also receive additional experience credit for up to four years of unrelated military service. The spouse or dependent shall not receive additional experience credit for the veteran's unrelated military service. To determine the amount of additional experience credit to be granted for unrelated military service, first determine the amount of related military service possessed by the eligible veteran beyond that required to meet the minimum qualifications, then apply the following:
  - (A) If the total of such experience equals or exceeds four years, the additional credit for unrelated military service does not apply.
  - (B) If the total of such experience is less than four years, the veteran shall receive direct experience credit for unrelated military service in an amount not to exceed the difference between the eligible veteran's related military service and the four-year maximum credit that may be granted.

- (3) In reduction-in-force situations, when calculating length of service, the eligible veteran shall be accorded one year of State service for each year or fraction thereof of military service, up to a maximum of five years credit. This additional credit does not count as total state service.

(b) After applying the preference to candidates from outside the State government structure, upon initial employment or subsequent employment as outlined in Subparagraph (a)(1) or (2) of this Rule, the eligible veteran shall be hired when the veteran's overall qualifications are substantially equal to the non-veterans in the applicant pool as provided in 25 NCAC 01H .0701(b). Substantially equal qualifications occur when the employing agency cannot make a reasonable determination that the qualifications held by one or more applicants are significantly better suited for the position than the qualifications held by another applicant.

(c) The spouse, surviving spouse or surviving dependent of that veteran may claim veterans' preference without regard to whether such preference has been claimed previously by the veteran.

(d) For promotion, reassignment and horizontal transfer, after applying the preference to veterans who are current State employees as explained under Subparagraph (a)(1) or (2) of this Rule, the eligible veteran receives no further preference and competes with all other applicants who have substantially equal qualifications.

*History Note: Authority G.S. 126-4(4); 126-4(10); 128-15; ARRC Objection July 16, 1987; Eff. December 1, 1987; ARRC Objection Removed Eff. March 16, 1989; Recodified from 25 NCAC 01H .0614 Eff. October 5, 2004; Amended Eff. June 1, 2008; February 1, 2007.*

**25 NCAC 01I .2301 JUST CAUSE FOR DISCIPLINARY ACTION**

(a) Any employee, regardless of occupation, position, or profession may be warned, demoted, suspended or dismissed by

the appointing authority. Such actions may be taken against employees with career status as defined in G.S. 126-1.1 only for just cause. The degree and type of action taken shall be based upon the judgment of the appointing authority in accordance with the provisions of this Rule. When just cause exists the only disciplinary actions provided for under this Section are:

- (1) Written warning;
- (2) Disciplinary suspension without pay;
- (3) Demotion; and
- (4) Dismissal.

(b) At any time during the period prior to achieving career status, including during the probationary period, an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. The employee must be given notice of dismissal, including reasons. Such notice may be, but is not required to be, in writing.

(c) There are two bases for the discipline or dismissal of employees under the statutory standard of "just cause" as set out in G.S. 126-35. These two bases are:

- (1) Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
- (2) Discipline or dismissal imposed on the basis of unacceptable personal conduct.

(d) Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct, as defined in 25 NCAC 01I .2302(a); .2303(a); and .2304(b), constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

(e) The imposition of any disciplinary action shall comply with the procedural requirements of this Section.

*History Note: Authority G.S. 126-4; 126-35; Eff. August 3, 1992; Amended Eff. June 1, 2008; December 1, 1995; August 2, 1993.*

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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday June 19, 2008 and July 17, 2008 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  
Keith O. Gregory  
Jerry R. Crisp  
Jeffrey P. Gray

#### **Appointed by House**

Jennie J. Hayman - Chairman  
John B. Lewis  
Clarence E. Horton, Jr.  
Daniel F. McLawhorn

### **RULES REVIEW COMMISSION MEETING DATES**

July 17, 2008                      August 21, 2008  
September 18, 2008            October 16, 2008

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### **RULES REVIEW COMMISSION**

**June 19, 2008**

#### **MINUTES**

The Rules Review Commission met on Thursday, June 19, 2008, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Keith Gregory, Clarence Horton, John Lewis and Dan McLawhorn.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel, and Angela Person, Administrative Assistant.

The following people were among those attending the meeting:

Mike Abraczinskas	DENR/Division of Air Quality
Nancy Pate	Department of Environment and Natural Resources
Felicia Williams	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Dana Vojtko	Office of Administrative Hearings
Julie Edwards	Office of Administrative Hearings
Catherine Marchesini	Office of Administrative Hearings
Joan Troy	Wildlife Resources Commission
Kate Pipkin	Wildlife Resources Commission
Kent Nelson	Wildlife Resources Commission
Dave Henderson	Department of Transportation
Kelly Braam	Board of Barber Examiners
S. C. Kitchen	Durham County
Robert M. Ward	City of Burlington
Catherine Blum	DENR/Division of Marine Fisheries
Rich Carpenter	DENR/Division of Marine Fisheries
Beverly Speroff	DHHS/Division of Health Service Regulation
Becky Wertz	DHHS/Division of Health Service Regulation
Barry Smith	Freedom Newspaper
Francis Crawley	Attorney Generals Office
David McGowan	NC Realtors
Andrea Borden	DHHS/Division of Mental Health
Lisa Martin	NC Home Builders Association
Nadine Pfeiffer	DHHS/Division of Health Service Regulation

Ellie Sprenkel	Department of Insurance
Jean Holliday	Department of Insurance
Roberta Ouellette	Appraisal Board
Stephen Benjamin	Department of Agriculture and Consumer Services
Clyde B. Albright	Alamance County Attorney
Will Crumbley	Office of State Budget and Management
David McLeod	Department of Agriculture and Consumer Services
Lorie Pugh	DHHS/Division of Child Development
Dedra Alston	DHHS/Division of Child Development
Bill Lane	Kilpatrick Stockton
Karen Sindelar	City of Durham
John Cox	City of Durham
Kathryn Jones Cooper	Attorney General's Office
Rich Gannon	DENR/Division of Water Quality
Jason Robinson	DENR/Division of Water Quality
W. Denise Baker	DHHS/Division of Mental Health
Denise Stanford	Contractors Board
Nancy Hemphill	Medical Board
Katy West	DENR/Division of Marine Fisheries
Palmer Sugg	Broughton Wilkins

### **APPROVAL OF MINUTES**

The meeting was called to order at 10:05 a.m. with Mr. Funderburk presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Vice-Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the May 15 meeting. There were none and the minutes were approved as distributed.

### **FOLLOW-UP MATTERS**

02 NCAC 42 .0501 – NC Gasoline and Oil Inspection Board. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 27G .0212 – Commission for MH/DD/SAS. The Commission approved the rewritten rule submitted by the agency.

12 NCAC 11 .0210 – Alarm Systems Licensing Board. No rewritten rule has been submitted and no action was taken. Mr. DeLuca received an email from Charles McDarris, the Attorney for the agency. Mr. McDarris reported that the Alarm Board has voted to change the rule according to staff recommendations. He will make changes and submit them accordingly.

15A NCAC 02D .2602 and .2603 – Environmental Management Commission. The Commission approved the rewritten rules submitted by the agency.

15A NCAC 10C .0107 – Wildlife Resources Commission. This rule was objected to in April based on lack of authority to submit a joint rule that must also have a companion rule filed by the Marine Fisheries Commission. The MFC filed rule 15A NCAC 03Q .0107, which is that companion rule, for review this month. The Commission on motion by Mr. Gray rescinded its objection to the WRC rule and approved the rule as written. It also approved the MFC rule at that time.

25 NCAC 01C .0414 – State Personnel Commission. This rule was returned to the agency at the agency's request.

IBC 421.3.9: NC Building Code Council – Small Residential Care Facilities – The Commission approved the rewritten rule submitted by the agency.

IPC 302.1: NC Building Code Council – Detrimental or Dangerous Materials – Mr. Barry Gupton, the APA coordinator for the agency, submitted a response asking the RRC to reconsider its objection to this rule and approve the rule as written. Commission counsel recommended against taking the action requested by the agency and stated that the agency should either amend the rule to satisfy the objection or ask that the rule be returned to the agency. The Commission took no further action on this rule.

### **LOG OF FILINGS**

Vice-Chairman Funderburk presided over the review of the log of permanent rules.

All rules were approved unanimously with the following exceptions:

10A NCAC 13D .2210: Medical Care Commission – The Commission objected to this rule based on lack of statutory authority. There is no authority cited for paragraph (e) of this rule. G.S 131E-256 creates the Health Care Personnel Registry and authorizes the Medical Care Commission to adopt rules to implement the Section. But the Section does not prohibit the employment of persons with substantiated findings. It does require facilities to access the Registry before hiring personnel, and it requires the Department of Health and Human Services to provide the employer or potential employer with information about the nature of the findings or allegation and the status of the investigation. But it does not prohibit the hiring. There is also no general authority cited for the Commission to set qualification for who may be employed.

10A NCAC 27G .0211: DHHS: Division of MH/DD/SAS – This rule was withdrawn by the agency.

10A NCAC 27G .7102: DHHS: Division of MH/DD/SAS – The Commission objected to this rule based on lack of statutory authority. There is no authority cited for the agency to establish and change target populations merely by changing a website rather than by following the rule-making process.

10A NCAC 27I .0102, .0201, .0504: DHHS: Division of MH/DD/SAS – These rules were withdrawn by the agency.

10A NCAC 27I .0505: DHHS: Division of MH/DD/SAS – This rule was renumbered as 10A NCAC 27I .0504.

10A NCAC 28F .0214: DHHS: Division of MH/DD/SAS – This rule was withdrawn by the agency.

15A NCAC 02B .0262, .0263, .0264, .0265, .0266, .0267, .0268, .0269, .0270, .0271, .0272, .0311: Environmental Management Commission – The Commission extended the period of review on the rules. It did this in accordance with N.C.G.S. 150B-21.10(3) in order to provide the agency with additional time to review and revise these rules in accordance with comments and requests for technical changes from the RRC Commissioners and staff. This should expedite the substantive review of the rules and focus the time and attention of the agency on issues that are more of a problem than on many changes that the agency may be willing to make.

On the motion of Commissioner Horton, the RRC extended the period of review of these rules and authorized the agency to make any changes in the rules based on staff technical change requests and return the rules to the RRC by July 3, that is at least two weeks prior to its July meeting in order to give interested parties and RRC staff sufficient time to review those changes. If the agency chooses to rewrite any rule or portion of a rule based on a staff or commissioner's comments, requests, or recommendation to object, then that is authorized also. If the changes were submitted by July 3 then the RRC could review those revised rules at its July meeting. If any changes were submitted later than July 3, then the RRC could choose to review those changes and these rules at its scheduled August 21 meeting.

15A NCAC 03O .0402 and .0404: Marine Fisheries Commission – These rules were withdrawn by the agency. Rule 03Q .0107 was approved at the time the Commission reviewed and approved the companion WRC Rule 10C .0107.

21 NCAC 12 .0204: Licensing Board of General Contractors – The Commission objected to this rule based on ambiguity. In (f), it is not clear when the Board would desire a reporting method not in compliance with Generally Accepted Accounting Principles.

21 NCAC 12 .0211: Licensing Board of General Contractors – The Commission approved this rule. The Commission received requests from more than 10 persons clearly requesting legislative review for this rule, and the effective date of this rule is therefore delayed pending legislative review.

21 NCAC 57A .0202: Appraisal Board – The Commission objected to this rule based on ambiguity. In (d), it is not clear what agency or agencies have been designated by the Board to provide criminal record reports.

21 NCAC 57A .0211: Appraisal Board – The Commission objected to this rule based on ambiguity. In (c), it is not clear what agency or agencies have been designated by the Appraisal Board to provide criminal record reports.

21 NCAC 64 .0218: Board of Examiners for Speech and Language Pathologists and Audiologists – The Commission objected to this rule based on lack of statutory authority, ambiguity and failure to comply with the Administrative Procedure Act. G.S. 150B-21.2(f) and (g) require an agency to accept comments on the text of a proposed rule for at least 60 days after the text is published in the NC Register, and to not adopt a rule until the comment period is over. This rule was published on March 3, 2008 and adopted on April 19, 2008. That is only 47 days. The rule was not adopted in compliance with Part 2 of Article 2A of the Administrative Procedure Act. In addition, it is not clear what standards the Board will use in approving continuing professional education. There is no authority cited to set the standards outside the rule-making process.



**COMMISSION PROCEDURES AND OTHER BUSINESS**

The Commission reviewed the written comments it received concerning its proposed rules. After a few minutes discussion concerning how to proceed, Commissioner McLawhorn suggested, and the chairman ordered that the committee which had previously worked on drafting the proposed rules, and any other interested commissioners set another meeting to determine if it wanted to make any further changes in the rules and report back at the next RRC meeting.

The meeting adjourned at 11:30 a.m.

The next scheduled meeting of the Commission is Thursday, July 17 at 10:00 a.m.

Respectfully Submitted,  
Angela J. Person  
Administrative Assistant

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**LIST OF APPROVED PERMANENT RULES**  
**June 19, 2008 Meeting**

**GASOLINE AND OIL INSPECTION BOARD**

Branding and Registration of Motor Fuels 02 NCAC 42 .0501

**CHILD CARE COMMISSION**

Special Training Requirements 10A NCAC 09 .0705

Health and Training Requirements for Family Child Care Ho... 10A NCAC 09 .1705

Requirements for Records 10A NCAC 09 .1721

Retention of Forms and Reports by an Operator 10A NCAC 09 .2318

Other Staff Requirements 10A NCAC 09 .2511

**HEALTH SERVICE REGULATION, DIVISION OF**

Filing Applications 10A NCAC 14C .0203

**MENTAL HEALTH, COMMISSION FOR**

Disclosure of Financial Interest of Providers of MH/DD/SA... 10A NCAC 27G .0212

Letter of Support Required for Licensure of Residential F... 10A NCAC 27G .0406

**HHS - MENTAL HEALTH**

Scope 10A NCAC 27G .7001

Local Management Entity Requirements Concerning Complaints 10A NCAC 27G .7002

Requirements for Local Management Entity Complaint Invest... 10A NCAC 27G .7003

Appeals Regarding Utilization Review Decisions for Non-Me... 10A NCAC 27G .7004

Scope 10A NCAC 27G .7101

Scope 10A NCAC 27I .0401

Definitions 10A NCAC 27I .0402

Information Included in Request 10A NCAC 27I .0403

Process 10A NCAC 27I .0404

Scope 10A NCAC 27I .0501

LME Business Plan Content and Format Requirements 10A NCAC 27I .0502

LME Business Plan Signature Requirements 10A NCAC 27I .0503

<u>Plan of Correction</u>	10A NCAC 27I .0505
<b>INSURANCE, DEPARTMENT OF</b>	
<u>Weighted Average; Mental Illness Benefits Coverage</u>	11 NCAC 12 .0563
<b>ENVIRONMENTAL MANAGEMENT COMMISSION</b>	
<u>General Provisions on Test Methods and Procedures</u>	15A NCAC 02D .2602
<u>Testing Protocol</u>	15A NCAC 02D .2603
<b>MARINE FISHERIES COMMISSION</b>	
<u>Electrical Fishing Device</u>	15A NCAC 03J .0304
<u>Season, Size and Harvest Limit: Internal Coastal Waters</u>	15A NCAC 03M .0202
<u>Procedures and Requirements to Obtain Licenses, Endorseme...</u>	15A NCAC 03O .0101
<u>For Hire Coastal Recreational Fishing</u>	15A NCAC 03O .0112
<u>Procedures and Requirements to Obtain Permits</u>	15A NCAC 03O .0501
<u>Permit Conditions: Specific</u>	15A NCAC 03O .0503
<u>Special Regulations: Joint Waters</u>	15A NCAC 03Q .0107
<b>WILDLIFE RESOURCES COMMISSION</b>	
<u>Release of Mute Swans</u>	15A NCAC 10B .0125
<u>Special Regulations: Joint Waters</u>	15A NCAC 10C .0107
<u>Open Seasons: Creel and Size Limits</u>	15A NCAC 10C .0305
<u>McDowell County</u>	15A NCAC 10F .0339
<b>GENERAL CONTRACTORS, LICENSING BOARD FOR</b>	
<u>Filing Deadline/App Seeking Qual/Emp/Another</u>	21 NCAC 12 .0205
<u>Multitunit Buildings</u>	21 NCAC 12 .0211
<u>Granting or Denying Hearing Request</u>	21 NCAC 12 .0819
<u>Proposals for Decisions</u>	21 NCAC 12 .0830
<u>Definitions</u>	21 NCAC 12 .0901
<b>PSYCHOLOGY BOARD</b>	
<u>Foreign Degree Application Policy</u>	21 NCAC 54 .1702
<b>APPRAISAL BOARD</b>	
<u>Form</u>	21 NCAC 57A .0101
<u>Filing and Fees</u>	21 NCAC 57A .0102
<u>Qualifications for Trainee Registration and Appraiser Cer...</u>	21 NCAC 57A .0201
<u>Expired Registration, License or Certificate</u>	21 NCAC 57A .0206
<u>Temporary Practice</u>	21 NCAC 57A .0210
<u>Time and Place</u>	21 NCAC 57A .0301
<u>Subject Matter and Passing Scores</u>	21 NCAC 57A .0302
<u>Re-examination</u>	21 NCAC 57A .0303
<u>Appraisal Reports</u>	21 NCAC 57A .0405
<u>Supervision of Trainees</u>	21 NCAC 57A .0407

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**RULES REVIEW COMMISSION**

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<u>Registered Trainee Course Requirements</u>	21	NCAC 57B .0101
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21	NCAC 57B .0102
<u>Certified General Real Estate Appraiser Course Requirements</u>	21	NCAC 57B .0103
<u>Purpose and Applicability</u>	21	NCAC 57B .0201
<u>Application for Approval</u>	21	NCAC 57B .0202
<u>Criteria for Approval</u>	21	NCAC 57B .0203
<u>Administration</u>	21	NCAC 57B .0207
<u>Accommodations for Persons With Disabilities</u>	21	NCAC 57B .0208
<u>Certificate of Course Completion</u>	21	NCAC 57B .0209
<u>Purpose</u>	21	NCAC 57B .0301
<u>Course Content</u>	21	NCAC 57B .0302
<u>Course Completion Standards</u>	21	NCAC 57B .0303
<u>Instructor Requirements</u>	21	NCAC 57B .0306
<u>Criteria for Course Recognition</u>	21	NCAC 57B .0307
<u>Applicability</u>	21	NCAC 57B .0401
<u>Precertification Courses</u>	21	NCAC 57B .0604
<u>Payment of Fee Required by G.S. 93e-1-7(c)</u>	21	NCAC 57B .0613

**BUILDING CODE COUNCIL**

<u>NC Residential Code - Exterior Walls</u>	R302.1
<u>NC Residential Code - Handrail Grip Size</u>	R311.5.6.3
<u>NC Building Code</u>	2009 Building Code

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**AGENDA**  
**RULES REVIEW COMMISSION**  
**Thursday, July 17, 2008, 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. Medical Care Commission – 10A NCAC 13D .2210 (Bryan)
  - B. DHHS: Division of MH/DD/SAS – 10A NCAC 27G .7102 (Bryan)
  - C. Alarm Systems Licensing Board – 12 NCAC 11 .0210 (DeLuca)
  - D. Environmental Management Commission – 15A NCAC 02B .0262-.0272 and .0311 (DeLuca)
  - E. Licensing Board of General Contractors – 21 NCAC 12 .0204 (Bryan)
  - F. Appraisal Board – 21 NCAC 57A .0202, .0211 (Bryan)
  - G. Board of Examiners for Speech and Language Pathologists and Audiologists – 21 NCAC 64 .0218 (Bryan)
  - H. NC Building Code – 2006 IPC with NC Amendments – IPC 302.1 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between May 21, 2008 and June 20, 2008 (attached)
- V. Review of Temporary Rules
- VI. Commission Business
  - Discussion of Commission rules

- Next meeting: August 21, 2008
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**Commission Review**  
***Log of Permanent Rule Filings***  
***May 21, 2008 through June 20, 2008***

**AGRICULTURE, BOARD OF**

The rules in Subchapter 52J are enforced by the animal welfare section and include rules about record keeping and licensing (.0100); facilities and operating standards (.0200); transportation standards (.0300); euthanasia standards (.0400); euthanasia by injection (.0500); euthanasia by carbon monoxide (.0600); extraordinary circumstances (.0700); and policy and procedure manual (.0800).

<u>Outdoor Facilities</u>	02	NCAC 52J	.0203
Amend/*			
<u>Veterinary Care</u>	02	NCAC 52J	.0210
Amend/*			
<u>Primary Enclosures Used in Transporting Dogs and Cats</u>	02	NCAC 52J	.0302
Amend/*			
<u>Adoption by Reference</u>	02	NCAC 52J	.0401
Adopt/*			
<u>Authorized Persons</u>	02	NCAC 52J	.0402
Adopt/*			
<u>Definitions</u>	02	NCAC 52J	.0403
Adopt/*			
<u>Certification Requirements for Euthanasia</u>	02	NCAC 52J	.0404
Adopt/*			
<u>Training and Examinations</u>	02	NCAC 52J	.0405
Adopt/*			
<u>Duties</u>	02	NCAC 52J	.0406
Adopt/*			
<u>Intracardiac Injection</u>	02	NCAC 52J	.0501
Adopt/*			
<u>Carbon Monoxide Equipment</u>	02	NCAC 52J	.0601
Adopt/*			
<u>Prohibited Uses</u>	02	NCAC 52J	.0602
Adopt/*			
<u>Dead Animals</u>	02	NCAC 52J	.0603
Adopt/*			
<u>Individual Separation</u>	02	NCAC 52J	.0604
Adopt/*			
<u>Chamber Requirements</u>	02	NCAC 52J	.0605
Adopt/*			
<u>Inspections and Records</u>	02	NCAC 52J	.0606
Adopt/*			
<u>Cleaning Chamber</u>	02	NCAC 52J	.0607
Adopt/*			
<u>Operational Guides and Instruction Manuals</u>	02	NCAC 52J	.0608
Adopt/*			
<u>Persons Required to be Present</u>	02	NCAC 52J	.0609
Adopt/*			
<u>Methods of Euthanasia Permitted Under Extraordinary Circu...</u>	02	NCAC 52J	.0701

Adopt/*			
<u>Gunshot or Other Methods</u>	02	NCAC 52J	.0702
Adopt/*			
<u>Methods and Standards</u>	02	NCAC 52J	.0703
Adopt/*			
<u>Technician Not Required</u>	02	NCAC 52J	.0704
Adopt/*			
<u>Reports</u>	02	NCAC 52J	.0705
Adopt/*			
<u>Manual Required</u>	02	NCAC 52J	.0801
Adopt/*			
<u>Contents</u>	02	NCAC 52J	.0802
Adopt/*			
<u>Additional Contents</u>	02	NCAC 52J	.0803
Adopt/*			

## **PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 46 are adopted by the Commission for Public Health and concern local standards including general provisions (.0100); standards for local health departments (.0200) and local health department staff (.0300); and sanitation inspections (.0400).

<u>Minimum Standard Health Department: Staffing</u>	10A	NCAC 46	.0301
Amend/*			

## **INSURANCE, DEPARTMENT OF**

The rules in Chapter 19 are from the market examinations division.

<u>Maintenance of Records</u>	11	NCAC 19	.0102
Amend/*			
<u>Complaint Records</u>	11	NCAC 19	.0103
Amend/*			
<u>Policy Records</u>	11	NCAC 19	.0104
Amend/*			
<u>Claim Records</u>	11	NCAC 19	.0105
Amend/*			
<u>Records Required for Examination</u>	11	NCAC 19	.0106
Amend/*			
<u>Definitions</u>	11	NCAC 19	.0108
Adopt/*			

The rules in Chapter 20 concern managed care health benefit plans including managed care definitions (.0100); contracts between network plan carriers and health care providers (.0200); provider accessibility and availability (.0300); network provider credentials (.0400); HMO quality management programs (.0500); and significant modifications to HMO operations (.0600).

<u>Monitoring Activities</u>	11	NCAC 20	.0304
Adopt/*			
<u>Records and Examinations</u>	11	NCAC 20	.0409
Amend/*			
<u>Records and Examinations</u>	11	NCAC 20	.0510
Amend/*			

## ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); mercury rules for electric generators (.2500); and source testing (.2600).

### Gasoline Truck Tanks and Vapor Collection Systems

15A NCAC 02D .0932

Amend/\*

### Other Incinerators

15A NCAC 02D .1208

Amend/\*

The rules in Subchapter 2Q are rules relating to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); and exempt categories (.0800); and permit exemptions (.0900).

### Permit Content

15A NCAC 02Q .0508

Amend/\*

## PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 13 cover hazardous and solid waste management, inactive hazardous substances, and waste disposal sites.

The rules in Subchapter 13A cover hazardous waste management and specifically HWTSD (hazardous waste treatment, storage, or disposal) facilities.

### The Hazardous Waste Permit Program-Part 270

15A NCAC 13A .0113

Amend/\*

The rules in Chapter 13 concern Solid Waste Management.

The rules in Subchapter 13B concern Solid Waste Management including general provisions (.0100); permits for solid waste management facilities (.0200); treatment and processing facilities (.0300); transfer facilities (.0400); disposal sites (.0500); monitoring requirements (.0600); administrative penalty procedures (.0700); septage management (.0800); yard waste facilities (.0900); solid waste management loan program (.1000); scrap tire management (.1100); medical waste management (.1200); disposition of remains of terminated pregnancies (.1300); municipal solid waste compost facilities (.1400); standards for special tax treatment of recycling and resource recovery equipment and facilities (.1500); requirements for municipal solid waste landfill facilities (.1600); and requirements for beneficial use of coal combustion by-products (.1700).

### Definitions

15A NCAC 13B .0101

Amend/\*

### Permit Required

15A NCAC 13B .0201

Amend/\*

### Permit Approval or Denial

15A NCAC 13B .0203

Amend/\*

### Open Dumps

15A NCAC 13B .0502

Amend/\*

## DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 are from the Board of Dental Examiners.

<u>Functions Which May Be Delegated</u> Amend/*	21 NCAC 16G .0101
<u>Procedures Prohibited</u> Amend/*	21 NCAC 16G .0103

The rules in Subchapter 16H concern dental assistants including classification and training (.0100); and permitted functions of dental assistant (.0200).

<u>Permitted Functions of Dental Assistant II</u> Amend/*	21 NCAC 16H .0203
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The rules in Subchapter 16I concern the annual renewal of the dental hygienist license.

<u>Reporting Continuing Education</u> Amend/*	21 NCAC 16I .0104
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The rules in Subchapter 16R concern continuing education requirements of dentists.

<u>Exemptions from and Credit for Continuing Education</u> Amend/*	21 NCAC 16R .0106
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## **MEDICAL BOARD**

The rules in Chapter 32 are from the Medical Board.

The rules in Subchapter 32B concern license to practice medicine including general provisions (.0100); license by written examination (.0200); license by endorsement (.0300); temporary license by endorsement of credentials (.0400); resident's training license (.0500); special limited license (.0600); certificate of registration for visiting professors (.0700); medical school facility license (.0800); special volunteer license (.0900) prescribing (.1000); reactivation of full license (.1100); and reinstatement of full license (.1200).

<u>Letter of Recommendation</u> Amend/*	21 NCAC 32B .0306
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## **REAL ESTATE COMMISSION**

The rules in Chapter 58 are from the North Carolina 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>Brokerage Fees and Compensation</u> Amend/*	21 NCAC 58A .0109
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## **STATE PERSONNEL COMMISSION**

The rules in Subchapter 1H concern recruitment and selection including general provisions (.0600); general provision for priority consideration (.0700); promotional priority (.0800); reduction-in-force-priority reemployment (.0900); exempt priority consideration (.1000); and veteran's preference (.1100).

<u>Appointment to a Position</u> Adopt/*	25 NCAC 01H .0629
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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray Selina Brooks Melissa Owens Lassiter Don Overby	Randall May A. B. Elkins II Joe Webster Shannon Joseph
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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
Partnership T/A C Js Lounge v. ABC Commission	07 ABC 0201	Overby	03/11/08	
Benita, Inc., T/A Pantana Bob's v. ABC Commission	07 ABC 1584	Overby	04/21/08	23:01 NCR 141
Original Grad, Inc/ T/A Graduate Food and Pub	07 ABC 1648	Joseph	02/25/08	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Carrie R. McDougal v. Victims Compensation Services Division	07 CPS 1970	Elkins	05/23/08	
Steel Supply and Erection Co., Department of Crime Control and Public Safety, Division of State Highway Patrol and Department of Revenue	08 CPS 0777	Overby	05/29/08	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>				
Arthur Burch and Margaret and Burch v. Department of Health and Human Services	07 DHR 0242	Brooks	04/30/08	
Judy E. Pettus v. Office of Chief Medical Examiner, Thomas B. Clark, Iii, Md, Pathologist	07 DHR 0535	Webster	05/05/08	
Shirley Brooks Dial v. Health Care Personnel Registry	07 DHR 0931	Webster	02/27/08	
Midtown Food Mart #2, Kerab Giebrehiwot, Mehreteab Wooldeghebibel and Fesseha Zeru	07 DHR 1044	Webster	04/25/08	
Midtown Food Mart III, Chenet Hailesslassi and Fesseha Zeru v. DHHS	07 DHR 1045	Webster	04/28/08	
Mrs. Elizabeth Futrell v. Value Options	07 DHR 1331	Lassiter	06/09/08	
Cornell Jones v. DHHS, Division of Health Services Regulation	07 DHR 1399	Joseph	04/22/08	
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 1440	Joseph	05/07/08	
Ray Dukes, Bright Future Learning Center v. DHHS, Division of Public Health, Child and Adult Care Food Program	07 DHR 1473	Joseph	04/08/08	
Hospice of the Piedmont, Inc., v. DHHS, Division of Health Service Regulation, Licensure and Certification Section and DHHS, Division of Health Service Regulation, CON Section	07 DHR 1617	Elkins	05/21/08	
Janice Addison v. Value Options	07 DHR 1618	Webster	05/16/08	
Rebecca Dehart v. DHHS, Division of Health Service Regulation Health Care Personnel Registry Section	07 DHR 1650	Elkins	05/21/08	
Ellen Brown v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	07 DHR 1651	Elkins	05/21/08	
Joann Lennon v. Value Options Medicaid	07 DHR 1770	Webster	05/16/08	
Angeline Currie v. DHHS	07 DHR 1986	Elkins	06/04/08	
Tameala Jones v. OAH	07 DHR 1993	Webster	05/16/08	
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 2020	Joseph	05/07/08	
Family & Youth Services, Inc. Angela Ford, President v. DHHS, Division of Medical Assistance Provider Services	07 DHR 2057	Webster	05/16/08	
Yolanda Jones v. DHHS, Adult Licensure Section	07 DHR 2081	Webster	05/16/08	



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## CONTESTED CASE DECISIONS

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Tianna Troy Legal guardian Mother Traci Lookadoo v. Value Option	07 DHR 2087	Elkins	05/23/08
Alexis Ford/Linda M McLaughlin v. DHHS	07 DHR 2111	Elkins	06/04/08
Kevin McMillian/Linda M McLaughlin v. DHHS	07 DHR 2239	Elkins	06/04/08
Maurisha Bethea/Linda McLaughlin v. DHHS	07 DHR 2240	Elkins	06/04/08
Anna Fields v. Value Options	07 DHR 2326	Jospeh	06/02/08
Shelby Davis v. DHHS	08 DHR 0014	Lassiter	05/09/08
Lenora King v. DHHS	08 DHR 0034	Joseph	05/01/08
Forest Mewborn v. Health Care Personnel Registry	08 DHR 0043	Elkins	05/23/08
Wilma Jackson v. Value Options	08 DHR 0082	Joseph	06/02/08
Carmelita Wiggins v. Value Options	08 DHR 0198	Webster	05/16/08
Mamaue Aytch v. DHHS	08 DHR 0325	Elkins	05/23/08
Angela D Seabrooks/The Jabez House LLC v. DHHS/Division of Mental Health, Developmental and Substance Abuse Services, The Guilford Center	08 DHR 0403	Joseph	06/09/08
William McCray Pretty v. DHHS, Division of Facility Services	08 DHR 0411	Webster	06/12/08
Earline Ross (Quentin Galloway) v. DHHS (Medicaid)	08 DHR 0549	May	06/09/08
Betty Williams v. DHHS	08 DHR 0570	Joseph	06/02/08
Susan Nelson v. Medicaid	08 DHR 0573	May	06/09/08
Brent Morris Per Dedrea Moors (Mother) v. Priscilla Valet, DMA	08 DHR 0585	May	06/09/08
Brenda M. Finney v. Medicaid	08 DHR 0586	Joseph	06/09/08
Lakeva Robinson v. DMA/Value Options	08 DHR 0625	May	05/28/08
Tina Miller v. OAH, DHHS	08 DHR 0661	Lassiter	06/10/08
Michelle D. Mills v. DHHS, Division of Health Service Regulation	08 DHR 0712	Joseph	06/09/08
Faith Davis v. Pride in North Carolina Value Options	08 DHR 0746	Overby	05/28/08
Janice Chavis v. DHHS	08 DHR 0923	Lassiter	05/19/08
Evangeline Ingram v. Value Options	08 DHR 0997	Gray	06/10/08

### **DEPARTMENT OF JUSTICE**

Dallas Ray Joyner v. Criminal Justice Education and Training Standards Commission	07 DOJ 0719	Overby	04/15/08
Richard Junior Hopper v. Private Protective Services Board	07 DOJ 1071	Webster	02/21/08
Sheldon Avery McCoy v. Criminal Justice Education and Training Standards Commission	07 DOJ 1162	Mann	04/07/08
David Steven Norris v. Private Protective Services Board	07 DOJ 1256	Elkins	04/16/08
Brian Campbell v. Department of Justice, Company Police Program	07 DOJ 1344	Webster	02/25/08
John Mark Goodin v. Alarm Systems Licensing Board	07 DOJ 1405	Lassiter	04/04/08
James Lee Rodenberg v. Depart. of Justice, Company Police Program	07 DOJ 1434	Webster	02/25/08
Michael L. Scriven v. Private Protective Services Board	07 DOJ 1483	Elkins	03/25/08
Roger Wayne Mungo, Jr., Sheriffs' Education and Training Standards Commission	07 DOJ 1510	Overby	05/19/08
Iris Nina Bumpass v. Criminal Justice Education and Training Standards Commission	07 DOJ 2071	Webster	05/16/08
Jonathan R. Elam v. Private Protective Services Board	08 DOJ 0568	Webster	05/08/08
Wilford Odell Hamlin v. Private Protective Services Board	08 DOJ 0713	Joseph	05/01/08

### **DEPARTMENT OF TRANSPORTATION**

Kevin Douglas v. Dept. of Justice Criminal Justice Standards, DMV License and Theft, Holly Springs Police Department	07 DOT 2221	Webster	05/12/08
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### **DEPARTMENT OF STATE TREASURER**

Patricia V. Leonard v. State Treasurer/Retirement Systems Division	07 DST 1928	Lassiter	03/12/08
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### **EDUCATION, STATE BOARD OF**

Bradford Dale Gulley v. Depart. of Education Attorney Generals Office	07 EDC 1486	Webster	05/16/08
Lucretia Burrus v. State Board of Education	07 EDC 2210	Webster	05/16/08
Gregory Bates v. DPI, Licensure Section	07 EDC 2238	Gray	04/30/08
Heather S. Brame v. State Board of Education	07 EDC 2287	Joseph	05/07/08
Hubert Thomas Byrum v. Office of State Superintendent	08 EDC 0619	Gray	06/04/08

### **DEPT. OF ENVIRONMENT AND NATURAL RESOURCES**

Robin R. Moore v. DENR, Division of Waste Management	06 EHR 1479	Lassiter	03/24/08
NC Coastal Federation v. DENR, Division of Coastal Management and Wind over Waves, LLC	07 EHR 0345	Lassiter	04/07/08
Terry Hill DAQ 2007-015 v. DENR, Division of Air Quality	07 EHR 0937	Morrison	04/08/08
Frank Home Construction, Inc. v. Division of Water Quality	07 EHR 1061	Webster	05/12/08
Kenneth & Mary Anne Sutton v. DENR, Division of Coastal Management	07 EHR 1316	Overby	05/09/08
W Russell Overman Martin County Water & Sewer District v. DENR	08 EHR 0345	Gray	06/10/08

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**CONTESTED CASE DECISIONS**

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Public Water Supply Section  
Joel M. Walker v. Division of Water Quality Well Contractors 08 EHR 0985 Joseph 06/11/08  
Certification Commission

**DEPARTMENT OF INSURANCE**

Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive 07 INS 1130 Overby 03/12/08  
Major Medical Plan  
Alesha D Carter v. State Health Plan 07 INS 1858 Lassiter 05/19/08

**MISCELLANEOUS**

Kevin Edral Douglas v. Wake County District Attorney, DMV 07 MIS 1976 Webster 05/12/08

**OFFICE OF STATE PERSONNEL**

Marsha A Early v. Durham County Department of Social Services 01 OSP 0279 Lassiter 04/02/08

Jacqueline B. Maynard v. UNC 07 OSP 0575 Webster 04/08/08  
Warren R. Follum v. NCSU 07 OSP 0577 Webster 03/21/08  
Sharon P. House v. UNC 07 OSP 0630 Webster 04/08/08  
Michael Shelton Woody v. DENR, Division of Forest Resources 07 OSP 1255 Brooks 05/13/08  
Kellee M. Buck v. Dare County Department of Social Services 07 OSP 1385 Overby 05/27/08  
Dennis E. Hrynkow v. Dept. of Insurance 07 OSP 1400 Joseph 04/03/08  
Adley K. Prager v. Dept. of Crime Control and Public Safety and 07 OSP 2011 Webster 05/29/08  
Butner Public Safety  
Charlene J. Shaw v. Peter Bucholz, Hoke Correctional Institution 07 OSP 2012 Joseph 04/07/08  
Jacqueline Burkes v. DOC, Hoke 4320, Mr. Peter Bucholz 07 OSP 2047 Joseph 04/07/08  
Charles Jones v. Bryan Beatty, Secretary of Crime Control & Public 07 OSP 2222 Morrison 06/05/08 23:01 NCR 147  
Safety and The Dept. of Crime Control & Public Safety (NC  
Highway Patrol)

Kimberly James v. UNC-Charlotte 08 OSP 0146 Webster 05/08/08  
Richard D. Lincoln v. DOT 08 OSP 0801 Gray 05/27/08  
Kenyatta Burrus v. Craven County Clerk of Superior Court 08 OSP 1089 Overby 06/12/08

**RESPIRATORY CARE BOARD**

Angelique Thompson v. Respiratory Care Board 07 RCB 1176 Gray 03/13/08 23:01 NCR 153

**UNC HOSPITALS**

Rolie Adrienne Webb "Andi" v. UNC Hospitals 08 UNC 0881 Gray 06/11/08

2008 APR 21 PM 1:55 PM

Office of  
Administrative Hearings

V.

Benita, Inc.,  
T/A Pantana Bob's,  
Respondent

3. Mr. Person's date of birth is November 21, 1986, making him 20 years of age on March 30, 2007.

4. Upon arriving at Respondent's establishment at approximately 10:30 PM, Mr. Person was greeted by an employee of Respondent who was checking IDs at a podium on the sidewalk outside. Mr. Person presented an ID to this person who then gave Mr. Person a wristband. The procedure established by Respondent requires issuance of wristbands only to patrons 21 years of age or older. There is approximately 15 – 20 feet from the ID checking station on the sidewalk at the door to the bar inside.

5. Mr. Person entered Respondent's establishment and ultimately purchased malt beverages.

6. At approximately 1:45 a.m., Alcohol Law Enforcement Agent (ALE) Lauren Wilson (hereinafter "Agent Wilson") and Chapel Hill Police Department Officer Mitch McKinney (hereinafter "Officer McKinney") visited Respondent's establishment.

7. Agent Wilson entered Respondent's establishment and Officer McKinney went to the patio area.

8. Agent Wilson observed Mr. Person purchase two malt beverages in bottles from Respondent's employee Zachery Alderson (hereinafter "Mr. Alderson"). Mr. Alderson is a manager of the Respondent business.

9. Mr. Alderson did not check Mr. Person's identification.

10. Agent Wilson approached Mr. Person and identified herself with her ALE credentials.

11. Mr. Person presented to Agent Wilson the same ID he had presented to Respondent's employee at the door earlier which indicated that he was of sufficient age to purchase alcohol. This ID did not belong to Mr. Person. The ID has a "yellow code" indicating the possessor was not 21 years of age at date of issuance but may be 21 years of age currently.

12. When Agent Wilson asked Mr. Person his date of birth, he provided one that did not match the date of birth on the ID he provided.

13. The physical description on the ID presented is of a person who is male, 5 feet 10 inches tall with blue eyes and blonde hair. At the time, Mr. Person was 5 feet 11 inches with green eyes but wearing contact lens with a blue tint. The photograph shows a male with very short cropped hair appearing browner in color, with a small amount of facial hair. Although his hair was longer than the photograph, Mr. Person's hair color was not significantly different. There are differences in the structure of the face between Mr. Person and the photograph.

14. Mr. Alderson testified that he constantly checks IDs even if the purchaser is wearing a wristband, and he has no recollection of selling malt beverages to Mr. Person on March 30, 2007.

15. Mr. Bennett LaPrade (hereinafter "Mr. LaPrade") has owned and operated the Respondent business since it opened in 1994.

16. Mr. Alderson and Mr. LaPrade testified that the purpose of checking of IDs at the door to obtain a wristband was not to validate the purchase of alcoholic beverages but to monitor improper entry to the establishment by persons under the age of 21 after 10:00 p.m. Wristbands are not controlling for the sale of alcohol and the bartenders are reminded almost daily by Mr. LaPrade to check IDs. While employed with Respondent, Mr. Alderson has confiscated numerous fake IDs and turned them over to law enforcement officers.

17. Mr. Alderson and Mr. LaPrade have both attended training sponsored by the Petitioner and by Chapel Hill Police Department for compliance with alcohol related rules, regulations and statutes.

18. Agent Wilson has been an agent of Petitioner in Orange County for approximately 2 years. During that time she has closely monitored Respondent's business by going there between 50 and 75 times checking for violations. Agent Wilson acknowledges that she frequents Respondent's business more frequently than most other establishments within her area.

19. Officer McKinney has been with Chapel Hill Police Department for 10 years and in law enforcement for 14 years. He has gone to Respondent's business 3 – 4 times per month for compliance checks. He has made numerous suggestions to Respondent to which Respondent has complied although security on the deck area remained problematic.

20. Despite the vigilant and constant monitoring by Agent Wilson and Officer McKinney, there have been no sustained violations by Respondent.

21. Agent Wilson and Officer McKinney are aware of the procedure followed by Respondent for checking identification at the door and the issuance of wristbands as well as the continual checking of IDs by the bartenders. Neither have made suggestions to alter or change that procedure.

22. North Carolina General Statute §18B-302(a) states that "It shall be unlawful for any person to: (1) Sell malt beverages or unfortified wine to anyone less than 21 years old; . . ." NCGS §18B-302 is a criminal law statute, with criminal law sanctions imposed for violations of its terms and conditions.

23. North Carolina General Statute §18B-302(d) states that "It shall be a defense to a violation of subsection (a) of this section if the seller: (1) shows that the purchaser produced a driver's license...showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser."

24. North Carolina General Statute §18B-302 is made applicable to Respondent, a retail establishment selling alcohol through a valid permit issued by Petitioner, through Article 10 of Chapter 18B, entitled Retail Activity; more particularly §18B-1005(a) which states "It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises: (1) Any violation of this Chapter; . . ."

25. North Carolina General Statute §18B-1005 requires "knowledge" by the permittee. "Knowledge means 'an impression of the mind, the state of being aware; . . . Generally speaking, when it is said a person has knowledge of a given condition, it is meant that his relation to it, his association with it, his control over it and his direction of it are such as to give him actual information concerning it.'" *Underwood v. State Board of Alcoholic Control*, 278 N.C. 623, 181 S.E.2d 1 (1971). This requirement of knowledge, of awareness, does not allow for a permittee becoming willfully blind to events of which he is aware.

26. *Underwood* was decided under the statutory authority that was predecessor to Chapter 18B, which likewise had the requirement of "knowledge." The Court recognizes the authority of the Board (now Commission) to revoke or suspend the permit of a licensee for any violation of the law or controlling regulations. The Supreme Court goes further to state in *Underwood* that the licensee was making "a reasonable effort in good faith" to comply with the laws and regulations.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings has jurisdiction in this matter.
2. On or about March 30, 2007, Respondent's employee, Zachery Alderson, sold a malt beverage to Glen Person III, a person less than 21 years old, while on the licensed premises, in violation of NCGS §18B-302(a)(1).
3. The purchaser, Mr. Person, produced a driver's license showing his age to be the required age for purchase of alcohol and the driver's license bore a physical description of the person named on the driver's license which reasonably described Mr. Person, in accord with NCGS §18B-302(d)(1).
4. Mr. Person's ID was checked at the point of entry to Respondent's establishment but not checked once he was inside the establishment. At the point of entry, Mr. Person was issued a wristband indicating that he was of legal age to purchase alcohol.
5. NCGS §18B-302 is made applicable to Respondent, a retail permittee, by NCGS §18B-1005.
6. NCGS §18B-1005 requires knowledge by the permit holder or his agent or employee of the violation of Chapter 18B. Willful blindness of matters of which he is aware is

not sufficient. Respondent has made all diligent, reasonable good faith efforts to comply with the requirements of Chapter 18B and regulations promulgated pursuant thereto. Respondent's owner and manager have attended training with Petitioner and Chapel Hill Police Department. Respondent has made good faith effort to institute any and all recommendations from Petitioner and Chapel Hill Police Department to ensure compliance, has instituted measures to check IDs at the door and has almost daily suggested to his employees to check IDs.

7. Respondent did not have knowledge of the violation and was not willfully blind to the violation.

DECISION

Based upon the foregoing Finding of Fact and Conclusions of Law, the undersigned Administrative Law Judge recommends that the ABC Commission **DISMISS** the complaint against Respondent.

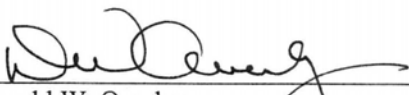
NOTICE AND ORDER

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

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

The agency that will make the final decision in this contested case is the NC Alcoholic Beverage Control Commission.

This is the 21<sup>st</sup> day of April, 2008.

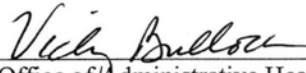
  
\_\_\_\_\_  
Donald W. Overby  
Administrative Law Judge

A copy of the foregoing was mailed to:

K Renee Cowick  
Assistant Counsel  
NC ABC Commission  
4307 Mail Service Center  
Raleigh, NC 27699-4307  
ATTORNEY FOR PETITIONER

William H. Potter Jr.  
Sink & Potter  
Attorneys at Law  
PO Box 1471  
Raleigh, NC 27602-1471  
ATTORNEY FOR RESPONDENT

This the 21st day of April, 2008.

  
\_\_\_\_\_  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 733-2698  
Fax: (919) 733-3407



Filed

STATE OF NORTH CAROLINA <sup>2008 JUN -5 AM 9:32</sup>

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
07 OSP 2222

COUNTY OF JOHNSTON

Office of  
Administrative Hearings

Charles Jones  
Petitioner

vs.

Bryan Beatty, Secretary of NC Dept of  
Crime Control & Public Safety and the  
NC Dept of Crime Control & Public  
Safety (NC Highway Patrol)  
Respondent

**DECISION**

This contested case was heard by Senior Administrative Law Judge Fred G. Morrison Jr. on April 28, 29 and 30, in Raleigh, North Carolina.

**APPEARANCES**

For Petitioner: John P. O'Hale, Attorney at Law, Smithfield, North Carolina

For Respondent: Ashby T. Ray & Tamara S. Zmuda, Assistant Attorneys General, North Carolina Department of Justice, Raleigh, North Carolina

**ISSUE**

Whether the Respondent had just cause (procedurally and substantively) to terminate Petitioner's employment with the State Highway Patrol for unacceptable personal conduct.

**FINDINGS OF FACT**

Petitioner Charles Jones served our country in the United States Marine Corps from May 1988 to May 1994. He worked as a military policeman and reached the rank of Sergeant(E-5) prior to being honorably discharged. In November of 1994, he was employed by the North Carolina Highway Patrol where for the next thirteen years he served as a Cadet, Trooper, Senior Trooper, Master Trooper, and Sergeant in various postings across North Carolina.

In May of 2001, Petitioner Jones was selected for the Patrol's Canine Handler School. Ricoh, a Belgian Malinois, was assigned as his canine partner. Following a six week course, they were certified as a Canine Team. In addition to being certified as a handler by the Patrol, Petitioner was certified by the North American Police Work Dogs Association as a canine handler. Canine Ricoh became certified as a police patrol/narcotics canine after completing fourteen weeks of training. Patrol training stressed Obedience & Control as primary. Troopers were told to rule with an iron fist as canines were weapons which had to be under control at all

times. Handlers were taught that they had to resolve discipline problems immediately. The Patrol had no approved or disapproved compliance techniques. Tough handling was customary. Having been taught "when your dog is not performing, bust his ass," handlers used whatever methods worked with their dogs, including: choke collars, stun guns, sticks, cans filled with rocks, Alpha Rolls, windmilling, helicoptering, tying-off, tethering, lifting-up. "Do whatever to get control" was stressed in training sessions. For the protection of the dogs and the public, children as well as adults, dogs had to be trained to obey release commands immediately---otherwise serious injury could result to humans, and dogs could die from swallowing illegal drugs. These dogs were not treated as household pets and public petting was forbidden.

Petitioner and Ricoh worked together as a successful team for six years, confiscating more than ten million dollars in cash and drugs. Ricoh lived in Petitioner's home garage. Petitioner provided food, water, grooming and medical care for Ricoh at no cost to the State. Petitioner sought additional training for Ricoh whenever possible, especially concerning obeying the release command when Ricoh had an object in his mouth. Ricoh could be very possessive, aggressive, defiant and domineering, wanting to be the Alpha or Top Dog, and several times during training he had bitten Petitioner.

In addition to handling, training, and deploying a canine for narcotics sniffs, tracking of persons, and recovery of evidence, Petitioner supervised the training of other canine teams. He was recognized by other canine handlers as being the very best at his craft. Petitioner was assigned to conduct a four day canine maintenance narcotics training session August 6-9, 2007, involving Ricoh along with several other troopers and their dogs. During the afternoon of August 8, while Petitioner and Ricoh were doing a narcotics sweep in a training center building, Ricoh refused to release upon command a piece of fire hose he had been given as a reward for alerting to the presence of drugs. After several other efforts to correct Ricoh failed, Petitioner took him outside the building, put him on the ground from the deck, tied his leash to the top rail, suspended him with his rear paws on the ground, gave him 5 commands to release with each command being followed by a kick in the pants/flank with his right foot instep. The tying-off, commands and kicks took about 13 seconds. Ricoh released the treat, Petitioner picked it up, put it away, went up on the deck and untied Ricoh, which took another 13 seconds. Petitioner did not intend to harm or abuse Ricoh, nor did he. He wanted to get his attention and correct him. Ricoh was not injured and the partners continued the training session without further incident.

A fellow trooper used his cell phone to record Petitioner disciplining Ricoh. After he showed it to fellow troopers in the field, word got to Raleigh officials and was leaked to the press. Petitioner's superiors, realizing their dogs had been treated worse during training, wrote him up for a less serious personal conduct violation which could have resulted in a written warning and/or three days suspension without pay. Because there had been several news reports of misconduct by troopers, the Governor's press office became involved. CCPS Secretary Bryan Beatty viewed the trooper's recording and had it sent to the Governor's office where staff reviewed it and advised the Governor who decided that Petitioner should be dismissed from the Patrol. Petitioner was not confronted and asked for comments before this decision was made. Members of the Governor's staff communicated the Governor's decision to Secretary Bryan Beatty and Lieutenant Clendenin of the Patrol. Secretary Beatty told Colonel Clay and Lieutenant Clendenin told Lieutenant Colonel Lockley that "they want him gone". Upon being

informed of the Governor's decision, patrol officials sent Petitioner home on placement, took his car, dog and pistol, changed the charges, expedited the process, and fired him for unbecoming conduct. Because of pressure felt from the Governor's office, the Patrol did not give meaningful consideration to Petitioner's responses to the charges against him. A news article, quoting Secretary Beatty and Lieutenant Clendenin that Petitioner was being fired, was published at 12:38am on the morning that Petitioner's predissmissal conference was scheduled for 10:00am. Lieutenant Clendenin also emailed the news article to all Patrol employees across the State at 9:58am. Following the conference, Patrol officials did not confer to discuss Petitioner's contentions before Lieutenant Colonel Lockley signed off on the firing. Prior to and at the hearing, Lieutenant Colonel Lockley admitted that he did the wrong thing by approving the predetermined firing decision because, in his opinion, Petitioner acted in the manner in which he was trained even though it was an ugly manner. I find Lieutenant Colonel Lockley, Petitioner, and other Patrol dog handlers who testified to this effect to be credible witnesses. Petitioner appealed his termination to Secretary Beatty, who had been in contact with patrol officials, the Governor and his staff, and the news media during the dismissal process. Secretary Beatty named an employee advisory committee which heard Petitioner's appeal and unanimously recommended that the dismissal be reversed. When Secretary Beatty rejected the committee's recommendation, Petitioner filed a Petition for Contested Case Hearing alleging lack of just cause for his dismissal and asking to be reinstated with an award of back pay and attorney's fees.

#### **CONCLUSIONS OF LAW**

1. Petitioner was a career state employee at the time of his dismissal. Because he is entitled to the protections of the North Carolina State Personnel Act, and has alleged that Respondent lacked just cause for his dismissal, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue a Decision to the State Personnel Commission. N.C. GEN. STAT. §§ 126-1 *et seq.*, 126-35, 126-37(a). (2007).

2. N.C. GEN. STAT. § 126-35(a) provides that "No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." In a career state employee's appeal of a disciplinary action, the department or agency employer bears the burden of proving that "just cause" existed for the disciplinary action. N.C. GEN. STAT. § 126-35(d) (2007).

3. 25 NCAC 11.2301(b) enumerates two grounds for disciplinary action, including dismissal, based upon just cause: (1) unsatisfactory job performance, including grossly inefficient job performance; and (2) unacceptable personal conduct. "Unacceptable personal conduct" is defined as conduct for which no reasonable person should expect to receive prior warning; willful violation of known or written work rules; conduct unbecoming a state employee that is detrimental to state service; or, the abuse of--- an animal owned by the State. 25 NCAC 11.0614(i)(4,5,6) (2007).

4. The North Carolina State High Highway Patrol's Directive H.1, Section VI "Unbecoming Conduct" provides as follows: "Unbecoming conduct shall include any conduct that constitutes unacceptable personal conduct pursuant to State Personnel Policy and any

conduct which tends to bring the Patrol into disrepute, or which reflects discredit upon any member(s) of the Patrol---.”

5. N.C.D.E.N.R. v. Clifton Carroll, 358 N.C. 649, 599 S.E.2d 888 (2004), states that the fundamental question in determining just cause is whether the disciplinary action taken was just. Citing further, “Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations.” Our Supreme Court said that there is no bright line test to determine “just cause”—it depends upon the specific facts and circumstances in each case.

6. Respondent has not met the burden of persuading me by the greater weight of the evidence presented that it had just cause, procedurally and substantively, to terminate Petitioner’s employment. My reasons for concluding that this dismissal was not just are as follows:

- a. Petitioner was making a good faith training effort to make Ricoh release in accord with State v. Fowler, 22 N. C. App. 144 (1974), which held that punishment administered to an animal(a German Shepherd dog whose owners/trainers were breaking from digging holes by immersing its head for 45 seconds in a hole filled with water) in an honest and good faith effort to train it is not without justification and not “willful.” Also, G. S. 14-360(c)(2) exempts activities conducted for purposes of training, such as Petitioner did.
- b. In accord with the ruling in Fred A. Wilkie v. N. C. Wildlife Resources Commission, 118 N. C. App. 475 (1995), a reasonable person in Petitioner’s position would have expected to receive prior warnings prior to being dismissed, in view of Patrol customs concerning the rough and tumble handling by troopers of law enforcement canines during training sessions.
- c. Petitioner did not receive a required meaningful predissmissal conference because the Patrol’s decision to carry out the Governor’s decision to fire him had been made, released to the news media, and disseminated to all Patrol employees prior to such conference; nor did firing officials consider his contentions or confer after the conference prior to approving the firing. Also, Petitioner had no opportunity to explain his actions to those in the Governor’s office who decided and ordained that his employment with the Patrol should be terminated. See Margaret Y. Bishop v. North Carolina Department of Human Resources, 100 N. C. App. 175 (1990).

7. In State v. Wallace, 49 N. C. App. 475 (1980), Judge Harry C. Martin wrote a very learned dissertation on dogs. I commend it to those who read this decision. People have loved dogs from time immemorial. Jesus spoke of them in His conversation with a Canaanite woman in the region of Tyre and Sidon. I cherish my companionship with our three year old Golden Retriever, Counselor. He has followed in the paw prints of Talitha, Natasha, P. D., Rocky II, Rocky I, Cassie, Spitz, and many strays which have blessed my days since childhood. With them in mind, my final conclusion is that the State of North Carolina forego the future use

of dogs such as Ricoh for law enforcement purposes, unless it purchases fully trained canines to be handled by fully trained troopers who are given specific written compliance techniques.

**DECISION**

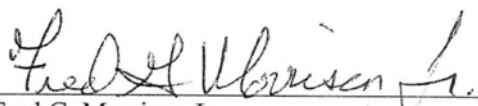
Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to terminate Petitioner's employment should be reversed and Petitioner should be reinstated with back pay and attorney's fees.

**ORDER AND NOTICE**

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 5th day of June, 2008.

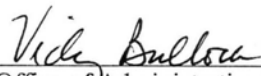
  
Fred G. Morrison Jr.  
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

John P. O'Hale  
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ATTORNEY FOR PETITIONER

Ashby T. Ray  
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Raleigh, NC 27699-9001  
ATTORNEY FOR RESPONDENT

This the 5th day of June, 2008.

  
Office of Administrative Hearings  
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Filed

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
07 RCB 1176

Office of  
Administrative Hearings

Angelique Thompson  
Petitioner

vs.

N. C. Respiratory Care Board  
Respondent

**PROPOSAL FOR  
DECISION**

Under N.C. Gen. Stat. § 131E-188(a) and N.C. Gen. Stat. § 150B-40(e), a contested case hearing was held in this matter on January 30, 2008 in Raleigh, North Carolina before Administrative Law Judge Beecher R. Gray. Respondent filed a Proposal for Decision on March 5, 2008. Petitioner filed objections to proposed findings of fact 51, 63, and 64 and conclusions of law 4 and 5. Those objections were carefully considered and overruled.

The parties to this contested case are Petitioner Angelique Thompson ("Ms. Thompson") and Respondent North Carolina Respiratory Care Board (the "Board"). Ms. Thompson filed this contested case to challenge the Board's determination that she practiced respiratory care while her license was expired, and to challenge the Board's entry of a Consent Order that required Ms. Thompson be publicly reprimanded and pay \$250.00 in civil penalties and \$100.00 in costs.

**APPEARANCES**

Lee M. Whitman  
Sarah M. Johnson  
Wyrick Robbins Yates & Ponton LLP  
Raleigh, North Carolina

For Petitioner Angelique Thompson

William R. Shenton  
Poyner & Spruill LLP  
Raleigh, North Carolina

For Respondent North Carolina Respiratory  
Care Board

**I. APPLICABLE LAW**

The procedural statutory law applicable to this contested case is the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-1 et seq.

The substantive statutory law applicable to this contested case hearing is the North Carolina Respiratory Care Practice Act, N.C. Gen. Stat. § 90-646 et seq.

The administrative regulations applicable to this contested case hearing are the North Carolina Respiratory Care Board Regulations, 21 N.C. Admin. Code 61.0100 et seq., and the Office of Administrative Hearings Regulations, 26 N.C. Admin. Code 3.0700-.0714.

## **II. ISSUES**

The parties set forth the following issues for resolution in this contested case in the Pre-Hearing Order:

### **Issue as Stated by Petitioner Angelique Thompson**

Whether the North Carolina Respiratory Care Board exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it found that Angelique Thompson had practiced respiratory care without a license, issued a reprimand to Angelique Thompson, and required Angelique Thompson to pay \$350.00 in civil penalties and costs.

### **Issue as Stated by Respondent North Carolina Respiratory Care Board**

Whether Petitioner Angelique Thompson violated the provisions of N.C. Gen. Stat. § 90-661 while her license had lapsed; and whether the reprimand and \$350.00 in civil penalties and costs should be upheld.

## **III. RECORD OF THE CASE**

At the hearing, the following testimony was received:

<b><u>Witness</u></b>	<b><u>Affiliation</u></b>	<b><u>Pages</u></b>
Angelique Thompson	Petitioner	38-91
John Kight	Kight's Medical Corp.	92-146
Judy Green	North Carolina Respiratory Care Board	147-190
Mary Lou Fleming	North Carolina Respiratory Care Board	193-205
Floyd Boyer	North Carolina Respiratory Care Board	206-287

In addition, the following exhibits were admitted into evidence:

### **Petitioner's Exhibits**

1. Angelique Thompson's Gateway Community College Transcript
2. July 13, 2004 letter from the National Board for Respiratory Care, Inc.
3. Brochure for the ResMed Ultra Mirage II Nasal Mask
4. Unaddressed RCP Renewal Postcard



5. September 5, 2006 letter from North Carolina Respiratory Care Board to Angelique Thompson
6. October 30, 2006 letter from North Carolina Respiratory Care Board to Angelique Thompson
7. Consent Order
8. North Carolina Respiratory Care Board "Disciplinary Actions" from [www.ncrcb.org](http://www.ncrcb.org)
9. North Carolina Respiratory Care Board License Verification of Angelique Thompson from [www.ncrcb.org](http://www.ncrcb.org)
10. March 8, 2007 Notice of Appeal from Angelique Thompson
11. Photocopy of Angelique Thompson's North Carolina Respiratory Care Practitioner license
12. April 18, 2003 letter from Terry Bacot to North Carolina Respiratory Care Board
13. May 24, 2005 letter from North Carolina Respiratory Care Board to John Kight
14. May 25, 2005 letter from John Kight to Floyd Boyer
15. September 2, 2005 letter from Poyner & Spruill LLP to John Kight
16. March 21, 2006 letter from Poyner & Spruill LLP to John Kight
17. March 22, 2006 letter from John Kight to William Shenton
18. July 27, 2006 letter from Poyner & Spruill to John Kight
19. September 26, 2006 letter from Poyner & Spruill to John Kight
20. Complaint and attached Exhibits in North Carolina Respiratory Care Board v. Kight's Medical Corp., 07 CVS 2584, Wake County Superior Court
21. Print out from Kight's Medical Corp. website dated October 8, 2007
22. North Carolina Respiratory Care Board ALERT! w/ attachment
23. NCAMES Urgent Memorandum by E-Mail
24. Photocopy of Judy Green's business card
25. North Carolina Respiratory Care Board Disciplinary Manual
26. NCRCB Individual Information printout with attached License Renewal Form for Angelique Thompson

27. North Carolina Respiratory Care Board Notice of Inspection to Kight's Medical dated August 24, 2006
28. North Carolina Respiratory Care Board Report of Findings dated August 24, 2006
29. Transcript of North Carolina Respiratory Care Board, Investigation and Informal Settlement Committee interview of Angelique Thompson, January 10, 2007
30. North Carolina Respiratory Care Board Job Descriptions
31. Photocopy of Floyd Boyer's business card
32. Excerpts from the Council on Licensure, Enforcement & Regulation National Certified Investigator/Inspector Training Basic Program, with handwritten notes by Floyd Boyer
33. NCRCB Interview Schedule, January 10, 2007, 4:00 PM - Angelique Thompson
36. Transcript of the Deposition of Floyd Boyer
38. Transcript of the Deposition of Sherry Samuels

Respondent's Exhibits

8. Copy of Home Care Services License HC 2035 issued for 2006 to Kight's Medical for Clinical Respiratory and Directly Related Medical Supplies and Appliances
9. Copy of Home Care Services License HC 2035 issued for 2007 to Kight's Medical for Clinical Respiratory and Directly Related Medical Supplies and Appliances

**IV. FINDINGS OF FACT**

After examination of the evidence presented at the hearing, the presentations of counsel, and the findings of fact and conclusions of law proposed by the parties, the undersigned Administrative Law Judge makes the following Findings of Fact:

**A. Parties, Procedural Points and Other Undisputed Information**

1. All the parties properly are before the Office of Administrative Hearings ("OAH"), and OAH has jurisdiction of the parties and of the subject matter.
2. All parties correctly have been designated and there is no question as to misjoinder or nonjoinder of parties.
3. Petitioner Angelique Thompson is a licensed respiratory care practitioner who resides in Charlotte, North Carolina.
4. Respondent North Carolina Respiratory Care Board is the state agency charged with licensing respiratory care practitioners under the North Carolina Respiratory Care Practice Act, N.C. Gen. Stat. § 90-646 et seq.

***B. The North Carolina Respiratory Care Practice Act***

5. Under the North Carolina Respiratory Care Practice Act (the “Act”), a respiratory care practitioner is defined as “[a] person who has been licensed by the Board to engage in the practice of respiratory care.” N.C. Gen. Stat. § 90-648(12).

6. The Act defines respiratory care as “the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.” N.C. Gen. Stat. § 90-648 (11).

7. It is unlawful for any person who is not licensed under the Act to engage in the practice of respiratory care. N.C. Gen. Stat. § 90-661.

8. However, the Act does not apply to persons who perform only support activities. N.C. Gen. Stat. § 90-664(4). The Act defines support activities as “[p]rocedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment.” N.C. Gen. Stat. § 90-649 (13).

9. In addition, the Board’s rules define the practice of respiratory care to include “patient instruction in respiratory care, functional training in self-care and home respiratory care management, and the promotion and maintenance of respiratory care fitness, health, and quality of life. . . .” 21 NCAC 61 .0103 (3) (j). The Board provides that persons who provide only support activities as defined by the Act are exempt from the requirement of obtaining a respiratory care practitioner license. 21 N.C. Admin. Code 61.0202 (3). Specifically, the rules state: “[u]nlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of apparatus, including demonstrating its mechanical operation for the patient, or caregiver[.]” *Id.*

***C. Undisputed Background Facts***

10. The Board has the power and the duty to deny, issue, suspend, revoke, and renew respiratory care practitioner licenses in accordance with the Act. N.C. Gen. Stat. § 90-652(4).

11. Under the Board’s rules and regulations, “[e]ach license issued by the Board shall be valid for a period of one year[.]” 21 N.C. Admin. Code 61.0301.

12. The Board also has the power and the duty to conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline respiratory care practitioners licensed under the Act and to enforce the Act. N.C. Gen. Stat. § 90-652(5).

13. The Board has adopted a Disciplinary Manual (the “Manual”) as an internal procedure. Pet’s Ex. 25. The Manual provides that upon receipt of a Complaint, the Board will review the Complaint and make a determination whether the information is credible. *Id.* at 3. If it is determined that credible information supports the Complaint, then an investigation shall be initiated. *Id.*

14. The Manual also indicates that Complaints should be submitted in writing and delivered to the Board Office by mail, private carrier, or in person. Id. at 2. Anyone who submits a Complaint by fax, e-mail, telephone or voice mail will be required to submit an original signed written complaint as well. Id. Complaints must document:

- The name, mailing address and phone number of the person filing the Complaint;
- The name of the licensee or person involved, and the name and location of each organization where the licensee or any other person that is the subject of the Complaint practices; and
- A detailed description of the alleged behavior or incident that is the subject of the Complaint, including identification of date, time, and location of each alleged behavior or incident, as well as the identity of other individuals with information about the alleged behavior or incident, and the identity and location of any pertinent documents, if known.

Id. The “Discipline Process Flow Chart” as set forth in the Manual also describes the process to be followed if a Complaint is received, starting with an investigation, and states that an interview will not be held if the complaint is resolved and “there is no credible evidence of a violation of the Practice Act or Board Rules.” Id. at 6.

15. The Manual states that a licensee will be notified by certified mail when the Board has begun an investigation, but not later than ten (10) days after the decision to begin an investigation. Id. at 4.

16. Under the section of the Manual entitled “Basic Principles of the Disciplinary Process,” a licensee has the right to refuse to be interviewed. Id. In addition, the licensee has the right to be represented by an attorney, and the attorney may accompany the Licensee to any interview with the Board. Id. The licensee is further entitled to receive a full explanation of the allegations being investigated at the beginning of the interview, before any substantive questions are asked. Id.

17. The Manual permits the Board to issue a Letter of Reprimand in lieu of an interview with the Board. This option is available when the offense is practicing respiratory care with a lapsed license and the license was lapsed for less than ninety (90) days. Id. at 14.

18. The Manual also sets forth the Board’s procedure for issuance of subpoenas for documents needed to conduct an investigation and/or administrative hearings. Id. at 16.

## **V. FINDINGS OF FACT**

19. Ms. Thompson became a licensed respiratory care practitioner in North Carolina in 2004. Hr’g Tr. 41:5-9, January 30, 2008. When first she became licensed, she worked as a respiratory care practitioner in Charlotte-area hospitals. Id. at 41:1-24.

20. In Fall of 2005, Ms. Thompson transitioned from working for hospitals to working for a home care company, American Home Patient. Id. at 41:21-42:1. Ms. Thompson

did not perform any clinical work for American Home Patient. Id. at 42:16-19. Rather, she only set up, fit, and instructed on equipment. Id. at 42:16-24, 46:15-20. In fact, American Home Patient had to train her how to use the equipment because it was not covered by Ms. Thompson's respiratory care schooling. Id. at 42:20-43:5.

21. Ms. Thompson began working at Kight's Medical Corp. ("Kight's") in December 2005 and has worked there continuously ever since. Id. at 43:6-15. Kight's is a home medical equipment ("HME")/durable medical equipment ("DME") company. Id. at 93:6-12. Kight's dispenses respiratory equipment, including C-PAPs, Bi-Paps, apnea monitors and ventilators. Id. at 43:19-23, 93:13-16.

22. At Kight's, Ms. Thompson's job responsibilities entail setting up, maintaining, fitting and instructing persons on how to use respiratory equipment, but do not include the provision of clinical services, as she understands that term. Id. at 43:19-25, 100:10-23.

23. To Mr. Kight's knowledge, no Kight's employee provides respiratory care or treatment, as he understands and comprehends those terms. Id. at 95:1-5. Kight's does not bill or submit reimbursement requests to Medicare or Medicaid for respiratory therapy. Id. at 95:6-11.

24. Ms. Thompson has decided to keep her respiratory care practitioner license current because she is proud of her achievement and in the event she gets another job that would require a license. Id. at 44:23-45:9.

25. When Ms. Thompson delivers equipment to Kight's patients, she leaves brochures that have been prepared by the manufacturer of the equipment with the patients. See, e.g., Pet's Ex. 3; Hr'g Tr. at 45:10-15. She testified that the substance of the instructions she gives to a patient orally and demonstratively is essentially the same as the instructions found in the brochure. Hr'g Tr. 46:7-11.

26. Ms. Thompson never touches a patient when performing her job functions for Kight's, and she testified that "The important part is to instruct the patient on how to use the machine and equipment." Id. at 46:12-20.

27. Prior to 2006, Ms. Thompson had received a postcard in the mail from the Board reminding her to renew her respiratory care practitioner license. Id. at 47:16-25; Pet's Ex. 4. Ms. Thompson does not recall receiving such a postcard in 2006. Hr'g Tr. 48:1-3. If Ms. Thompson had received such a postcard in 2006, she would have renewed her license as instructed. Id.

28. In 2006, Ms. Thompson's respiratory care practitioner license expired on July 16, 2006. Pet's Ex. 26. However, Ms. Thompson was under the mistaken impression that her license did not expire until August 16, 2006. Hr'g Tr. 47:4-9. In August 2006, Ms. Thompson attempted to renew her respiratory care practitioner license via the Board's website. Id. When she was unsuccessful, Ms. Thompson called the Board to inquire why she could not renew on the website. Id. She was informed that her license had expired and she could not renew online once her license had expired. Pet's Ex. 29 at page 2. The Board gave Ms. Thompson instructions as to how to renew her license through the mail. Id. Ms. Thompson followed the instructions and

her license was renewed on August 10, 2006, approximately 24 days after it had expired. Hr'g Tr. 171:3-7.

29. At some time after August 10, 2006, the Board's Executive Director Floyd Boyer ("Mr. Boyer") asked Board Investigator Judy Green ("Ms. Green") to begin investigating whether Ms. Thompson had practiced respiratory care during the 24 day period while her license had lapsed. *Id.* at 169:8-12, 231:2-4. Mr. Boyer requested that Ms. Green begin an investigation although Ms. Thompson had already taken the necessary steps to renew her license and her lapsed license could have been dealt with administratively. *Id.* At 225:22-26:24. In requesting that Ms. Green investigate this lapse of license, Mr. Boyer was following the Board's typical procedure in these situations. Hr'g Tr. at 285:13-20.

30. To begin the investigation, Mr. Boyer gave Ms. Green a printout of the database indicating that Ms. Thompson's license had lapsed. Pet's Ex. 26; Hr'g Tr. 169:16-170:8.

31. On August 24, 2006, Ms. Green attempted to investigate whether Ms. Thompson had practiced respiratory care while her license had lapsed. *Id.* at 171:18-22; *see also* Pet's Exs. 27 and 28. Ms. Green went to Ms. Thompson's place of employ, Kight's in Charlotte, but Ms. Thompson was not in the office and Ms. Green did not speak with her. Hr'g Tr. 173:5-8; Pet's Ex. 28. Ms. Green was further unable to review any documents or records because Kight's refused to allow Ms. Green to inspect its premises. Hr'g Tr. 171:23-173:11; Pet's Exs. 27 and 28. Ms. Green reported this information back to Mr. Boyer and ceased any further investigation into whether Ms. Thompson had practiced respiratory care while her license had lapsed. Hr'g Tr. 172:24-173:4, 181:12-23.

32. In September 2006, Ms. Thompson received a letter from the Board. Pet's Ex. 5; Hr'g Tr. 49:23-50:7. More than ten (10) days had passed since the Board had decided to investigate Ms. Thompson. Pet's Exs. 5, 27 and 28. The letter, dated September 5, 2006, stated that the Board had received a Complaint regarding her practice of respiratory care. Pet's Ex. 5; Hr'g Tr. 50:8-17. However, no written Complaint regarding Ms. Thompson's practice of respiratory care had been filed with the Board. Hr'g Tr. 233:9-18.

33. The letter further stated that the Board had determined that there was sufficient credible information to begin an investigation into the matter. Pet's Ex. 5. However, the only evidence the Board had at that time was the fact that Ms. Thompson's license had lapsed for twenty-four (24) days and that Ms. Thompson was employed by an HME/DME company. Hr'g Tr. 239:20-240:19.

34. The letter requested Ms. Thompson attend an interview at the Board office on October 11, 2006. Pet's Ex. 5. The text of the letter did not state that Ms. Thompson had the right to refuse to be interviewed; but it did reference the "Basic Principles of the Discipline Process" as an enclosure. *Id.* The "Basic Principles of the Disciplinary Process" from the Board's Manual as an enclosure; and that document mentions a right to counsel and the right to refuse to be interviewed. Pet's Ex. 25, p. 4. Although the Board normally attaches excerpts from the Disciplinary Manual referring to a licensee's right to refuse an interview and right to an attorney to such letters, neither Mr. Boyer nor Ms. Green had any direct personal knowledge as to whether Ms. Thompson received any excerpts from the Disciplinary Manual with the

September 5, 2006 letter. *Id.* at 163:2-164:4; 236:2-18. Ms. Thompson did not understand from the letter that she had the right to have an attorney present at the interview. Hr’g Tr. 52:2-7.

35. Ms. Thompson informed the Board that she would not be able to attend an interview on October 11, 2006. *Id.* at 52:8-11.

36. In October 2006, Ms. Thompson received another letter from the Board. Pet’s Ex. 6; Hr’g Tr. 52:17-22. The letter, dated October 30, 2006, contained essentially the same language as the letter dated September 5, 2006, including the reference to enclosing the Basic Principles of the Disciplinary Process. Pet’s Exs. 5 and 6; Hr’g Tr. 52:23-53:1. However, it also included a heading in highlighted print at the top of the page, which read: “SECOND NOTICE: FAILURE TO SHOW MAY RESULT IN LICENSE SUSPENSION.” Pet’s Ex. 6. The letter requested that Ms. Thompson attend an interview at the Board office on January 10, 2007. *Id.* The text of the letter did not state that Ms. Thompson had the right to refuse to be interviewed, nor did Ms. Thompson understand from the letter that she had the right to have an attorney present at the interview. *Id.*; Hr’g Tr. 53:22-24, 180:13-20.

37. As before, a written Complaint regarding Ms. Thompson’s practice of respiratory care had not been filed with the Board, and the only evidence in the Board’s possession was the fact that Ms. Thompson’s license had lapsed for twenty-four (24) days and that Ms. Thompson was employed by an HME/DME company. Hr’g Tr. 164:16-18, 189:19-25, 237:14-21, 248:10-17.

38. Prior to January 10, 2007, and at Mr. Boyer’s request, Ms. Green telephoned Ms. Thompson and asked whether Ms. Thompson would be attending the interview. Hr’g Tr. 176:17-177:6, 238:19-24. Ms. Thompson responded yes. *Id.* at 177:3-6. Ms. Green did not advise Ms. Thompson that she had the right to bring an attorney to the interview, nor did she advise Ms. Thompson that she had the right to refuse to be interviewed. *Id.* at 53:8-12, 177:7-10.

39. Ms. Thompson attended an interview at the Board office on January 10, 2007 as requested. *Id.* at 53:13-18. According to the “Interview Schedule” form, the only evidence the Board had was a copy of Ms. Thompson’s renewal application, the information that her license had lapsed, and the notes from Ms. Green’s attempted August 24, 2006 inspection of Kight’s. Pet’s Ex. 33. Those notes indicated that Ms. Green was not able to obtain any information or review any documents in connection with her investigation of Ms. Thompson. The Board had authority to subpoena documents it needed to investigate this matter but did not use that authority. Pet’s Ex. 28. The Board also had the information that Ms. Thompson’s license had lapsed.

40. On January 10, 2007, no one informed Ms. Thompson prior to the interview that she had the right to an attorney or asked Ms. Thompson whether she had retained an attorney. Hr’g Tr. 54:22-55:4, 201:21-202:1, 241:16-25. Likewise, since there is no evidence that Ms. Thompson received the attachments referenced in the Board’s letters dated September 5, 2006, and October 30, 2006, and there is no evidence that anyone informed Ms. Thompson prior to the interview that she had the right to refuse to be interviewed. *Id.* at 53:8-12.



41. At the beginning of the interview, Board member Sherry Samuels ("Ms. Samuels") stated to Ms. Thompson: "We asked you here to get more information about the time that you were practicing respiratory care while your license was expired....Could you tell us what were you doing during the time that your license was expired from July 16, 2006 until it was renewed August 10th?" Pet's Ex. 29 at page 1.

42. Ms. Thompson answered Ms. Samuels question as follows: "What we do is CPAP setups, BiPAP setups, occasional apnea monitors, and then there's vent checks for the patients. That was it, I don't do anything else. So during that time it was basically doing setups - CPAP setups, BiPAP setups. In the summer, it's real slow for the apnea monitors. And the vent checks, I wasn't - we only had one and that patient wasn't on it. So almost - basically just doing CPAP setups and BiPAP setups on patients." Id.

43. According to Mary Lou Fleming, who was on the Board and a member of the committee that interviewed Ms. Thompson, the activities mentioned in Ms. Thompson's answer as set forth in Finding of Fact 45 *supra* do not, *per se*, constitute the practice of respiratory care. It would depend on what specific tasks were encompassed within the activities that Ms. Thompson mentioned. Mary Lou Fleming had no familiarity with the Board's Disciplinary Manual either at the time of the interview or at the contested case hearing. Hr'g Tr. 202:19-203:25.

44. After Ms. Thompson's answer to Ms. Samuels' question Mr. Boyer responded by asking: "So you were practicing respiratory care without a license and you were holding yourself out as being a licensed practitioner, correct?" Id. Ms. Thompson answered in the affirmative. Id.

45. Ms. Thompson answered in the affirmative because she had already been told twice in two different letters sent by the Board, and once at the beginning of the interview from a Board member, that she had practiced respiratory care without a license. Hr'g Tr. 55:18-56:6.

46. No one defined the term "respiratory care" for Ms. Thompson during the interview. Pet's Ex. 29; Hr'g Tr. 56:10-13.

47. No one mentioned the term "support services" during the interview. Pet's Ex. 9; Hr'g Tr. 56:14-16.

48. During the interview Ms. Thompson was asked a number of questions about the activities of other Kight's employees, including five other named individuals. Pet's Ex. 9, at pages 2-8. Of the approximately seven (7) page interview transcript, one and one-half (1 ½) pages were spent discussing Ms. Thompson's activities while her license was lapsed. Id. At pages 1-2; Hr'g Tr. 272:20-23. The remainder of the interview was spent discussing the activities of other Kight's employees, including the activities of Kight's employees who filled in for Ms. Thompson during an earlier period while she was ill, and those who had similar responsibilities to those of Ms. Thompson with regard to the respiratory equipment provided by Kight's. Pet's Ex. 9 at pages 2-8; Hr'g Tr. 272:25-273:5.



49. At one point in the interview, Mr. Boyer asked Ms. Thompson whether she provided clinical services for Kight's. Id. at page 7. Ms. Thompson answered no and clarified that Kight's employees do not provide clinical services. Id.

50. After Ms. Thompson's interview, the Board did not investigate her license lapse any further. Hr'g Tr. 181:12-23. The Board never attempted to subpoena any documents as part of its investigation into Ms. Thompson. Id. at 226:10-21.

51. At one point in his deposition, Mr. Boyer stated that he had concluded that Ms. Thompson had provided respiratory care while her license was lapsed on the sole grounds that Ms. Thompson is a licensed respiratory care practitioner who works for an HME/DME company. Pet's Ex. 36 at page 151:10-17. In his deposition, Mr. Boyer also identified several activities defined as respiratory care which he contends Ms. Thompson engaged in, including providing mechanical or physiological ventilatory support and observing and monitoring signs and symptoms in the course of doing so, as well as working with apnea monitors which would be considered a device that requires clinical expertise. Pet's Ex. 36 at pages 127. He also testified that anytime Ms. Thompson saw a patient, she would be determining the patient's signs and symptoms, general behavior and general response of the patient on the equipment. Id. at 128.

52. Mr. Boyer called Ms. Thompson several days later and informed her that he would be sending her a Consent Order to sign and return to him. Id. at 56:22-57:14. He did not state that she had the right to appeal the Consent Order. Id. at 57:18-21.

53. The Consent Order stated that Ms. Thompson had practiced respiratory care with an expired license and that Ms. Thompson agreed to the issuance of a Board Reprimand and to pay \$250.00 in civil penalties and \$100.00 in costs. Pet's Ex. 7.

54. In order to keep her license, and because the Board had told her multiple times that she had practiced respiratory care without a license, Ms. Thompson signed, notarized and returned the Consent Order. Hr'g Tr. 56:22-57:17. The Consent Order was entered on February 9, 2007. Pet's Ex. 7.

55. The Board's website, which is publicly accessible at [www.ncrcb.org](http://www.ncrcb.org), reflects that Ms. Thompson had received a Board Reprimand, civil penalty and disciplinary costs for practicing respiratory care in North Carolina with a lapsed license. Pet's Exs. 8 and 9.

56. After signing the Consent Order, Ms. Thompson informed her employer, John Kight ("Mr. Kight"), Kight's CEO and President, about the Consent Order. Hr'g Tr. 60:14-23. Mr. Kight informed Ms. Thompson that she had the right to appeal the Consent Order, but he did not require her to appeal as a condition of her employment. Id. at 60:24-61:10, 128:24-129:17. Ms. Thompson decided to appeal the Consent Order of her own accord because she wanted to maintain a clean record and avoid paying \$350 in penalties and costs. Id. at 61:9-62:13.

57. Ms. Thompson sent the Board a letter of appeal dated March 8, 2007, and stated: "When I was asked if I ever practiced respiratory care I automatically answered yes but now I have realized that working for a HME company, I do not provide any respiratory care." Pet's Ex. 10. Ms. Thompson authored and sent this letter herself. Hr'g Tr. 61:18-62:3.

58. On the date of the hearing, Ms. Thompson did not believe that she practiced respiratory care with a lapsed license during the period July 17, 2006 through August 10, 2006. Id. at 64:6-9. On the date of the hearing, Ms. Thompson believed that she only provided support services during the period July 17, 2006 through August 10, 2006. Id. at 64:1-12.

59. During the period July 17, 2006 through August 10, 2006, Ms. Thompson testified that she did not:

- a) treat, manage or care for any respiratory care patients;
- b) monitor, diagnose or assess any respiratory care patients;
- c) evaluate the effectiveness of any respiratory apparatus or treatment;
- d) instruct any patient or caregiver on the clinical use of respiratory care equipment;
- e) teach any respiratory care; or
- f) administer, practice or perform any respiratory care.

Id. at 63:1-25.

60. Ms. Thompson also testified that on July 17, 2006, the first day that her license had lapsed, she did deliver an apnea monitor to a home. Hr'g Tr. 68:8-10. This apnea monitor was among the types of equipment that she described in response to the initial question during her interview. Pet. Ex. 29, at p. 1.

61. An apnea monitor is a piece of equipment that monitors whether a baby's breathing slows down or stops during the night. Hr'g Tr. at 68:11-22. When an infant goes into an episode of apnea, there is a risk of death, and the purpose of the equipment is to sound an alarm so that someone will respond and stimulate the infant so that they resume breathing. Hr'g Tr. 71-72.

62. During her delivery of the apnea monitor on July 17, 2006, Ms. Thompson explained to the parents of the child in question how to use the apnea monitor and the alarms. Hr'g Tr. 71:9-14. Ms. Thompson and the caregivers for the child were the only persons present during her instruction. Hr'g Tr. 70-71.

63. Under a rule adopted by the Division of Health Service Regulation (formerly the Division of Facility Services) of the North Carolina Department of Health and Human Services, clinical respiratory care services must be provided by or under the supervision of a licensed respiratory therapist or registered nurse. 10A NCAC 13J .1109. During the time that Ms. Thompson license had lapsed, Kight's held a home care license for clinical respiratory care from the Division of Health Service Regulation for the Charlotte office where she worked. Hr'g Tr. 135-136.

64. Among the services defined by Rule 10A NCAC 13J .1109 as clinical respiratory services are teaching and training clients or caregivers to self-administer home respiratory care procedures and evaluating the functioning of infant monitors. 10A NCAC 13J .1109 (b) (2) and (5).

#### **VI. CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge enters the following Conclusions of Law:

1. Ms. Thompson's agreement to the Consent Order was based on an understanding of the scope of Respiratory Care which she later believed to be mistaken, and after receiving her communication about this, the Board referred this matter to the Office of Administrative Hearings for hearing pursuant to N.C. Gen. Stat. 150B-40 (e). The Board did not follow its own policies in the investigation and determination of this case, specifically, by not fully and fairly informing Petitioner of her right to have counsel with her at the interview or that she could not be compelled to attend the interview.

2. This case proceeded to hearing on the issues identified by the parties, which are recited above in Section II of this Proposal for Decision. No other issues were presented for hearing in this case.

3. Since the Reprimand and the \$250.00 in civil penalties and \$100.00 in costs were based on Ms. Thompson's mistaken agreement to the Consent Order, the Consent Order is not a sufficient basis for upholding those sanctions.

4. The delivery of the apnea monitor on July 17, 2006 and the associated instructions that Ms. Thompson gave to the child's caregivers on that date did constitute the practice of respiratory care, as defined in the Board's Rules, because it constituted "patient instruction in respiratory care, functional training in self-care and home respiratory care management, and the promotion and maintenance of respiratory care fitness, health, and quality of life..." 21 NCAC 61 .0103 (3) (j).

5. Other than the apnea monitor service which Ms. Thompson provided on July 17, 2006, the Board has not met its burden to show by a preponderance of the evidence that Ms. Thompson provided respiratory care to patients while her license was lapsed from July 17, 2006 to August 10, 2006. The evidence in this case shows that the apnea monitor incident on July 17, 2006 was an isolated incident, not committed with knowledge by Petitioner that it did or could constitute the practice of respiratory care. The evidence does not demonstrate a pattern of conduct on the part of Petitioner warranting discipline.

#### **PROPOSAL FOR DECISION**

It hereby is proposed that the North Carolina Respiratory Care Board reverse its previous decision to order Ms. Thompson to pay \$250.00 in civil penalties and \$100.00 in costs, remove any record or indication this action from Ms. Thompson's record with the Board, including but not limited to the public web page reference to same, and also take all necessary measures to remove any record or indication of this action with any other entity, including but not limited to

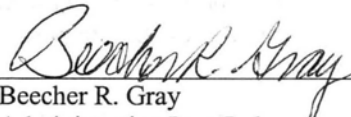
the Healthcare Integrity and Protection Data Bank and the National Databank maintained by the National Board for Respiratory Care.

**NOTICE AND ORDER**

The North Carolina Respiratory Care Board is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36(b).

This the 13 day of March, 2008.

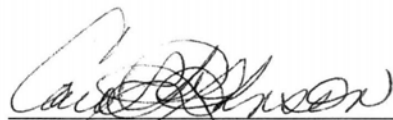
  
Beecher R. Gray  
Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 13<sup>th</sup> day of March, 2008.



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