

NORTH CAROLINA REGISTER

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September 2, 2008

| | |
|--|------------------|
| I. IN ADDITION | |
| Building Code Council – Request for Public Comment | 378 |
| Notice of Intent to Remediate a Dry Cleaning Facility - Love Cleaners..... | 379 |
| II. PROPOSED RULES | |
| Environment and Natural Resources, Department of | |
| Department..... | 391 |
| Marine Fisheries Commission..... | 391 – 456 |
| Labor, Department of | |
| Department..... | 380 – 391 |
| III. APPROVED RULES..... | 457 – 478 |
| Environment and Natural Resources, Department of | |
| Environmental Management Commission | |
| Public Health, Commission for | |
| Health and Human Services, Department of | |
| Medical Care Commission | |
| Mental Health/DD/SAS, Division of | |
| Insurance, Department of | |
| Department | |
| Justice, Department of | |
| Alarm Systems Licensing Board | |
| Occupational Licensing Boards and Commissions | |
| Appraisal Board | |
| Dental Examiners, Board of | |
| General Contractors, Licensing Board for | |
| Medical Board | |
| Real Estate Commission | |
| Speech and Language Pathologists and Audiologists, Board of Examiners for | |
| State Personnel, Office of | |
| State Personnel Commission | |
| IV. RULES REVIEW COMMISSION | 479 – 483 |
| V. CONTESTED CASE DECISIONS | |
| Index to ALJ Decisions | 484 – 487 |
| Index of ALJ Decisions | |
| 07 ABC 1532 | 488 – 499 |
| 08 DST 0235 | 523 – 528 |
| 06 EHR 1185..... | 500 – 522 |
| 07 OSP 1186 | 527 – 545 |
| 07 OSP 2256 | 546 – 563 |

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.

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

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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

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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 th 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 REQUEST FOR PUBLIC COMMENT

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Request for Public Comment is hereby given by the NC Building Code Council in response to House Bill 2431, "The Studies Act of 2008", Section 18.1.

Reason for Proposed Action: *To receive public comment on the subject matter listed below to assist in the Council in preparation of the report to the General Assembly.*

Public Comment: *September 8, 2008, 1:00PM, Wake County Commons, 4011 Carya Drive, Raleigh, NC 27610*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on September 17, 2008.*

Statement of Subject Matter:

1. HOUSE BILL 2431 - Ratified on July 18, 2008

PART XVIII. NORTH CAROLINA BUILDING CODE COUNCIL TO REEXAMINE ADOPTION OF CERTAIN SECTIONS OF THE ELECTRICAL CODE

SECTION 18.1. The North Carolina Building Code Council shall reexamine its adoptions of the following sections of the North Carolina Electrical Code to determine whether they are necessary and cost-effective: Section 210.12(B), Arc-Fault Circuit-Interrupter Protection; Section 338.10(B)(4)(a), Allowable Ampacities for SE Cables; and Section 406.11, Tamper Resistant Receptacles in Dwelling Units. The Council shall report its findings to the General Assembly on or before January 1, 2009.

210.12 Arc-Fault Circuit-Interrupter Protection. (AFCI)

(B) Dwelling Units: All 125-volt, single-phase, 15- and 20- ampere branch circuits supplying outlets installed in dwelling unit family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreation rooms, closets, hallways, or similar rooms or areas shall be protected by a listed arc-fault circuit interrupter, combination-type, installed to provide protection of the branch circuit.

Note: *This requirement for AFCI protection shall become effective January 1, 2009. It shall be permitted to meet the 2005 NC Electrical Code Article 210.12 for bedrooms until that date.*

338.10(B)(4)(a) Installation Methods for Branch Circuits and Feeders.

(a) Interior Installations. In addition to the provisions of this article, Type SE service-entrance cable used for interior wiring shall comply with the installation requirements of Part II of Article 334.

FPN: See 310.10 for temperature limitation of conductors.

Note: *The Rules Review Commission received 10-written requests for Legislative review of this rule. The rule became effective on July 3, 2008.*

406.11 Tamper-Resistant Receptacles in Dwelling Units. In all areas specified in 210.52, all 125-volt, 15-and 20-ampere receptacles shall be listed tamper-resistant receptacles.

Note: *The Rules Review Commission received 10-written requests for Legislative review of this rule. The rule became effective on July 3, 2008.*

**SUMMARY OF NOTICE OF INTENT TO REMEDIATE A DRY-CLEANING
SOLVENT FACILITY OR ABANDONED SITE**

Love Cleaners
DSCA Site No. 10-0002

Pursuant to N.C.G.S. §143-215.104L, Dode, LLC and Sude, LLC have filed with the North Carolina Department of Environment and Natural Resources (DENR) a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site (NOI). The purpose of this summary is to notify the public of the proposed remedy for the affected property and invite comment on the proposed remedy.

The Property consists of the following parcel in Calabash, Brunswick County, North Carolina identified by street address and by the following property tax parcel identification numbers:

10000 Beach Drive, Calabash, NC
Parcel Number 25500076

Dry-cleaning solvent contamination has been discovered in soil and groundwater on a portion of the Property. Because this contamination is expected to naturally attenuate over time, the proposed remedy is to place land-use restrictions on the Property to control current and future exposure to the contamination.

The NOI is available for review by the public at the address provided below. To arrange a review of the NOI or for additional information, contact Al Chapman at (919)508-8580. Written public comments may be submitted to DENR no later than November 1, 2008. Written requests for a public meeting may be submitted to DENR no later than October 2, 2008. All such comments and requests should be addressed as follows:

Al Chapman, DSCA Program
Special Remediation Branch
Superfund Section
Division of Waste Management
North Carolina 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 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to amend the rules cited as 13 NCAC 13 .0101, .0202-.0206, .0208, .0301-.0302, .0401, .0403-.0405, .0409, .0412-.0414, .0416-.0417, .0420.

Proposed Effective Date: January 1, 2009

Public Hearing:

Date: September 17, 2008

Time: 10:00 a.m.

Location: 4 W. Edenton Street, Raleigh, NC (Room 205)

Reason for Proposed Action: Title 13, Chapter 13 of the North Carolina Administrative Code needs to be amended in order to remain consistent with boiler and pressure vessel industry standards, the North Carolina Plumbing Code, the North Carolina Mechanical Code, and to clarify or standardize certain reference/information contained in the current rules.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, NC 27699-1101; or via facsimile at (919)733-4235. Objections may also be submitted during the public hearing conducted on these rules, which is noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 pm on November 3, 2008.

Comments may be submitted to: Erin T. Gould, 1101 Mail Service Center, Raleigh, NC 27699-1101, phone (919)733-7885, fax (919)733-4235, email erin.gould@nclabor.com.

Comment period ends: November 3, 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 13 - BOILER AND PRESSURE VESSEL

SECTION .0100 - DEFINITIONS

13 NCAC 13 .0101 DEFINITIONS

The following definitions are applicable throughout the rules in this Chapter, and shall be construed as controlling in case of any conflict with the definitions contained in any other standard or code:

- (1) "Accepted Design and Construction Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME Code), or a comparable code with standards that the Chief Inspector determines to be as safe as the ASME Code.
- (1)(2) "Appurtenance" means any control, fitting, appliance or device attached to or working in conjunction with the boiler or pressure vessel proper.
- (2)(3) "ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.
- (3)(4) "Audit" means activities, other than those identified as certificate inspections, conducted by the Chief Inspector or his designee. These activities include, in part:
 - (a) reviews and surveys for ASME and National Board stamp issuance and renewal;
 - (b) audits conducted on an authorized inspector at the location of a manufacturer or repair organization as may be required by the ASME Code, National Board Inspection Code, or National Board Rules for Commissioned Inspectors; and
 - (c) audits pursuant to evaluation for the issuance of North Carolina Specials.

- ~~(4)~~(5) "Automatically fired boiler" means a boiler that cycles automatically in response to a control system and which does not require a constant attendant for the purpose of introducing fuel into the combustion chamber or to control electrical input.
- ~~(5)~~(6) "Authorized Inspection Agency" means an organization employing commissioned inspectors including the following:
- (a) the Department of Labor, Boiler Safety Bureau;
 - (b) an inspection agency of an insurance company licensed to write boiler and pressure vessel insurance; or
 - (c) an owner-user inspection agency that meets the requirements of G.S. 95-69.15.
- ~~(6)~~(7) "Authorized inspector" means an employee of an Authorized Inspection Agency who is commissioned by the National Board and this State, holds an appropriate endorsement on his/her National Board Commission, and inspects as the third party inspector in ASME Code manufacturing facilities.
- ~~(7)~~(8) "Board" means the North Carolina Board of Boiler and Pressure Vessel Rules.
- ~~(8)~~(9) "Boiler", as defined in G.S. 95-69.9(b), includes the following types of boilers:
- (a) "Exhibition boiler" means a historical or antique boiler which generates steam or hot water for the purposes of entertaining or educating the public or is used for demonstrations, tourist travel or exhibitions. This term shall include steam tractors, threshers, steam powered sawmills, and similar usages.
 - (b) "High pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig, or water is heated to a temperature greater than 250°F and a pressure greater than 160 ~~psig~~, including the following: psig for use external to itself. High pressure boilers include the following:
 - (i) Electric boilers.
 - (ii) Miniature boilers.
 - (iii) High temperature water boilers.
 - (iv) High temperature liquid boilers (other than water).
 - (c) "Low pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of not more than 15 psig, or water is heated to a temperature not greater than 250°F and a pressure not greater than 160 psig, including the following:
 - (i) "Hot water heating boiler" means a low pressure boiler that supplies heated water that is returned to the boiler from a piping system and is used normally for building heat applications (hydronic boiler).
 - (ii) "Hot water supply boiler" means a low pressure boiler that furnishes hot water to be used externally to itself (domestic water boiler).
 - (iii) "Steam heating boiler" means a low pressure boiler that generates steam to be used normally for building heat applications.
 - (d) "Model hobby boiler" means a boiler which generates steam, whether stationary or mobile, where the boiler does not exceed 20 square feet heating surface, a shell diameter of 16 inches, a volume of 5 cubic feet and a pressure not exceeding 150 psig and is used for the purpose of entertainment or exhibiting steam technology.
 - (e) "Water heater" means a closed vessel in which water is heated by the combustion of fuel, by electricity, or by any other source and withdrawn for use external to the system at pressures not exceeding 160 psig and temperatures not exceeding 210°F.
- ~~(9)~~(10) "Boiler blowoff" means that system associated with the rapid draining of boiler water to remove concentrated solids which have accumulated as a natural result of steam generation. This term also applies to the blowoff for other boiler appurtenances, such as the low-water fuel cutoff.
- ~~(40)~~(11) "Boiler or pressure vessel proper" means the internal mechanism, shell, and heads of a boiler or pressure vessel terminating at:
- (a) the first circumferential joint for welded end connections;
 - (b) the face of the first flange in bolted flange connections; or
 - (c) the first threaded joint in threaded connections.
- ~~(44)~~(12) "Bureau" means the Boiler Safety Bureau of the North Carolina Department of Labor.
- ~~(42)~~(13) "Certificate inspection" means an inspection, the report of which is used by the Chief Inspector as justification for issuing, withholding or revoking the inspection certificate. The term certificate inspection also applies to the external inspection conducted in

- accordance with this Chapter whether or not a certificate is intended to be issued as a result of the inspection.
- ~~(13)~~(14) "Certificate of competency" means the certificate issued by the Commissioner to a person who has passed the National Board inspector's examination.
- ~~(14)~~(15) "Chief Inspector" means the Bureau Chief of the Boiler Safety Bureau of the North Carolina Department of Labor.
- ~~(15)~~(16) "Commissioner" means the Commissioner of the North Carolina Department of Labor.
- ~~(16)~~(17) "Condemned boiler or pressure vessel" means a boiler or pressure vessel:
- (a) that has been found not to comply with G.S. Chapter 95, Article 7A, or this Chapter;
 - (b) that constitutes a menace to public safety; and
 - (c) that cannot be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and this Chapter.
- ~~(17)~~(18) "Coil type water tube boiler" means a boiler having no steam space, such as a steam drum, whereby the heat transfer portion of the water containing space consists only of a coil of pipe or tubing.
- ~~(18)~~(19) "Commissioned inspector" means an employee of an Authorized Inspection Agency that is commissioned by the National Board and this State and who is charged with conducting in-service inspections of pressure equipment and inspecting repairs or alterations to that equipment.
- ~~(19)~~(20) "Deputy Inspector" means a boiler and pressure vessel inspector employed by the Bureau.
- ~~(20)~~(21) "Design criteria" means ASME requirements relating to the mode of design and construction of a boiler or pressure vessel.
- ~~(21)~~(22) "External inspection" means an inspection of the external surfaces and appurtenances of a boiler or pressure vessel. An external inspection may entail the "shutting down" of a boiler or pressure vessel while it is in operation, including inspection of internal surfaces, if the inspector determines this action is warranted.
- ~~(22)~~(23) "Hydropneumatic storage tank" means a pressure vessel used for storage of water at ambient temperature not to exceed 120°F and where a cushion of air is contained within the vessel.
- ~~(23)~~(24) "Imminent danger" means any condition or practice in any location that a boiler or pressure vessel is being operated which is such that a danger exists, and which could reasonably be expected to cause death or serious physical harm immediately if the condition is not abated.
- ~~(24)~~(25) "Insurance inspector" means the special inspector employed by an insurance company, and holding a valid North Carolina Commission and National Board Commission.
- ~~(25)~~(26) "Internal inspection" means as complete an examination as can reasonably be made of the internal and external surfaces and appurtenances of a boiler or pressure vessel while it is shut down.
- ~~(26)~~(27) "Maximum allowable working pressure (MAWP)" means the maximum gauge pressure as determined by employing the stress values, design rules and dimensions designated by the ~~ASME Code~~, accepted design and construction code or as determined by the Chief Inspector in accordance with this Chapter.
- ~~(27)~~(28) "Menace to public safety" means a boiler or pressure vessel that cannot be operated without a substantial risk of injury to persons and property.
- ~~(28)~~(29) "Miniature boiler" means a boiler which does not exceed any of the following:
- (a) 16 inch inside shell diameter;
 - (b) 20 square feet of heating surface (does not apply to electrically fired boilers);
 - (c) 5 cubic feet volume; and
 - (d) 100 psig maximum allowable working pressure.
- ~~(29)~~(30) "National Board" means The National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the ASME Code and the National Board Inspection Code.
- ~~(30)~~(31) "National Board Commission" means the commission issued by the National Board to a holder of a certificate of competency who has fulfilled the requirements of the National Board Rules for Commissioned Inspectors.
- ~~(31)~~(32) "National Board Inspection Code (NBIC)" means the ANSI/NB-23 standard published by the National Board, as adopted by the Bureau.
- ~~(32)~~(33) "Nonstandard boiler or pressure vessel" means:
- (a) high pressure boilers contracted for or installed before December 7, 1935;
 - (b) heating boilers contracted for or installed before January 1, 1951;
 - (c) pressure vessels contracted for or installed before January 1, 1976;
 - (d) hydropneumatic storage tanks contracted for or installed before January 1, 1986; and

- (e) boilers or pressure vessels for which the ASME Code is not intended to apply, other than those boilers and pressure vessels to which the term North Carolina Special applies.
- ~~(33)~~(34) "Normal working hours" means between the hours of 6:00 AM and 6:00 PM, Monday through Friday, except for state recognized holidays.
- ~~(34)~~(35) "North Carolina Commission" means the commission issued by the Board, to holders of a National Board Commission, authorizing them to conduct inspections in this State.
- ~~(35)~~(36) "North Carolina Special" means a boiler or pressure vessel that is not constructed under the ~~ASME Code~~ accepted design and construction code and for which the owner/operator must apply for a special inspection certificate with the Chief Inspector.
- ~~(36)~~(37) "NPS" means nominal pipe size.
- ~~(37)~~(38) "Nuclear component" means the items in a nuclear power plant such as pressure vessels, piping systems, pumps, valves, and component supports.
- ~~(38)~~(39) "Nuclear system" means a system comprised of nuclear components which collectively serve the purpose of producing and controlling an output of thermal energy from nuclear fuel and includes those associated systems essential to the function and overall safety of the power system.
- ~~(39)~~(40) "Operating pressure" means the pressure at which a boiler or pressure vessel operates. It shall not exceed the MAWP except as shown in Section I of the ASME Code for forced flow steam generators.
- ~~(40)~~(41) "Owner or user" means any person or legal entity responsible for the operation of any boiler or pressure vessel installed in this State. This term shall also apply to a contractor, installer, or agent of the owner or user, as applicable.
- ~~(41)~~(42) "Owner-user inspector" means a qualified individual employed by a company operating pressure vessels for its own use and not for resale, and maintains an inspection program that meets the requirements of the National Board for periodic inspection of pressure vessels owned or used by that company.
- ~~(42)~~(43) "Pressure piping" means piping including welded piping, external to high pressure boilers from the boiler proper to the required valve(s).
- ~~(43)~~(44) "Pressure relief devices" mean the devices on boilers and pressure vessels set to open and relieve the pressure in the event of an over pressurization event, and include the following:
 - (a) "Non-reclosing pressure relief device" means a pressure relief device designed to remain open after operation and includes a rupture disk which is a non-reclosing pressure relief device actuated by static pressure upstream of the device and designed to function by the bursting of a pressure retaining disk.
 - (b) "Pressure relief valve" means a pressure relief device that is designed to reclose and prevent the further flow of fluid after normal conditions have been restored. These devices include:
 - (i) "Relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve which opens further with the increase in pressure over the opening pressure.
 - (ii) "Safety relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action or by opening in proportion to the increase in pressure over the opening pressure.
 - (iii) "Safety valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action.
- ~~(44)~~(45) "PSIG" means pounds per square inch gauge.
- ~~(45)~~(46) "Reinspection or Follow-Up Inspection" means as complete an examination as is necessary to verify that any repair or corrective action required as a result of a certificate inspection is completed.
- ~~(46)~~(47) "Service vehicle" means a vehicle mounted with an air storage tank and often with other storage tanks that have oil, grease or other fluids. The purpose of the vehicle is to service vehicles and equipment in the field away from the owner's shop.
- ~~(47)~~(48) "Shop inspection" means an inspection conducted by an Authorized Inspector pursuant to an inspection service agreement whereby the fabrication process or the repair or alteration of a boiler or pressure vessel is observed to ensure compliance with ASME and the National Board.
- ~~(48)~~(49) "Special inspection" means any inspection conducted by a Deputy Inspector other than a

regularly scheduled inspection. Special inspection also includes the performance of an inspection by a Deputy Inspector which requires that the inspector make a special trip to meet the needs of the individual or organization requesting the inspection, including conducting certificate inspections during hours other than normal working hours, and inspection of field repairs and alterations.

~~(49)~~(50) "Special inspector" means a National Board commissioned inspector employed by an insurance company authorized to write boiler and pressure vessel insurance in the state of North Carolina.

Authority G.S. 95-69.11; 95-69.14.

SECTION .0200 – ADMINISTRATION

13 NCAC 13 .0202 INSPECTOR QUALIFICATION

(a) Deputy Inspectors conducting certificate inspections shall be in possession of a valid North Carolina Commission. Special Inspectors and Owner-User Inspectors shall be in possession of a National Board Commission and a North Carolina Commission.

(b) A North Carolina Commission shall be issued to an inspector who has passed an examination administered by the Chief Inspector on the Uniform Boiler and Pressure Vessel Act and the rules of this Chapter. There is no fee for this examination.

(c) If an inspector's North Carolina Commission becomes inactive for more than one calendar year, or if the inspector does not conduct inspections in North Carolina for more than one calendar year, the inspector must retake and pass this examination before becoming active again in this state.

~~(d) A Certificate of Competency shall be issued to an inspector who passes an examination written and graded by the National Board and administered by the Chief Inspector. The Certificate of Competency authorizes an individual to obtain a National Board Commission.~~

~~(e)~~(d) National Board examinations are administered on the first Wednesday and Thursday of March, June, September and December. Applicants for the examination shall contact the Chief Inspector by the 10th of the month prior to the month in which they desire to sit for the examination.

~~(f)~~(e) The National Board examination covers the construction, installation, operation, maintenance and repair of boilers and pressure vessels and their appurtenances, and is administered upon payment to the Department of Labor of a fee of one hundred dollars (\$100.00). Unsuccessful Applicants who desire to retake the National Board examination must pay an additional one hundred dollar (\$100.00) fee before retaking the examination.

~~(g)~~(f) A grade of 70 percent or greater must be attained to achieve a passing grade on both examinations.

Authority G.S. 95-69.11; 95-69.15.

13 NCAC 13 .0203 NORTH CAROLINA COMMISSION

(a) When requested by the employer, a North Carolina Commission, bearing the signature of the Commissioner, shall be issued by the Board to persons holding a valid National Board ~~Commission. Commission who has taken and passed the examination specified in 13 NCAC 13 .0202(b).~~

(b) Requests for a North Carolina Commission shall be processed upon proof of a National Board Commission and payment of a twenty five dollar (\$25.00) fee to the Department of Labor.

(c) North Carolina Commissions are valid through December 31, at which time the inspector's employer shall submit a renewal application and a twenty five dollar (\$25.00) fee to the Department of Labor.

(d) The North Carolina Commission shall be returned by the employing company with notification of termination date to the Bureau within 30 days of termination of employment.

(e) A North Carolina Commission may be suspended or revoked by the Board in accordance with G.S. 95-69.13 for incompetence, untrustworthiness or falsification of any statement in an application or inspection report. The Board shall give notice of the commencement of proceedings for suspension or revocation of a commission pursuant to G.S. 150B-23. A North Carolina Commission may be suspended prior to the hearing if the Chief Inspector determines that the public health, safety or welfare requires this action. In this case, the proceedings shall be promptly commenced and determined in accordance with G.S. 150B-3. The Board's decision regarding the competency of an inspector shall be determined after consideration of the knowledge, skill, and care ordinarily possessed and employed by boiler and pressure vessel inspection personnel in good standing. Industry custom and practice shall be considered but are not determinative. Failure to conduct the inspections in accordance with this Chapter shall constitute incompetence. The inspector shall be given the opportunity to show that he is conducting his duties in a competent manner and that suspension or revocation is unwarranted. If the inspector believes that the decision of the Board is not warranted, he may file a petition for judicial review pursuant to Article 4 of Chapter 150B of the N.C. General Statutes.

Authority G.S. 95-69.11; 95-69.15.

13 NCAC 13 .0204 CONFLICT OF INTEREST

An inspector shall not engage in any conduct or endeavor that would constitute a conflict of interest including the following:

- (1) Ownership or employment in any kind of boiler or pressure vessel sales or service business;
- (2) Ownership or employment in any kind of boiler or pressure vessel parts or appurtenances sales or service business;
- (3) Consultative services for ~~ASME Code~~ accepted design and construction code or National Board quality programs design or implementation; or
- (4) Inspection services outside the purview of the employing entity.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0205 OWNER-USER INSPECTION AGENCY

(a) A company seeking to conduct inspections of its own pressure vessels shall file an application with the Chief Inspector and obtain approval from the Board.

(b) The company shall, in its application, designate a supervisor who shall be an engineer within its employ, who, upon approval of the application, shall:

- (1) ascertain that the company's inspectors, pursuant to ~~Rules .0202 and .0203~~, 13 NCAC 13 .0202 and 13 NCAC 13 .0203 are issued ~~certificates of competency and~~ owner-user commission cards;
- (2) supervise inspections of pressure vessels and see that an inspection report, signed by the owner-user inspector, is filed at the equipment site;
- (3) notify the Chief Inspector of any unsafe pressure vessel which presents a condition of imminent danger;
- (4) maintain a master file of inspection records which shall be made available for examination by the Chief Inspector or his representative during business hours:
 - (A) identifying each pressure vessel by serial number and abbreviated description; and
 - (B) showing the date of the last and next scheduled inspection;
- (5) on a date mutually agreed upon with the Chief Inspector, file an annual statement signed by the supervisor, showing the number of boilers and certifying that each inspection was conducted pursuant to this Chapter, accompanied by an administrative fee of twenty dollars (\$20.00) per vessel.

(c) Inspection certificates are not required for pressure vessels inspected under an owner-user program.

Authority G.S. 95-69.11; 95-69.15; 95-69.16.

13 NCAC 13 .0206 OWNERS OR USERS TO NOTIFY CHIEF INSPECTOR OF ACCIDENTS

(a) The owner or user of a boiler or pressure vessel shall notify the Chief Inspector within 24 hours when a device is rendered inoperative due to an over pressurization, dry firing or any related event that causes damage to the equipment, real or personal property, personal injury, or death.

(b) No person shall remove or disturb the boiler, pressure vessel, or any of its parts, before an investigation by the Chief Inspector or designee has been made, except for the purpose of conserving life or limiting consequential damages.

(c) Insurance inspectors who elect to investigate an accident ~~may do so after the Director has concluded his investigation.~~ shall not have equipment removed from the location until an investigation has been made by the Chief Inspector or designee.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0208 INSURANCE COMPANIES TO NOTIFY CHIEF INSPECTOR

(a) All insurance companies shall notify the Chief Inspector within 30 days regarding actions taken on all boiler or pressure vessel risks, including but not limited to:

- (1) the issuance of a policy;
- (2) the cancellation of a policy;
- (3) the non-renewal or suspension of a policy because of unsafe conditions; or
- (4) removal of a boiler or pressure vessel from service.

(b) Such notification shall ~~be made by using the National Board form NB-4, or an equivalent form, and include reference to the applicable North Carolina identification number and the owner/user's name and address.~~ following:

- (1) Object, date of service and effective date;
- (2) Owner's number;
- (3) Jursisdiction number;
- (4) National Board number;
- (5) Name of manufacturer;
- (6) Name of owner including county;
- (7) Location of object including county;
- (8) User of object;
- (9) Date of last inspection for certificate;
- (10) Whether or not a certificate of inspection was issued; and
- (11) Reason for discontinuance or cancellation.

Authority G.S. 95-69.11; 95-69.14.

SECTION .0300 - ENFORCEMENT OF STANDARDS

13 NCAC 13 .0301 INSPECTION DOCUMENTATION

(a) The inspector shall document the results of the inspection on a written inspection report or in an electronic format ~~provided~~ recognized by the Chief Inspector.

(b) If the inspector finds that the boiler or pressure vessel is in compliance with the rules in this Chapter, he shall indicate on the report that the boiler or pressure vessel is satisfactory.

(c) If the inspector finds the boiler or pressure vessel is not in compliance with the rules in this Chapter, he shall specify on the inspection report the deficiencies and the required repairs or corrective action.

(d) The inspector shall determine if the deficiency is such that operation of the boiler or pressure vessel creates a condition of imminent danger. If a condition of imminent danger exists, the inspector shall state on the inspection report that operation of the boiler or pressure vessel is to cease until completion of the necessary repairs or corrective action. The inspector shall immediately notify the Chief Inspector of any condition of imminent danger.

(e) If the condition of the boiler or pressure vessel is such that repairs or corrective action cannot bring the boiler or pressure vessel into compliance, he shall recommend to the Chief Inspector that the boiler or pressure vessel be condemned from further use.

(f) For inspections revealing deficiencies, the inspector shall request the owner/user to sign the inspection report acknowledging receipt of a copy of the report and confirming that the inspector explained the necessary repairs or corrective action.

(g) The Bureau shall issue an invoice to the owner or user for the inspections made and for issuance of the inspection certificate. The owner or user shall remit payment as indicated on the invoice within 30 days to the North Carolina Department of Labor.

Authority G.S. 95-69.11; 95-69.16.

13 NCAC 13 .0302 CERTIFICATE ISSUANCE

(a) The Chief Inspector shall issue an inspection certificate to the owner/user, upon receipt of payment, when the boiler or pressure vessel is found to be in compliance with this Chapter.

(b) The owner shall post the inspection certificate under protective cover in a prominent place visible to the operator while reading the pressure, or if a pressure gauge is not required to be installed, while observing operation of the boiler or pressure vessel, unless environmental conditions or proprietary reasons make it impracticable. The certificate shall be maintained in a readily retrievable location should the conditions make it impracticable to post.

(c) If the ~~Commissioner~~ Chief Inspector determines that a boiler or pressure vessel is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, the ~~Commissioner~~ Chief Inspector may refuse to issue or renew or may revoke, suspend or amend an inspection certificate; provided, however, that whenever any action is taken under this subpart, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the N.C. General Statutes.

Authority G.S. 95-69.11; 95-69.17.

SECTION .0400 - GENERAL REQUIREMENTS

13 NCAC 13 .0401 DESIGN AND CONSTRUCTION STANDARDS

(a) The design, construction, installation, inspection, stamping, and operation of all boilers and pressure vessels shall conform to the rules in this Chapter and the ~~ASME Code~~ accepted design and construction code.

(b) Repairs and alterations to boilers and pressure vessels shall conform to the requirements of the National Board Inspection Code.

(c) The rules of this Chapter shall control when any conflict is found to exist between the Rules and the ~~ASME Code~~ accepted design and construction code or the National Board Inspection Code.

(d) Welded repairs and alterations may be made only by an individual or organization in possession of a valid certificate of authorization for use of the National Board "R" symbol stamp.

(e) Repairs of safety valves or safety relief valves shall be made by an individual or organization in possession of a valid certificate of authorization for use of the National Board "VR" symbol stamp.

Authority G.S. 95-69.11; 95-69.13; 95-69.14.

13 NCAC 13 .0403 MAXIMUM ALLOWABLE WORKING PRESSURE

(a) An inspector may lower the maximum allowable working pressure of any boiler or pressure vessel because of age, condition or the circumstances under which it is operated.

(b) The inspector shall justify the reduction in the maximum allowable working pressure and note the new maximum allowable working pressure on the inspection report.

(c) No boiler or pressure vessel may be operated in excess of the maximum allowable working pressure as stated on the inspection certificate or outside of the temperature ranges for which the boiler or pressure vessel was designed.

(d) If a boiler or pressure vessel has its maximum allowable working pressure reduced under this chapter, the owner or user may appeal the inspector's decision to the Chief Inspector in accordance with the requirements of 13 NCAC 13 .0304.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0404 CONTROLS AND SAFETY DEVICES

Boilers and pressure vessels shall be equipped with all suitable controls and safety devices required for safe operation of the equipment. Controls and safety devices shown in Table-0404 in this Rule shall be considered minimum requirements for the various types of boilers and pressure vessels listed. All devices required herein and shown in Table-0404 shall be suitable for the maximum allowable operating pressure and temperature of the boiler or pressure vessel on which they are installed. The design, construction, installation, and operational requirements for controls and safety devices shall be as required in ~~Rules .0405 through .0420 of this Section~~ 13 NCAC 13.0405 and 13 NCAC 13 .0420.

TABLE-0404

| REQUIRED DEVICE AND REFERENCED RULE | HIGH PRESSURE BOILER | STEAM HEATING BOILER | HOT WATER HEATING BOILER | HOT WATER SUPPLY BOILER | WATER HEATER | PRESSURE VESSEL |
|-------------------------------------|----------------------|----------------------|--------------------------|-------------------------|--------------|-----------------|
| Pressure Relief Device .0405 | X | X | X | X | X | X |
| High Limit Control .0406 | X | X | X | X | X | X |
| Pressure Gauge .0407 | X | X | X | X | | X |

| | | | | | | |
|---|---|---|---|---|---|---|
| Steam Syphon (steam boilers only) .0407 | X | X | | | | |
| Water Column & Gauge Glass (steam boilers only) .0408 | X | X | | | | |
| Low-Water Fuel Cutoff (If input > 400,000 Btu) .0409 | X | X | X | X | | |
| Temperature Gauge .0410 | | | X | X | X | |
| Bottom Blowoff Valves .0411 | X | X | | | | |
| Drain Valves .0411 | X | X | X | X | X | X |
| Make-up Water Stop Valve(s) .0411 | X | X | X | X | X | |
| Expansion Tank .0412 | | | X | X | X | |
| Flame Failure Control .0420 | X | X | X | X | | |

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0405 PRESSURE RELIEF DEVICES

(a) Boilers and pressure vessels shall be protected from overpressurization by a pressure relief device. All pressure relief devices installed on any boiler or pressure vessel shall be constructed and stamped in accordance with the ~~ASME Code~~ accepted design and construction code.

(b) All pressure relief devices shall be stamped and capacity certified by the manufacturer indicating compliance with the National Board. The stamping shall include the set pressure (that pressure at which the valve is set to open) and the relieving capacity (the rate of flow).

(c) High pressure boilers with over 500 square feet of heating surface and electrically fired boilers having an input in excess of 1100 kW shall be provided with a minimum of two safety valves. For high pressure boilers with a combined bare tube and extended water-heating surface area exceeding 500 square feet, two or more safety valves are not required if the design steam generating capacity of the boiler is less than 4,000 lb/hr.

(d) Safety valves and safety relief valves for heating boilers shall have a seat diameter of not less than ½ inch, and not more than 4 ½ inches.

(e) Pressure relief devices shall have a set pressure and relieving capacity in accordance with the ~~ASME Code~~ accepted design and construction code requirements for the type equipment on which the pressure relief device is installed. At least one pressure relief device shall have the set pressure set at not greater than the maximum allowable working pressure of the boiler or pressure vessel. The relieving capacity shall not be less than the minimum required relieving capacity indicated on the manufacturer's name plate or stamping, or as otherwise required by the ~~ASME Code~~ accepted design and construction code. Safety relief valves installed on water heaters shall be of the combination temperature and pressure relieving type.

(f) All safety valves installed on high pressure boilers shall be installed on top of the boiler, or in the case of water tube boilers on top of the upper drum, with the spindle in the vertical position. All safety valves and safety relief valves installed on heating boilers shall be on top of the boiler or on an opening at the highest practicable part of the side of the boiler, but in no case shall the safety valve be installed below the normal operating level for a steam boiler. Safety valves and safety relief valves installed on hot water heating boilers, hot water supply boilers, and steam heating boilers shall be installed with the

spindles mounted in the vertical position. Safety relief valves for water heaters may be installed with the spindles mounted in either the vertical or horizontal position. In no case may pressure relief devices be mounted on appurtenances.

(g) The distance between the pressure relief device outlet nozzle on the boiler and the pressure relief device inlet shall be kept to a minimum consistent with the size of the pressure relief device and the pipe sizes required. In no case shall any valves or stops be installed in the inlet piping to the pressure relief device or in the discharge piping from the pressure relief device. The boiler outlet and the piping between the boiler outlet and the pressure relief device shall have a cross sectional area of not less than the cross sectional area of the pressure relief device inlet.

(h) Discharge piping from the pressure relief device outlet shall be the same size, or larger, than the outlet pipe connection on the pressure relief device and shall be extended full size to a safe location. A safe location shall be interpreted to mean a location within six inches of the finished floor of the mechanical room, to a location outside the building terminating a safe distance above the building roof or to a location outside the building within six inches above the finished grade. For vessels such as organic fluid heaters where the medium presents a hazard, the discharge shall be to a containment vessel large enough to hold all anticipated pressure relief discharges. When pressure relief device discharge piping is routed vertically, piped drainage shall be provided by the use of drip pan elbows installed on the outlet of each pressure relief device served.

(i) Multiple pressure relief devices may be piped to the point of discharge using a common discharge header pipe. The header pipe size shall have a diameter sufficient to provide an equivalent cross-sectional area equal to or larger than the sum of the cross-sectional areas of the pressure relief device outlets to which it is connected.

(j) Pressure relief devices on pressure vessels may be installed with the spindle in the vertical or horizontal position. The pressure relief device inlet, discharge piping, and the requirement for piping the discharge to a safe location shall be the same as noted for boilers. The requirement for discharge piping is optional for pressure vessels used to store compressed air, inert gasses, water, or other fluids no more hazardous than water.

(k) Pressure relief devices for direct fired pressure vessels and for those used as air compressor storage tanks shall be installed directly on the pressure vessel with no intervening valves.

Pressure relief devices for all other pressure vessels may be installed directly on the pressure vessel or in the piping system, except as modified in this Rule. A stop valve may be installed between a pressure vessel and the pressure relief device if one of the following is satisfied:

- (1) the stop valve is normally locked in the open position, and may only be closed when there is a full time attendant stationed at the stop valve when it is in the closed position for testing purposes; or
- (2) isolating the pressure relief device from the pressure vessel by closing the stop valve also isolates the pressure vessel from the source of pressure.

(l) Pressure relief devices shall be sealed to prevent the valve from being taken apart without breaking the seal. Pressure relief devices for boilers and pressure vessels containing air, water, or steam, shall be provided with a test ~~lever~~ lever, or pull test ring or other mechanism which may be used to test the operation of the valve. Pressure relief devices which are required to be provided with a test lever or pull ring testing mechanism shall be readily accessible for testing from the work platform or other means, such as a pull chain, shall be provided so that the pressure relief device can be tested from the work platform.

(m) When a hot water supply boiler or storage vessel is heated indirectly by steam or hot water in a coil or pipe, the pressure relief device capacity shall be determined by the heating surface available for heat transfer, and the pressure relief device shall not be less than 1 inch diameter.

(n) A person shall not:

- (1) attempt to remove, tamper or conduct any work on any safety appliance while the boiler or pressure vessel is in operation, except as permitted by the ASME or the National Board Inspection Code;
- (2) load a pressure relief device in any manner to maintain a working pressure in excess of the maximum allowable working pressure as stated on the inspection certificate;

(3) operate any boiler or pressure vessel without the safety appliances as described in this Chapter, the ~~ASME Code~~, accepted design and construction code, and the National Board Inspection ~~Code~~, Code;

(4) use a pressure relief device required by this Chapter as an operating pressure ~~control~~, control; or

(5) remove the seal and attempt to adjust or otherwise work on a pressure relief device unless the person/company removing the seal is a authorized holder of a National Board "VR" stamp.

(o) If an owner or user can demonstrate that a pressure vessel is operating in a system of such design that the maximum allowable working pressure cannot be exceeded, the Chief Inspector may waive the requirement for installation of a pressure relief device.

(p) Pressure relief device piping shall be supported sufficiently so that the piping is supported with no additional force being applied to the pressure relief device.

(q) Hydropneumatic storage tanks shall be provided with a relief valve of not less than ¾ inch NPS and rated in standard cubic feet per minute (SCFM). The relief valve is to be installed on top of the tank. This rule shall apply to new installations. Hydropneumatic tanks that have been formerly inspected under the previous rules do not require a change-out of the existing relief valve unless the current relief valve becomes defective.

NOTE: This new criterion shown for hydropneumatic tanks is applicable to any equipment installed after the effective date of the changes to this Chapter. Preexisting installed equipment will meet the criteria codified and effective on January 1, 1995.

(r) Dead weight safety valves are prohibited from use on any boiler or pressure vessel regulated by this Chapter.

(s) When the minimum safety valve relieving capacity is not found on the data plate, the following guide may be used to determine the required safety valve capacity for steam boilers. Multiply the factor noted in the table by the heating surface of the boiler to determine required safety valve relieving capacity.

| Table-0405 Guide for Estimating Steaming Capacity Based on Heating Surface | | |
|--|------------------|-------------------|
| | Firetube Boilers | Watertube Boilers |
| Boiler heating surface: | | |
| Hand-fired | 5 | 6 |
| Stoker-fired | 7 | 8 |
| Oil, gas, or pulverized fuel | 8 | 10 |
| Waterwall heating surface: | | |
| Hand-fired | 8 | 8 |
| Stoker-fired | 10 | 12 |
| Oil, gas, or pulverized fuel | 14 | 16 |
| Copper-finned watertube | | |
| Hand-fired | N/A | 4 |
| Stoker-fired | N/A | 5 |
| Oil, gas, or pulverized fuel-fired | N/A | 6 |

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0409 AUTOMATIC LOW-WATER FUEL CUTOFF CONTROLS AND WATER-FEEDING DEVICES

(a) Each automatically fired steam or vapor boiler, except miniature boilers, shall have at least two automatic low-water fuel cutoff devices.

- (1) One of the low-water fuel cutoff devices may also be used to regulate the normal water level.
- (2) Each cutoff device shall be installed to prevent startup and to shut down the boiler fuel or energy supply automatically when the surface of the water falls to a level not lower than the lowest visible part of the gauge glass.
- (3) One control shall be set to function ahead of the other. The lower fuel cutoff device shall be equipped with a manual reset which shall prevent the boiler from being fired after the low water limit has been reached until the operator resets the switch manually.
- (4) The low-water fuel ~~cutoff~~ cutoffs shall be attached directly to the boiler or to the water column. For float type low-water fuel cutoffs installed external to the boiler, each device shall be installed in individual chambers which shall be attached to the boiler by separate pipe connections below the waterline. Piping from the boiler shall be not less than 1 inch NPS. Low-water fuel cutoff designs embodying a float and float bowl shall have a vertical straightaway valved drain pipe of not less than ¾ inch NPS at the lowest point in the water-equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.

(b) Each automatically fired hot water heating boiler with heat input greater than 400,000 Btu/hr (117 kW/hr) shall be protected by a low-water fuel cutoff intended for hot water service.

- (1) The fuel cutoff device shall be installed to prevent startup and to shut down the boiler fuel or energy supply automatically when the surface of the water falls to a level not lower than the lowest safe permissible water level established by the boiler manufacturer.
- (2) The fuel cutoff device shall be equipped with a manual reset which shall prevent the boiler from being fired after the lowest water level has been reached until the operator resets the switch manually.
- (3) The low-water fuel cutoff installed in a hot water heating boiler system may be installed anywhere in the system above the lowest safe permissible water level established by the boiler manufacturer so long as there is no isolation valve installed between the device and the boiler. Connections to the system shall be not less than 1 inch NPS.

- (4) A means shall be provided for testing the operation of the low-water fuel cutoff on a hot water heating boiler system without resorting to draining the entire system.

(c) Coil type boilers or watertube boilers requiring forced circulation to prevent overheating of the coils or tubes may have a flow-sensing device installed at or near the boiler proper, in lieu of a low-water fuel cutoff, to automatically cut off the fuel supply when the circulation of flow is interrupted. If there is a definitive water line, a low-water fuel cutoff complying with the forgoing shall be provided in addition to the flow-sensing device.

(d) Electric boilers where uncovering of the electrical element can lead to an unsafe condition shall be equipped with a low-water fuel cutoff device. In the case of electrode type boilers, where the reduction in water level provides a self-limiting control on heat input, a low-water cutoff control is not required.

(e) Automatically fired boilers shall be provided with a system to automatically maintain a constant water level so that the water level cannot fall below the lowest safe water line.

(f) Low water fuel cutoff devices embodying a float and float bowl shall be installed so that the boiler feedwater or makeup water cannot be introduced through the float chamber.

Authority G.S. 95-69.14.

13 NCAC 13 .0412 EXPANSION TANKS

(a) Provisions shall be made for thermal expansion and contraction of hot water heating ~~piping~~ systems.

(b) When new equipment is installed and a backflow prevention system is installed or already exists on a potable water supply line for a water heater, expansion tanks shall be installed. For water heaters, backflow preventers or check valves may be installed at the meter in water systems.

(c) When expansion tanks are used they shall be constructed and stamped in accordance with the requirements of this Chapter for pressure vessels, unless exempted due to the vessel size or operating limits.

~~(b)(d)~~ For a closed type system the expansion tank shall be not less than that determined as follows:

$$V_t = [(0.00041T - 0.0466)V_s] / [(P_a/P_f) - (P_a/P_o)] \text{ where:}$$

V_t = minimum volume of tank(s), gal

V_s = volume of system, not including tanks, gal

T = average operating temperature, deg F

P_a = atmospheric pressure, psi

P_f = fill pressure, psi

P_o = maximum operating pressure, psi

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0413 CLEARANCES

(a) All boilers and pressure vessels shall be located so that adequate space is provided for proper operation, including visibility of all gauges, for the inspection of all surfaces, tubes, waterwalls, economizers, piping, valves and other equipment, and for maintenance and repair, including replacement of tubes. Boiler clearances shall remain free of all items, including

temporarily stored items, other than boiler piping and trim. Boiler piping and trim shall not impede access to the boiler.

(b) Adequate clearance for boilers and pressure vessels installed prior to January 1, 2009 shall not be less than the following:

- (1) Three feet of clearance shall be provided between the boiler or pressure vessel on all service sides, and clearances as recommended by the manufacturer on all other sides. Service side shall be interpreted as any side, including the top, of a boiler or pressure vessel on which clearance is necessary to access operating controls, safety devices, drain and blowoff valves, or inspection openings.
- (2) Cabinet mounted boilers, such as those used primarily for process or cooking, and having a maximum input of 400,000 Btu/hr need only be provided with the unobstructed clearances recommended by the manufacturer.

(c) Adequate clearance for boilers and pressure vessels installed after January 1, 2009 shall not be less than the following:

- (1) High-pressure steam boilers that exceed 5,000,000 Btu/h input (1465 kW), 5,000 pounds of steam per hour capacity or a 1,000-square-foot heating surface shall have a minimum unobstructed clearance of seven feet from the top of the boiler to the ceiling.
- (2) The following types of boilers and pressure vessels shall have a minimum unobstructed clearance of three feet from the top of the boiler to the ceiling:
 - (A) Steam-heating boilers and hot-water-heating boilers that exceed 5,000,000 Btu/h input (1465 kW), 5,000 pounds of steam per hour capacity or a 1,000-square-foot heating surface;
 - (B) High-pressure steam boilers that do not exceed 5,000,000 Btu/h input (1465 kW), 5,000 pounds of steam per hour capacity or a 1,000-square-foot heating surface; and
 - (C) All boilers with manholes on top of the boiler.
- (3) Package boilers, steam-heating boilers and hot-water-heating boilers without manholes on top of the shell that do not exceed 5,000,000 Btu/h input (1465 kW), 5,000 pounds of steam per hour capacity or a 1,000-square-foot heating surface shall have a minimum unobstructed clearance of two feet from the ceiling.

(e)(d) As an alternative to this Rule, replacement boilers and pressure vessels in existing buildings may meet the requirements in effect at the time that the original boiler or pressure vessel was installed. When boilers or pressure vessels are installed or replaced, unobstructed clearance shall be provided to allow access for inspection, maintenance and repair. Passageways around all sides of boilers and pressure vessels shall have an unobstructed width of not less than 18 inches, unless otherwise approved.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0414 GAS-FIRED JACKETED STEAM KETTLE

Gas-fired jacketed steam kettles having a steam space of such size that they are subject to the rules in this Chapter shall be equipped with the operating controls and safety devices required for ~~boilers~~. boilers, except that only one low water fuel cutoff control shall be required.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0416 REINSTALLATION OF CERTAIN BOILERS AND PRESSURE VESSELS

(a) A boiler or pressure vessel that is not constructed pursuant to the ~~ASME Code~~ accepted design and construction code shall not be reinstalled at any location in this State when the reinstallation is accompanied by a change of ownership of the boiler or pressure vessel unless the owner/user receives authorization in writing from the Chief Inspector.

(b) Used boilers or pressure vessels cannot be installed unless an application for permission to install the equipment has been approved in writing according to these Rules by the Chief Inspector followed by a certificate inspection by a Deputy Inspector.

(c) Applications to install used or nonstandard boilers or pressure vessels must be made in writing to the Chief Inspector.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0417 SUPPORTS

Each boiler and pressure vessel shall be supported by masonry or structural supports of sufficient strength and rigidity to safely support the boiler or pressure vessel and its ~~contents~~. contents and distribute the weight contained thereon. There shall be no excessive vibration in the boiler, pressure vessel, or connected piping or fittings.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0420 FIRING MECHANISM CONTROLS

(a) Automatically fired boilers and pressure vessels shall be provided with ~~burner~~ firing mechanism controls.

(b) Oil, gas-fired, and electrically heated boilers shall be equipped with suitable primary (flame safeguard) safety controls, safety limit switches, and burners or electric elements that are listed and labeled with a qualified testing laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) pursuant to 29 CFR 1910.7.

(c) Automatically fired boilers installed after January 1, 2007, shall be provided with a clearly marked remote emergency fuel shut-off switch. The remote shut-off switch shall be located outside each door of the room in which the boiler is located. Alternatively, the shut-off switch may be located just inside the entrance door(s) where the equipment is located. If there is more than one door to the boiler room, there shall be a switch located at each door designed for primary emergency egress from the

boiler room. Where specific conditions give reason to request a variance, variance requests shall be submitted in writing to the Chief Inspector.

(d) For installations which are gas-fired, the burners used shall conform to the North Carolina Fuel Gas Code in effect at the time of installation.

Authority G.S. 95-69.11; 95-69.14.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to adopt, the rule cited as 15A NCAC 01S .0101.

Proposed Effective Date: *January 1, 2009*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): For public hearing, notify: Lisa Tolley, Office of Environmental Education, 1609 Mail Service Center, Raleigh, NC 27699-1609.*

Reason for Proposed Action: *The enrollment fee for the Certification Program is currently \$25.00. The increase to \$50.00 is to cover the cost of the meal at the recognition ceremony and to help with administrative costs of managing the program.*

Procedure by which a person can object to the agency on a proposed rule: *For an objection, write: Lisa Tolley, Office of Environmental Education, 1609 Mail Service Center, Raleigh, NC 27699-1609.*

Comments may be submitted to: *Lisa Tolley, Office of Environmental Education, 1609 Mail Service Center, Raleigh, NC 27699-1609.*

Comment period ends: *November 03, 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: A copy of the fiscal note can be obtained from the agency.

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

**SUBCHAPTER 01S - OFFICE OF ENVIRONMENTAL
EDUCATION**

**SECTION .0100 - NORTH CAROLINA
ENVIRONMENTAL EDUCATION CERTIFICATION
PROGRAM**

15A NCAC 01S .0101 FEES

For enrollment in the North Carolina Environmental Education Certification Program an applicant shall submit to the Office of Environmental Education an enrollment application, provided by the Office of Environmental Education, accompanied by a fee of fifty dollars (\$50.00).

Authority G.S. 143B-285.21; 143B-285.22; 143B-285.23; 150B-19.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 03J .0306, .0501 - .0505; 03L .0105, amend the rules cited as 15A NCAC 03H .0102 - .0103; 03I .0101, .0104; 03J .0103 - .0104; 03L .0103, .0301; 03M .0501; 03O .0302, .0501 - .0503; 03Q .0202; 03R .0112 - .0113, and repeal the rules cited as 15A NCAC 03J .0107; .03L .0104.

Proposed Effective Date: *February 1, 2009*

Public Hearing:

Date: *October 13, 2008*

Time: *7:00 p.m.*

Location: *Roanoke Island Festival Park, One Festival Park, Manteo, NC 27954*

Public Hearing:

Date: *October 14, 2008*

Time: *7:00 p.m.*

Location: *Agriculture Extension Building, 300 Industrial Drive, New Bern, NC 28562*

Public Hearing:

Date: *October 15, 2008*

Time: *7:00 p.m.*

Location: *Wilmington DENR Regional Office, 127 Cardinal Drive Extension, Wilmington, NC 28405*

Reason for Proposed Action:

15A NCAC 03H .0102 SCOPE AND PURPOSE

This rule is proposed for amendment and describes in more detail the role of the Department and the Marine Fisheries

Commission, where the rules apply, and alerts the public to opportunities to comment on or effect proposed rules and rule changes.

15A NCAC 03H .0103 PROCLAMATION AUTHORITY OF FISHERIES DIRECTOR

This rule is proposed for amendment and defines proclamations, how proclamation authority exists in rule, and instructs the public on how to access proclamations.

15A NCAC 03I .0101 DEFINITIONS

This rule is proposed for amendment to modify the definition of a North Carolina Trip Ticket to include a reference to electronic data files submitted from approved software and to modify the definition of Office of the Division to include reference to permits and exclude other offices where Coastal Recreational Fishing Licenses are sold. Amendment to this rule is also needed to modify the definition of Submerged Aquatic Vegetation (SAV) for consistency with and implementation of the NC Coastal Habitat Protection Plan by more accurately describing SAV habitat and aiding in SAV habitat determination.

15A NCAC 03I .0104 INTRODUCTION AND TRANSFERS OF MARINE AND ESTUARINE ORGANISMS

This rule is proposed for amendment to require bait dealers to obtain a permit from the Division of Marine Fisheries to introduce, transfer or hold imported marine and estuarine organisms to limit the threat of disease transfer or unintended introductions for imported live bait. The proposed rule amendment would also exempt fishermen from obtaining this permit if they buy from a permitted bait dealer. Other changes in the rules are to better define the terms used on the permit and to clarify rule language.

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

This rule is proposed for amendment to reduce the bycatch of unmarketable red drum in the estuarine gill net fishery in areas and seasons when the potential for dead red drum discards is the greatest, in support of the NC Red Drum Fishery Management Plan; to clarify gill nets in the Albemarle Sound area must adhere to the minimum 200-yard distance restriction for only flounder or other finfish pound net sets with lead and either pound or heart in use; and expand the Director's proclamation authority to cover gill net or seine fishing operations in order to address all aspects of an operation.

15A NCAC 03J .0104 TRAWL NETS

This rule is proposed for amendment to better describe notrawling areas in the Albemarle Sound and its tributaries by listing the latitude and longitude of each point where trawl nets may not be used.

15A NCAC 03J .0107 POUND NET SETS

This rule is proposed for repeal to be replaced by new rules in section 15A NCAC 03J .0500 that will establish definitions, standards and permit criteria for pound nets and pound net sets to minimize potential interactions with sea turtles and address the use of recreational shrimp pound nets, which is an objective of the NC Shrimp Fishery Management Plan.

15A NCAC 03J .0306 HOOK-AND-LINE

This rule is proposed for amendment to reduce the impact of hook-and-line mortality on eminently spawning adult red drum in Pamlico Sound from July through September by requiring the use of circle hooks under certain conditions. Promoting harvest

practices that minimize the mortality associated with regulatory discards of red drum is an objective of the NC Red Drum Fishery Management Plan.

15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS

This rule is proposed for adoption to establish definitions and standards for pound net and pound net sets to minimize potential interactions with sea turtles and address the use of recreational shrimp pounds, which is an objective of the NC Shrimp Fishery Management Plan.

15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING

This rule is proposed for adoption to establish pound net permit application and processing requirements in coastal fishing waters, which is an objective of the NC Shrimp Fishery Management Plan.

15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL

This rule is proposed for adoption to establish renewal processes for pound net set permits in coastal fishing waters, which is an objective of the NC Shrimp Fishery Management Plan.

15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER

This rule is proposed for adoption to establish transfer criteria for pound net set permits in coastal fishing waters, which is an objective of the NC Shrimp Fishery Management Plan.

15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS

This rule is proposed for adoption to establish conditions for issuance of pound net set permits, renewals, and transfers, as well as specific standards and conditions for pound nets in coastal fishing waters, which is an objective of the NC Shrimp Fishery Management Plan.

15A NCAC 03L .0103 PROHIBITED NETS, MESH SIZES AND AREAS

This rule is proposed for amendment to move certain information from proposed repealed rule 15A NCAC 03L .0104, for clarification. Amendments are also proposed to adopt federal Turtle Excluder Device requirements for shrimp trawls by reference, allowing state enforcement that would improve compliance and better protect sea turtles.

15A NCAC 03L .0104 UNLAWFUL TO USE OR TAKE

This rule is proposed for repeal. Information in this rule will be moved to 15A NCAC 03L .0103 and to new rule 15A NCAC 03L .0105, for clarification.

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

This rule is proposed for adoption to establish a recreational shrimp limit of 48 quarts of heads-on shrimp or 30 quarts of heads-off shrimp for all recreational gears, including those gears covered under the Recreational Commercial Gear License, and also to move certain information from proposed repealed rule 15A NCAC 03L .0104, for clarification.

15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

This rule is proposed for amendment to decrease the maximum carapace length, establish a minimum depth of a V-notch and require escape vents in lobster traps so North Carolina can

comply with the ASMFC Interstate Fisheries Management Plan for American Lobster and applicable amendments and addenda.

15A NCAC 03M .0501 RED DRUM

This rule is proposed for amendment to ensure annual harvest is kept within the 250,000-pound cap while preventing unnecessary closures during the summer months when mortality associated with commercial discards is highest, and to move a requirement preventing the targeting of red drum while using gigs, gaffs, or spears from proclamation into rule, in support of the NC Red Drum Fishery Management Plan.

15A NCAC 03O .0302 AUTHORIZED GEAR

This rule is proposed for amendment to include shrimp pounds as a gear authorized for use under the Recreational Commercial Gear License and to allow shrimp trawls used by Recreational Commercial Gear License holders to be retrieved by mechanical methods.

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

This rule is proposed for amendment to correct existing rule references to correspond to the proposed new rules for pound nets in section 15A NCAC 03J .0500.

15A NCAC 03O .0502 PERMIT CONDITIONS; GENERAL

This rule is proposed for amendment to correct existing rule references to correspond to the proposed new rules for pound nets in section 15A NCAC 03J .0500.

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

This rule is proposed for amendment to correct existing rule references to correspond to the proposed new rules for pound nets in section 15A NCAC 03J .0500, and to move a requirement for a permit for dealers transacting in black sea bass from north of Cape Hatteras from proclamation into rule.

15A NCAC 03Q .0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

This rule is proposed for amendment to correct existing rule references to coordinates for descriptive boundaries for coastal, joint and inland waters.

15A NCAC 03R .0112 ATTENDED GILL NET AREAS

This rule is proposed for amendment to reduce the mortality associated with regulatory discards of red drum in the estuarine gill net fishery. The proposed rules apply to areas where the potential for dead discards is greatest. Promoting harvest practices that minimize bycatch of unmarketable red drum is an objective of the NC Red Drum Fishery Management Plan.

15A NCAC 03R .0113 POUND NET SET PROHIBITED AREAS

This rule is proposed for amendment to correct existing rule references to correspond to the proposed new rules for pound nets in section 15A NCAC 03J .0500.

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

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

Comment period ends: November 3, 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 (\geq \$3,000,000)
- ☒ None

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03H – GENERAL INFORMATION

SECTION .0100 – GENERAL INFORMATION

15A NCAC 03H .0102 RULE DEVELOPMENT AND APPLICABILITY

~~(a) The Division of Marine Fisheries is charged with the stewardship of the marine and estuarine resources of the State of North Carolina and is responsible for the management of all marine and estuarine resources. This responsibility includes the administration and enforcement of all statutes and rules governing commercial and recreational fishing in coastal waters, the development and improvement of the cultivation and harvesting of shellfish, and submerged land claims in North Carolina.~~

(a) Chapter 3 of Title 15A of the North Carolina Administrative Code contains the rules developed by the Department of Environment and Natural Resources (Department) and adopted by the North Carolina Marine Fisheries Commission (Commission). The Department develops proposed rules after conducting research and gathering statistics concerning the status of the marine and estuarine resources of the State. The Department also administers and enforces the adopted rules. The Commission is a regulatory body created within the Department to adopt rules and policies to manage, protect, preserve and enhance the marine and estuarine resources under its jurisdiction. The Fisheries Director and staff at the Division of Marine Fisheries conduct management, enforcement, research, monitoring, statistics, and licensing programs to

provide information on which to base decisions on rule making and present that information to the Department and Commission in the form of fishery management and coastal habitat protection plans and proposed rules.

~~(b) In its constant effort to meet its obligations, the Division of Marine Fisheries administers programs in commercial and recreational fisheries management and enforcement, applied research and monitoring, fisheries statistics, shellfish rehabilitation, bottom leasing, submerged land claims, and information and education.~~

~~(c)(b)~~ The rules herein are applicable to the management of all marine and estuarine resources in all coastal fishing waters of North Carolina, including joint fishing waters, occurring between inland fishing waters and the US Exclusive Economic Zone (EEZ) that begins three miles from shore and in the Atlantic Ocean. The NC Wildlife Resource Commission is responsible for regulating fishing in inland fishing waters (see 15A NCAC 03Q .0200 for boundary descriptions). The federal government (NOAA and the federal fishery management councils or commissions) manages species that migrate across state boundaries or fisheries occurring in the EEZ from three miles out to 200 miles in the Atlantic Ocean. State inspectors have the power to enforce federal regulations if State rules are adopted to comply with management measures adopted by federal fishery management councils or commissions.

~~(d) The rules are designed to carry out, in part, the duty of the Division of Marine Fisheries to maintain, preserve, protect, and develop all the marine and estuarine resources of the State.~~

(c) The public has the opportunity to comment on proposed rules at public meetings of the Commission and its committees and at public hearings announced in the North Carolina Register. Persons proposing the Commission amend, repeal or adopt a fisheries rule can suggest rule changes through public comment opportunities provided at Commission meetings or by filing a petition with the Commission following the procedures set out in 15A NCAC 03P .0300 et. seq.

Authority G.S. 113-134; 143B-289.52; 150B-11.

15A NCAC 03H .0103 PROCLAMATION AUTHORITY

(a) The Marine Fisheries Commission has the authority to delegate to the Fisheries Director the ability to issue public notices, called proclamations, suspending or implementing particular rules of the Commission that may be affected by variable conditions. Proclamation authority is promulgated through the rule making process and proclamation measures are codified in rules for the specific fishery or activity. The proclamation authority granted to the Fisheries Director by the Marine Fisheries Commission within this Chapter includes the authority to close as well as open seasons and areas, to establish conditions governing various activities, and to reduce or increase the size and harvest limits from those stated in rule when specifically authorized. It is unlawful to violate the provisions of any proclamation issued by the authority of Marine Fisheries Commission Rule.

(b) Unless specific variable conditions are set forth in a rule granting proclamation authority to the Fisheries Director, variable conditions triggering the use of the Fisheries Director's proclamation authority may include any of the following:

compliance with changes mandated by the Fisheries Reform Act and its amendments, biological impacts, environmental conditions, compliance with Fishery Management Plans, user conflicts, bycatch issues and variable spatial distributions.

(c) Proclamations are posted on the Division of Marine Fisheries web site, www.ncdmf.net, and are available by email, fax and US Postal Service by notifying the NC Division of Marine Fisheries, Fisheries Management Section, P.O. Box 769, Morehead City, NC 28557 or by phone at 252-726-7021 or 800-682-2632. Rules implemented by proclamation can be effective immediately for public health issues and quota managed fisheries, and in as little as 48 hours after issuance for other issues so it is imperative that persons affected by proclamations keep themselves informed.

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

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 – GENERAL RULES

Note: The changes in italics have been adopted by the Marine Fisheries Commission, and are pending review by the Rules Review Commission. Additional proposed changes are shown in regular font.

15A NCAC 03I .0101 DEFINITIONS

~~(a) All definitions set out in G.S. 113, Subchapter IV and the following additional terms apply to this Chapter. Chapter:~~

~~(b) The following additional terms are hereby defined:~~

(1) Enforcement and management terms:

~~(b)(41)(a)~~ Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.

~~(b)(30)(b)~~ Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education.

~~(b)(10)(c)~~ Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.

~~(b)(17)(d)~~ Length of finfish.

(i) Curved fork length. A length determined by measuring along a line, tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.

~~(b)(17)(B)(ii)~~ Fork length is length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork ~~(b)(17)(C)Fork~~ length for

billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

~~(b)(17)(A)(iii)~~ Total ~~length is length.~~
A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.

~~(b)(39)(e)~~ Recreational Possession Limit. Includes restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

~~(b)(42)(f)~~ Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.

~~(b)(46)(g)~~ Regular Closed Oyster Season. ~~May 15~~ March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.

~~(h)~~ Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.

(2) Fishing Activities:

~~(b)(19)(a)~~ Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from ~~authorized~~ permitted sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:

~~(b)(19)(B)(i)~~ food,
~~(b)(19)(A)(ii)~~ predator protection,
~~(b)(19)(D)(iii)~~ salinity, or
~~(b)(19)(E)(iv)~~ temperature controls utilizing technology not found in the natural environment. controls, or

~~(b)(19)(C)(v)~~ water circulation, utilizing technology not found in the natural environment.

~~(b)(40)(b)~~ Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately

available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.

~~(b)(50)(c)~~ Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:

~~(b)(50)(B)(i)~~ food,
~~(b)(50)(A)(ii)~~ predator protection,
~~(b)(50)(D)(iii)~~ salinity, or
~~(b)(50)(E)(iv)~~ temperature controls utilizing technology not found in the natural environment. controls, or
~~(b)(50)(C)(v)~~ water circulation,

utilizing technology not found in the natural environment.

A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.

~~(b)(15)(d)~~ Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.

~~(b)(31)(e)~~ Long Haul Operations. A Fishing a seine towed between two boats.

~~(b)(16)(f)~~ Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a ~~definite~~ white, pink, or red-line or rim on the outer edge of the back fin or flipper.

~~(b)(4)(g)~~ Possess. Any actual or constructive holding whether under claim of ownership or not.

~~(b)(38)(h)~~ Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.

~~(b)(27)(i)~~ Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

~~(b)(28)(j)~~ Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials,

seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

~~(b)(26)(k)~~ Shellfish production on leases and franchises:

~~(b)(26)(A)(i)~~ The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.

~~(b)(26)(B)(ii)~~ The transplanting (relay) of oysters, clams, scallops and mussels from ~~designated~~ areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

~~(b)(32)(l)~~ Swipe Net Operations. A Fishing a seine towed by one boat.

~~(b)(5)(m)~~ Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

~~(b)(6)(n)~~ Use. Employ, set, operate, or permit to be operated or employed.

(3) Gear:

~~(b)(33)(a)~~ Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.

~~(b)(11)(b)~~ Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.

~~(b)(1)(c)~~ Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:

~~(b)(1)(G)(i)~~ Cast ~~Nets~~; nets;

~~(b)(1)(B)(ii)~~ Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;

~~(b)(1)(D)(iii)~~ A dip net Dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached

not exceeding 60 inches along the perimeter;

~~(b)(1)(H)(iv)~~ Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; ~~and~~

~~(v)~~ Hand operated rakes no more than 12 inches wide and weighing no more than six pounds, hand operated tongs, and taking shellfish without the use of harvest tools;

~~(b)(1)(E)(vi)~~ Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;

~~(b)(1)(F)(vii)~~ A landing net Landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;

~~(b)(1)(I)(viii)~~ Up to two minnow traps. Minnow traps when no more than two are in use;

~~(b)(1)(A)(ix)~~ Seines less than 30 feet in length;

~~(b)(1)(C)(x)~~ Spears, Hawaiian slings or similar devices, which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar ~~means~~; means.

~~(b)(12)(d)~~ Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

~~(b)(2)(e)~~ Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

~~(b)(51)(f)~~ Fyke Net. An entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

~~(b)(8)(g)~~ Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.

~~(b)(52)(h)~~ Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

~~(b)(13)(i)~~ Mechanical methods for clamming. Includes dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.

~~(b)(14)(j)~~ Mechanical methods for oystering. Includes dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.

~~(b)(3)(k)~~ Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.

~~(b)(29)(l)~~ Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.

~~(b)(7)(m)~~ Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.

~~(b)(9)(n)~~ Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.

(4) Habitat:

~~(b)(25)(a)~~ Coral:

~~(b)(25)(4)(i)~~ Fire corals and hydrocorals (Class Hydrozoa);

~~(b)(25)(B)(ii)~~ Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);

~~(b)(25)(C)(iii)~~ Octocorals; Gorgonian corals ~~(Class Anthozoa, Subclass Octocorallia):~~ (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).

~~(i) Sea fans (*Gorgonia* sp.);~~

~~(ii) Sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.);~~

~~(iii) Sea pansies (*Renilla* sp.);~~

~~(b)(20)(b)~~ Fish habitat areas. The ~~fragile~~ estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all coastal fishing waters, as determined through marine and estuarine survey sampling, include:

~~(b)(20)(D)(i)~~ Anadromous fish nursery areas. Anadromous fish nursery areas are those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.

~~(b)(20)(C)(ii)~~ Anadromous fish spawning areas. Anadromous fish spawning areas are those areas where evidence of spawning of anadromous fish has been documented ~~by~~ in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.

~~(b)(20)(4)(iii)~~ Beds of submerged aquatic vegetation. ~~Beds of submerged~~ Submerged aquatic vegetation (SAV) habitat are those habitats in public trust and estuarine

~~waters~~ is submerged lands that:

(A) ~~are~~ vegetated with one or more species of submerged aquatic vegetation such as ~~including eelgrass (Zostera marina), shoalgrass (Halodule wrightii) and widgeongrass (Ruppia maritima);~~ bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*) and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV

species and include the sediment within these areas;

(B) have been vegetated by one or more of the species identified in Subparagraph (A) within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

~~These vegetation beds occur. This habitat occurs~~ in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. ~~In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow.~~ In defining beds of submerged aquatic ~~vegetation,~~ SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic

vegetation definition, or rules 15A NCAC 03K .0304, .0404 and 03I .0101, to apply to or conflict with the non-development control activities authorized by that Act.

~~(b)(20)(E)(iv)~~ Nursery areas.

Nursery areas are those areas in which for reasons such as food, cover, bottom type, salinity, temperature and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size which have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.

~~(b)(20)(B)(v)~~ Shellfish producing habitats.

Shellfish producing habitats are those areas in which shellfish, such as clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.

~~(b)(20)(F)(vi)~~ Strategic Habitat Areas.

Strategic Habitat Areas are ~~specific~~ locations of individual fish habitats or systems of habitats that ~~have been identified to~~ provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.

~~(b)(21)(c)~~ Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.

~~(b)(24)(d)~~ Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). ~~For example, such living~~ Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include:

~~(A)~~ Animals:

~~(i)~~ Sponges (Phylum Porifera);

~~(ii)~~ Hard and Soft Corals, Sea Anemones (Phylum Cnidaria);

~~(I)~~ Fire corals (Class Hydrozoa);

~~(II)~~ Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);

~~(iii)~~ Bryozoans (Phylum Bryozoa);

~~(iv)~~ Tube Worms (Phylum Annelida);

~~(I)~~ Fan worms (Sabellidae);

~~(II)~~ Feather duster and Christmas tree worms (Serpulidae);

~~(III)~~ Sand castle worms (Sabellaridae);

~~(v)~~ Mussel banks (Phylum Mollusca: Gastropoda);

~~(vi)~~ Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.);

~~(B)~~ Plants:

~~(i)~~ Coralline algae (Division Rhodophyta);

~~(ii)~~ Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);

~~(iii)~~ Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta);

~~(i)~~ Coralline algae (Division Rhodophyta);

~~(ii)~~ Acetabularia sp., mermaid's fan and cups (Udotea sp.), watercress (Halimeda sp.), green feather, green grape algae (Caulerpa sp.) (Division Chlorophyta);

- (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (iv) Sponges (Phylum Porifera);
- (v) Hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
- (vi) Bryozoans (Phylum Bryozoa);
- (vii) Tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and Christmas tree-worms (Serpulidae), and sand castle worms (Sabellaridae);
- (viii) Mussel banks (Phylum Mollusca: Gastropoda);
- (ix) Acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).

(5) Licenses, permits, leases and franchises, and record keeping:

- ~~(b)(47)(a)~~ Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
- ~~(b)(49)(b)~~ Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- ~~(b)(53)(c)~~ For Hire Vessel. As defined by G.S. 113-174 when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.
- ~~(b)(37)(d)~~ Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- ~~(b)(44)(e)~~ Land:
 - ~~(b)(44)(B)(i)~~ For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - ~~(b)(44)(A)(ii)~~ For purposes of trip tickets, when fish reach a licensed seafood dealer, or

where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.

~~(b)(44)(C)(iii)~~ For recreational fishing operations, when fish are retained in possession by the fisherman.

~~(b)(18)(f)~~ Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.

~~(b)(45)(g)~~ Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.

~~(b)(35)(h)~~ New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.

~~(b)(22)(i)~~ North Carolina Trip Ticket. ~~Multiple part form provided by the Department to fish dealers who are required to record and report transactions on such forms.~~ Division approved paper forms or electronic data files submitted by fish dealers for the reporting of fish harvest, harvest method, area of catch and any other information required by the Division.

~~(b)(43)(j)~~ Office of the Division. Physical locations of the Division conducting license and permit transactions in ~~the cities of~~ Wilmington, Washington, Morehead City, Columbia, ~~Wanchese~~ Roanoke Island and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.

~~(b)(34)(k)~~ Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable ~~laws and regulations.~~ statutes and rules.

~~(b)(36)(l)~~ Tournament Organizer. The person who coordinates, supervises or

otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

~~(b)(23)(m)~~ Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing ~~shall be considered is~~ a transaction when the fisherman is the fish dealer.

~~(b)(48)(n)~~ Transfer. Permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

Authority G.S. 113-134; 113-174; 143B-289.52.

15A NCAC 03I .0104 INTRODUCE, TRANSFER OR HOLD MARINE AND ESTUARINE ORGANISMS

(a) In order to protect the marine and estuarine resources of North Carolina from ~~undesirable unacceptable risks from~~ predators, pests, parasites, and disease, it is unlawful, without first obtaining a permit from the Fisheries Director: ~~Director or without obtaining live marine and estuarine organisms from a permit holder:~~

- (1) To ~~introduce place into~~ the coastal fishing waters of the state live ~~aquatic animals or plants~~ marine and estuarine organisms not native to the state. For the purpose of this rule, this action is an introduction.
- (2) To ~~transfer place into~~ the coastal fishing waters of the state ~~species live marine and estuarine organisms~~ which are native but which originated outside the State's boundaries. For the purpose of this rule, this action is a transfer.
- (3) To hold or maintain any ~~imported live marine or estuarine organism imported into the state in a quarantine or isolation system for brood stock or growout live bait or use in an aquaculture operation as defined in 15A NCAC 03I .0101.~~
- (4) To sell for bait any live marine or estuarine organism imported into the state.

(b) Any person desiring to obtain a ~~permit for introductions or transfers~~ Permit to Introduce, Transfer or Hold Imported Marine and Estuarine Organisms must make written application to the Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557-0769. ~~The application must contain sufficient information~~ In order for the Fisheries Director to determine that the action will not pose a significant danger level of risk to any native marine resource or the ~~environment~~ environment, the applicant shall provide:

- (1) A certification from a pathologist that a sample of 60 organisms from proposed shipments are disease free or a certification from a governmental veterinary service that

the organisms to be shipped were produced in an area or facility free of diseases of concern; and

- (2) A certification from a biologist or veterinarian that macroscopic and microscopic examination indicates the shipment contains only those species identified on the permit application.

~~If such information is not available, the applicant~~ The applicant, at their own expense, may be required to have necessary additional analyses performed.

(c) The Fisheries Director may require disinfection, quarantine or destruction of organisms and transfer materials as a condition of the permit.

~~(e)(d)~~ The Fisheries Director may hold public meetings prior to granting permits for activities specified in ~~Subparagraphs (a)(1), (2), and (3)~~ Paragraph (a) of this Rule to gather information concerning risks to native marine resources or the environment and shall issue permits only after applicants have shown that such activities will not pose a threat to native species or environments.

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

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) It is unlawful to use gill nets:

- (1) With a mesh length less than 2 ½ inches.
- (2) In internal waters from April 15 through December 15, with a mesh length 5 inches or greater and less than 5 ½ inches.

(b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, or impose any or all of the following restrictions on ~~the use of gill nets or seines~~ gill net or seine fishing operations:

- (1) Specify area.
- (2) Specify season.
- (3) Specify gill net mesh length.
- (4) Specify means/methods.
- (5) Specify net number and length.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in internal waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets, which are not connected together at the top line, are considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line are considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in this Paragraph, shall be added

at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) Owner's N.C. motor boat registration number, or
 - (2) Owner's U.S. vessel documentation name.
- (d) It is unlawful to use gill nets:
- (1) Within 200 yards of any flounder or other finfish pound net set with lead and either pound or heart in use, except from August 15 through December 31 in all coastal fishing waters of the Albemarle Sound, including its tributaries to the boundaries between coastal and joint fishing waters, west of a line beginning at a point 36° 04.5184' N - 75° 47.9095' W on Powell Point; running southerly to a point 35° 57.2681' N - 75° 48.3999' W on Caroon Point, it is unlawful to use gill nets within 500 yards of any pound net set with lead and either pound or heart in use;
 - (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.
- (e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of the entrance to the Alligator-Pungo River Canal near Beacon "54" in Alligator River to the South Carolina line, unless such net is used in accordance with the following conditions:
- (1) No more than two gill nets per vessel may be used at any one time;
 - (2) Any net used must be attended by the fisherman from a vessel who shall at no time be more than 100 yards from either net; and
 - (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.
- (f) It is unlawful to use drift gill nets in violation of 15A NCAC 03J .0101(2) and Paragraph (e) of this Rule.
- (g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the gill net attended areas designated in 15A NCAC 03R .0112(a).
- (h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through ~~October 31~~ November 30 in the internal coastal and joint waters of the state designated in 15A NCAC 03R .0112(b).
- (i) ~~It is unlawful to use more than 3,000 yards of gill net with a mesh length 5 1/2 inches or greater per vessel in internal waters regardless of the number of individuals involved. For gill nets with a mesh length five inches or greater, it is unlawful:~~
- (1) To use more than 3,000 yards of gill net per vessel in internal waters regardless of the number of individuals involved.

- (2) From June through October, for any portion of the net to be within 10 feet of any point on the shoreline while set or deployed, unless the net is attended.

(j) For the purpose of this Rule and 15A NCAC 03R .0112, shoreline is defined as the mean high water line or marsh line, whichever is more seaward.

Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52.

15A NCAC 03J .0104 TRAWL NETS

(a) It is unlawful to possess aboard a vessel while using a trawl in internal waters more than 500 pounds of finfish from December 1 through February 28 and 1,000 pounds of finfish from March 1 through November 30.

(b) It is unlawful to use trawl nets:

- (1) In internal coastal waters, from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except that in the areas listed in Subparagraph (b)(5) of this Rule, trawling is prohibited from December 1 through February 28 from one hour after sunset on Friday to one hour before sunrise on Monday.
- (2) For the taking of oysters;
- (3) ~~In Albemarle Sound and its tributaries; Sound, Currituck Sound, and their tributaries, west of a line beginning on the south shore of Long Point at a point 36° 02.4910' N - 75° 44.2140' W; running southerly to the north shore on Roanoke Island to a point 35° 56.3302' N - 75° 43.1409' W; running northwesterly to Caroon Point to a point 35° 57.2255' N - 75° 48.3324' W;~~
- (4) In the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (6) of 15A NCAC 03R .0106 to peeler crab trawling;
- (5) From December 1 through February 28 from one hour after sunset to one hour before sunrise in the following areas:
 - (A) In Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N-76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N-76° 34.5135' W;
 - (B) In Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N - 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N - 76° 35.9333' W;
 - (C) In Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N - 76° 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N - 76° 32.2593' W;

- (D) In Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and
- (E) In New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation; and
- (6) In designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8) and (a)(9) within an area bound by the shoreline to the depth of six feet.
- (c) Minimum mesh sizes for shrimp and crab trawls are presented in 15A NCAC 03L .0103 and .0202.
- (d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.
- (e) It is unlawful to use shrimp trawls for recreational purposes unless the trawl is marked by attaching to the codend (tailbag), one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall always be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:
 - (1) Gear owner's current motor boat registration number; or
 - (2) Owner's U.S. vessel documentation name.
- (f) It is unlawful to use shrimp trawls for the taking of blue crabs in internal waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:
 - (1) For individuals using shrimp trawls authorized by a Recreational Commercial Gear License, 50 blue crabs, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board.
 - (2) For commercial operations, crabs may be taken incidental to lawful shrimp trawl operations provided that the weight of the crabs shall not exceed:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds, whichever is greater.
- (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52.

15A NCAC 03J .0107 POUND NET SETS

- ~~(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits as provided in 15A NCAC 03O .0502. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.~~
- ~~(b) It is unlawful to hold a Pound Net Set Permit in coastal fishing waters without the permittee's identification being legibly printed on a sign no less than six inches square, securely attached to a stake at the permitted ends of each set at all times. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be legibly printed on the buoy. Such identification on signs or buoys shall include the Pound Net Set Permit number and the permittee's last name and initials.~~
- ~~(c) It is unlawful to use a pound net set, or any part thereof, except for one location identification stake or identification buoy for a pound net used in the Atlantic Ocean at each end of a proposed new location, without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant shall indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on site identification and location. The applicant shall specify the type(s) of pound net set(s) requested and possess proper valid license(s) and permit(s) necessary to fish those type(s) of net. A pound net set is deemed a flounder pound net set when the catch consists of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted sea trout, spot, for example) and other finfish, except flounder, herring, or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:~~
 - ~~(1) Flounder pound net set;~~
 - ~~(2) Herring/shad pound net set;~~
 - ~~(3) Bait pound net set;~~
 - ~~(4) Shrimp pound net set;~~
 - ~~(5) Blue crab pound net set;~~
 - ~~(6) Other finfish pound net set.~~
- ~~(d) For proposed new location(s), the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application is deemed denied. The applicant shall be notified of denial in writing. For new locations, transfers and renewals, the Fisheries Director may deny the permit application if the Director determines that granting the permit is inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director:~~
 - ~~(1) The application shall be in the name of an individual and shall not be granted to a corporation, partnership, organization or other entity;~~

- (2) ~~The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, shall not interfere with public navigation or with existing, traditional uses of the area other than navigation, and shall not violate 15A NCAC 03J.0101 and .0102;~~
- (3) ~~The proposed pound net set shall not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;~~
- (4) ~~The proposed pound net set shall not, by its proximate location, interfere with existing pound net sets in the area. Except in Chowan River as referenced in 15A NCAC 03J .0203, proposed new pound net set locations shall be a minimum of 1,000 yards as measured in a perpendicular direction from any point on a line following the permitted location of existing pound net sets;~~
- (5) ~~The applicant has in the past complied with fisheries rules and laws and does not have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in ten years shall be grounds for denial of a Pound Net Set Permit;~~
- (6) ~~The proposed pound net set is in the public interest;~~
- (7) ~~The operation of the proposed pound net set is in compliance with management measures adopted in fishery management plans; and~~
- (8) ~~The applicant has in the past complied with all permit conditions, rules and laws related to pound nets.~~

Approval is conditional based upon the applicant's continuing compliance with specific conditions contained on the Pound Net Set Permit and the conditions set out in Subparagraphs (1) through (8) of this Paragraph. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) ~~An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, except that pound net sets approved prior to January 1, 2003 do not have to meet the 1,000 yard minimum distance requirement specified in Subparagraph (d)(4) of this Rule. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.~~

(f) ~~A Pound Net Set Permit, whether a new or renewal permit, shall expire one year from the date of issuance. The expiration date shall be stated on the permit.~~

(g) ~~Except for herring/shad pound net sets in the Chowan River, it is unlawful to fail to have a pound net set operational for a minimum of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, Pound Net Set Permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke any and all Pound Net Set Permits held by the permittee and for denial of any future applications for Pound Net Set Permits.~~

(h) ~~It is unlawful to transfer a Pound Net Set Permit without a completed application for transfer being submitted to the Division not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a Pound Net Set Permit in the new permittee's name. The Fisheries Director may hold a public meeting and conduct such investigations necessary to determine if the permit should be transferred. The transferred permit expires on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification in accordance with Chapter 28A of the North Carolina General Statutes. The Administrator/Executor shall provide a copy of the deceased permittee's death certificate, a copy of letters of administration/letters testamentary and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible immediate family members of the deceased permittee. No transfer is effective until approved and processed by the Division.~~

(i) ~~Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every pound net set shall have a marked navigational opening at least 25 feet wide at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. If~~

~~a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.~~

~~(j) In Core Sound, it is unlawful to use a pound net set in the pound net set prohibited areas designated in 15A NCAC 03R .0113 except that only those Pound Net Set Permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule.~~

~~(k) Escape Panels:~~

~~(1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:~~

~~(A) Specify size, number, and location.~~

~~(B) Specify mesh length, but not more than six inches.~~

~~(C) Specify time or season.~~

~~(D) Specify areas.~~

~~(2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.~~

~~(l) Pound net sets shall be subject to inspection at all times.~~

~~(m) Daily reporting may be a condition of the permit for a pound net set for fisheries under a quota.~~

~~(n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing Pound Net Set Permit has been revoked or denied.~~

~~(o) It is unlawful to abandon an existing pound net set without completely removing from the coastal fishing waters all stakes and associated gear within 30 days.~~

Authority G.S. 113-134; 113-182; 113-182.1; 113-221; 143B-289.52.

SECTION .0300 – POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0306 HOOK-AND-LINE

It is unlawful to use any hook larger than 4/0 from July 1 through September 30 in the internal coastal fishing waters of Pamlico Sound and its tributaries south of the Albemarle Sound Management Area as defined in 15A NCAC 03R .0201 and north of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point at 34° 58.7853' N - 76° 09.8922' W on Core Banks while using natural bait from 7:00 p.m. to 7:00 a.m. unless the terminal tackle consists of:

(1) A circle hook defined as a hook with the point of the hook directed perpendicularly back toward the shank, and with the barb either compressed or removed.

(2) A fixed sinker not less than two ounces in weight, secured not more than six inches from the fixed weight to the circle hook.

Authority G.S. 113-182; 113-182.1; 143B-289.52.

SECTION .0500 – POUND NETS

15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS

(a) For the purpose of this Section the following terms are hereby defined:

(1) Pound Net Set Permit is defined as a Division authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.

(2) Permit period. One year from the date of issuance of a new or renewal pound net set permit.

(3) Deployed pound net. Setting of any part of a pound net, except for a location identification stake or for a pound net used in the Atlantic Ocean a location identification buoy placed at each end of a proposed new location.

(4) Operational pound net set. A pound net set as defined in 15A NCAC 03I .0101 and deployed according to rules and permit conditions with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish.

(5) Flounder pound net. A pound net set that produces a catch consisting of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.

(6) Shrimp pound net. A pound net set with all pounds (holding pen) constructed of stretch mesh equal to or greater than one and one-fourth inches and less than or equal to two inches.

(b) It is unlawful for a pound net used in a commercial fishing operation to:

(1) Be deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.

(2) Fail to be operational for a minimum of 30 consecutive days during the pound net set permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met.

(c) It is unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:

(1) Have the permittee's identification legibly printed on a sign no less than six inches square, securely attached to a stake at the

permitted ends of each set at all times. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be legibly printed on the buoy. Such identification on signs or buoys shall include the Pound Net Set Permit number and the permittee's last name and initials.

- (2) Have yellow light reflective tape or yellow light reflective devices on each pound. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
- (3) Have a marked navigational opening at least 25 feet wide at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.

If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(d) It is unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in 15A NCAC 03O .0302(a)(8) in coastal fishing waters unless the shrimp pound net is:

- (1) Marked by attaching to the offshore lead, one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:
 - (A) Gear owner's current motor boat registration number; or
 - (B) Owner's U.S. vessel documentation name.
- (2) Set a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from an operational permitted shrimp pound net set.

(e) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following

requirements or restrictions on the use of escape panels:

- (A) Specify size, number, and location.
- (B) Specify mesh length, but not more than six inches.
- (C) Specify time or season.
- (D) Specify areas.
- (2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.

(f) During 1 December through 1 February the Director shall by proclamation establish time periods and areas where it is unlawful to fail to remove all nets from pound net sets in commercial fishing operations in internal coastal waters.

(g) It is unlawful within 30 days of abandonment of a permitted pound net set to fail to remove all stakes and associated gear from coastal fishing waters. The responsible party for abandoned pound net gear may be charged the costs incurred by the Division when the Division undertakes removal of the abandoned pound net gear.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING

(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits as provided in 15A NCAC 03O .0502. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.

(b) Applicants for Pound Net Set permits shall meet the following eligibility requirements as determined by the Fisheries Director:

- (1) Applicant is an individual and not a corporation, partnership, organization or other entity;
- (2) Applicant has in the past complied with fisheries rules and laws and does not have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in 10 years shall make an individual ineligible.
- (3) Applicant has in the past complied with all permit conditions, rules and laws related to pound nets.
- (4) Applicant holds proper valid license(s) and permit(s) necessary to fish the type of net indicated in the application.

(c) Applications for Pound Net Set permits shall include the following:

- (1) A base map provided by the Division indicating the proposed set location including

an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location.

- (2) Declaration of the type of pound net that will be deployed at the site. One of the following pound net fisheries shall be specified:

- (A) Flounder pound net set;
- (B) Bait pound net set;
- (C) Shrimp pound net set;
- (D) Blue crab pound net set;
- (E) Other finfish pound net set.

(d) For proposed new location(s), the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application is deemed denied. The applicant shall be notified of denial in writing. Approval is conditional based upon the applicant's continuing compliance with eligibility requirements set out in Subparagraph (e) and specific conditions contained on the Pound Net Set Permit. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) In order for a site to be deemed suitable for a pound net set the proposed set location shall meet the following criteria as determined by the Fisheries Director:

- (1) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, shall not interfere with public navigation or with existing, traditional uses of the area other than navigation, and shall not violate 15A NCAC 03J .0101 and .0102;
- (2) The proposed pound net set shall not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (3) The proposed pound net set shall not, by its proximate location, interfere with existing pound net sets in the area. Flounder or other finfish pound net sets shall be a minimum of 1,000 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets; except
 - (A) in Chowan River as referenced in 15A NCAC 03J .0203;
 - (B) for renewal of pound net sets permitted prior to January 1, 2003;
- (4) The proposed shrimp or blue crab pound net set shall be a minimum of 300 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets.

- (5) The proposed pound net set is not located in Core Sound in areas designated in 15A NCAC 03R .0113 except that only those Pound Net Set Permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule; and

- (6) The proposed pound net set is in the public interest.

- (7) Issuance of the proposed Pound Net Set Permit shall be in compliance with management measures adopted in fishery management plans.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL

An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER

It is unlawful to transfer a Pound Net Set Permit without a completed application for transfer being submitted to the Division not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a Pound Net Set Permit in the new permittee's name. The Fisheries Director may hold a public meeting and conduct such investigations necessary to determine if the permit should be transferred. The transferred permit expires on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification in accordance with Chapter 28A of the North Carolina General Statutes. The Administrator/Executor shall provide a copy of the deceased permittee's death certificate, a copy of letters of administration/letters testamentary and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible immediate family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS

(a) It is unlawful for the permittee:

- (1) To fail to notify the Marine Patrol Communications Center within 72 hours by phone:
 - (A) Of an operational pound net set. Notification shall include name of permittee, type of net, Pound Net Set Permit number, county where located, a specific location site, and how many pounds are in the set; and
 - (B) Of a change to the type of net being set at the permitted site.
- (2) To make false notifications.
- (3) To fail to render the pound net set inoperable during any closed season for the type of fishery for which the pound net is permitted.

Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke any and all Pound Net Set Permits held by the permittee and for denial of any future applications for Pound Net Set Permits.

- (b) Pound net sets are subject to inspection at all times.
- (c) Daily reporting may be a condition of the permit for a pound net set for fisheries under a quota.
- (d) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing Pound Net Set Permit has been revoked or denied.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

SUBCHAPTER 03L - SHRIMP, CRABS, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0103 PROHIBITED NETS, MESH SIZES AND AREAS

(a) It is unlawful to take shrimp with nets with mesh lengths less than the following:

- (1) Trawl net - one and one-half inches;
- (2) Fixed nets, channel nets, float nets, butterfly nets, and hand seines - one and one-fourth inches; and
- (3) Cast net - no restriction.

(b) It is unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh size. Net material used as chafing gear shall be no less than four inches mesh length except that chafing gear with smaller mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

(c) It is unlawful to take shrimp with trawls which have a combined headrope of greater than 90 feet in internal coastal waters except:

- (1) Pamlico Sound;
- (2) Pamlico River downstream of a line from a point 35° 18.5882'N – 76° 28.9625'W at

Pamlico Point; running northerly to a point 35° 22.3741'N – 76° 28.6905'W at Willow Point;
(3) Neuse River northeast of a line from a point 34° 58.2000'N – 76° 40.5167'W at Winthrop Point on the eastern shore of the entrance to Adam's Creek running northerly to a point 35° 01.0744' N – 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(d) It is unlawful to use a shrimp trawl in the areas described in 15A NCAC 03R .0114.

(e) It is unlawful to use channel nets except as provided in 15A NCAC 03J .0106.

(f) It is unlawful to use shrimp pots except as provided in 15A NCAC 03J .0301.

(g) It is unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

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

15A NCAC 03L .0104 UNLAWFUL TO USE OR TAKE

It is unlawful to:

- (1) Use channel nets except as provided in 15A NCAC 03J .0106.
- (2) Use shrimp pots except as provided in 15A NCAC 03J .0301.
- (3) Take or possess more than 100 shrimp per person per day while fishing in a closed area with a cast net.

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

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

It is unlawful to:

- (1) Possess more than 48 quarts, heads on or 30 quarts, heads off, of shrimp per person per day or if a vessel is used, per vessel per day for recreational purposes except as provided in 15A NCAC 03O .0303(e) and (f).
- (2) Take or possess shrimp taken from any area closed to the taking of shrimp except 100 shrimp per person per day may be taken while fishing in a closed area with a cast net.

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

SECTION .0300 – LOBSTER

**15A NCAC 03L .0301 AMERICAN LOBSTER
(NORTHERN LOBSTER)**

- (a) It is unlawful to possess American lobster:
- (1) with a carapace less than 3 3/8 inches or greater than ~~5 1/2 inches~~; 5 1/4 inches;
 - (2) which has eggs or from which eggs have been artificially removed by any method;
 - (3) meats, detached meats, detached tails or claws or any other part of a lobster that has been separated from the lobster;
 - (4) which has an outer shell which has been speared;
 - (5) ~~that is a V-notched female lobster as described in Amendment 3 to the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Lobster, copies of which are available through the Division of Marine Fisheries; or that is a V-notched female lobster. A V-notched female lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs. A V-notched female lobster is also any female lobster which is mutilated in a manner which would hide, obscure or obliterate such a mark;~~ or
 - (6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.
- (b) American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:
- (1) the opening to be covered by the ghost panel shall be not less than 3 3/4 inches (9.53 cm) by 3 3/4 inches (9.53 cm);
 - (2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
 - (3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section; and
 - (4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the ~~trap-trap; and~~
 - (5) all lobster traps must contain at least one rectangular escape vent per trap, 2 inches by 5 3/4 inches minimum size, or two circular escape vents per trap, with a minimum inside diameter of 2 5/8 inches.

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

SUBCHAPTER 03M - FINFISH

SECTION .0500 – OTHER FINFISH

Note: Proposed amendments to this rule, as published, are shown below in italics and have an earliest effective date of September 1, 2008. Additional proposed amendments to this rule are shown below in regular font.

15A NCAC 03M .0501 RED DRUM

(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:

- ~~(1) Specify areas.~~
- ~~(2) Specify seasons.~~
- ~~(3) Specify quantity.~~
- ~~(4) Specify means/methods.~~
- ~~(5) Specify size.~~

- ~~(b)(a)~~ It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.
- ~~(b)~~ It is unlawful to take or possess red drum taken by gigs, gaffs, spears, or similar devices.
- ~~(e)(b)(c)~~ It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.
- ~~(d)(c)(d)~~ It is unlawful to possess more than one red drum per person per day taken-by hook-and-line or for recreational purposes.
- ~~(e)(d)(e)~~ The annual commercial harvest limit (September 1 through August 31) for red drum is 250,000 pounds. The annual commercial harvest limit will be allotted in two periods: September 1 through April 30 at 150,000 pounds, and May 1 through August 31 at 100,000 pounds plus any remainder from the first period allotment. Any annual commercial harvest limit that is exceeded one year will result in the poundage overage being deducted from the subsequent year's commercial harvest limit and the Fisheries Director shall adjust the period allotments accordingly. If the harvest limit is projected to be ~~taken, taken in any period,~~ the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing ~~operation.~~operation for the remainder of that period.

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

**SUBCHAPTER 03O – LICENSES, LEASES AND
FRANCHISES**

**SECTION .0300 – RECREATIONAL COMMERCIAL
GEAR LICENSES**

15A NCAC 03O .0302 AUTHORIZED GEAR

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

- (1) One seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2 1/2 inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may be used only to transport the seine;
- (2) One shrimp trawl with a headrope not exceeding 26 feet in length per vessel. ~~Mechanical methods for retrieving otter trawls are not authorized for recreational purposes.~~

- (3) With or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
- (4) One multiple hook or multiple bait trotline up to 100 feet in length;
- (5) Gill Nets:
 - (A) Not more than 100 yards of gill nets with a mesh length equal to or greater than 2 1/2 inches except as provided in (C) of this Subparagraph. Attendance shall be required at all times;
 - (B) Not more than 100 yards of gill nets with a mesh length equal to or greater than 5 1/2 inches except as provided in (C) of this Subparagraph. Attendance shall be required when used from one hour after sunrise through one hour before sunset in internal coastal fishing waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance shall be required at all times in internal coastal fishing waters west and south of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean west and south of 77° 04.0000' W; and
 - (C) Not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board, a maximum of 200 yards may be used from a vessel;
 - (D) It is unlawful to possess aboard a vessel more than 100 yards of gill nets with a mesh length less than 5 1/2 inches and more than 100 yards of gill nets with a mesh length equal to or greater than 5 1/2 inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board. It is unlawful to possess aboard a vessel more than 200 yards of gill nets with a mesh length less than 5 1/2 inches and more than 200 yards of gill nets with a mesh length equal to or greater than 5 1/2 inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on board;

- (6) A hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304;
- (7) Skimmer trawls not exceeding 26 feet in total combined width.
- (8) One pound net used to take shrimp with each lead 10 feet or less in length and with a minimum lead net mesh of 1 1/2 inches, and enclosures constructed of net mesh of 1 1/4 inches or greater and with all dimensions being 36 inches or less. Attendance is required at all times and all gear must be removed from the water when not being fished. Gear is to be marked and set as specified in 15A NCAC 03J .0501.

(b) It is unlawful to use more than the quantity of authorized gear specified in Subparagraphs (a)(1) through ~~(a)(7)~~ (a)(8) of this Rule, regardless of the number of individuals aboard a vessel possessing a valid Recreational Commercial Gear License.

(c) It is unlawful for a person to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.

(d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

Authority G.S. 113-134; 113-173.

SECTION .0500 – PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or

- estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
- (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
- (6) Additional information as required for specific permits.
- (b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
- (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; or
 - (3) Atlantic Ocean Striped Bass Commercial Gear Permit.
- (c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
 - (2) Permit to Transplant Oysters from Seed Management Areas;
 - (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
 - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
 - (5) Depuration Permit.
- (d) A permittee shall hold a valid:
- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
 - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.
- (e) Aquaculture Operations/Collection Permits:
- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
 - (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (f) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) Application for an Atlantic Ocean Striped Bass Commercial Gear Permit must be made prior to November 1 of each year. A person shall declare one of the following gears for an initial Atlantic Ocean Striped Bass Commercial Gear Permit and at intervals of three consecutive license years thereafter:
 - (A) gill net;
 - (B) trawl; or
 - (C) beach seine.

For the purpose of this Rule, a beach seine is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place.

Gear declarations are binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.
 - (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.
 - (3) The annual, nonrefundable permit fee is ten dollars (\$10.00).
- (g) For Hire Fishing Permit:
- (1) The permittee shall hold a valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers;
 - (2) The permittee shall provide valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- (h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.
- (i) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC ~~03J-0107~~, 03J .0501, 03J .0505, 03K .0103, 03K .0104, 03K .0107, 03K .0206,

03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.

(j) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

(k) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

(m) To renew a permit, the permittee shall file a certification that the information in the original application is still valid, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.

(n) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

(o) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

(p) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(q) Permit applications shall be available at all Division Offices.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

15A NCAC 03O .0502 PERMIT CONDITIONS; GENERAL

The following conditions apply to all permits issued by the Fisheries Director:

- (1) it is unlawful to operate under the permit except in areas, at times, and under conditions specified on the permit;
- (2) it is unlawful to operate under a permit without having the permit or copy thereof in possession of the permittee or his or her designees at all times of operation and the

- (3) permit or copy thereof shall be ready at hand for inspection, except for Pound Net Permits;
- (4) it is unlawful to operate under a permit without having a current picture identification in possession and ready at hand for inspection;
- (5) it is unlawful to refuse to allow inspection and sampling of a permitted activity by an agent of the Division;
- (6) it is unlawful to fail to provide complete and accurate information requested by the Division in connection with the permitted activity;
- (7) it is unlawful to hold a permit issued by the Fisheries Director when not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 03O .0501;
- (8) it is unlawful to fail to provide reports within the timeframe required by the specific permit conditions;
- (9) it is unlawful to fail to keep such records and accounts as required by the rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries;
- (10) it is unlawful to assign or transfer permits issued by the Fisheries Director, except for Pound Net Permits as authorized by 15A NCAC ~~03J .0107(h)~~ 03J .0504;
- (11) the Fisheries Director, or his agent, may, by conditions of the permit, specify any or all of the following for the permitted purposes:
 - (a) species;
 - (b) quantity or size;
 - (c) time period;
 - (d) location;
 - (e) means and methods;
 - (f) disposition of resources;
 - (g) marking requirements; or
 - (h) harvest conditions.
- (12) unless specifically stated as a condition on the permit, all statutes, rules and proclamations shall apply to the permittee and his or her designees.
- (13) as a condition of accepting the permit from the Fisheries Director, the permittee agrees to abide by all conditions of the permit and agrees that if specific conditions of the permit, as identified on the permit, are violated or if false information was provided in the application for initial issuance, renewal or transfer, the permit may be suspended or revoked by the Fisheries Director.

Authority G.S. 113-134; 113-169.1; 113-182; 113-210; 143B-289.52.

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

- (a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
 - (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
 - (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.
- (b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:
- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:
 - (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
 - (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) Maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
 - (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
 - (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
 - (iii) The joint and coastal fishing waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
 - (B) No permittee shall possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined in 15A NCAC 03J .0209.
- (4) Atlantic Ocean Flounder Dealer Permit:
- (A) It is unlawful for a ~~Fish Dealer~~ fish dealer to allow vessels holding a valid

License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.

- (B) It is unlawful for a ~~Fish Dealer~~ fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

- (5) Black Sea Bass North of Cape Hatteras Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
- (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
- (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles

taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

- (e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are set forth in 15A NCAC ~~03J .0107~~ 03J .0505.

(f) Aquaculture Operations/Collection Permits:

- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It is unlawful:
 - (A) To take marine and estuarine resources from coastal fishing waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
- (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who will be acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Collection Permit:

- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
- (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on

December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.

- (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
 - (A) without the required license(s) for such sale;
 - (B) to anyone other than a licensed North Carolina fish dealer; and
 - (C) without authorization stated on the permit for such sale.
- (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who will be acting under Scientific or Educational Collection Permits at the time of application.
- (5) The permittee or designees utilizing the permit shall call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

(h) Under Dock Oyster Culture Permit:

- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
- (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in coastal fishing waters shall result in permit revocation.

(i) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
- (2) It is unlawful to use a single Standard Commercial Fishing License, including

assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.

(j) Coastal Recreational Fishing License Exemption Permit:

- (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in coastal or joint fishing waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) Individuals with physical or mental limitations;
 - (B) Members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
 - (C) Individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal agencies, or instructors affiliated with educational institutions; and
 - (D) Disadvantaged youths.
- (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:
 - (A) The name, date(s), time and physical location of the event;
 - (B) Documentation that substantiates local, state or federal involvement in the organized fishing event, if applicable;
 - (C) The cost or requirements, if any, for an individual to participate in the event; and
 - (D) An estimate of the number of participants.

(k) For Hire Fishing Permit:

- (1) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel as provided in

- 15A NCAC 03O .0112 or a Division of Marine Fisheries For Hire Fishing Permit for the vessel.
- (2) It is unlawful for a For Hire vessel operator to operate under the For Hire Fishing Permit without:
 - (A) Holding the USCG certification required in 15A NCAC 03O .0501(g)(1);
 - (B) Having the For Hire Fishing Permit for the vessel or copy thereof in possession and ready at hand for inspection;
 - (C) Having current picture identification in possession and ready at hand for inspection.
 - (3) It is unlawful for the permittee to fail to notify the Division within five days of any changes to information provided on the permit.
 - (4) It is unlawful to fail to display a current For Hire Fishing Permit decal mounted on an exterior surface of the vessel so as to be ~~plainly~~ visible when viewed from the port side while engaged in for-hire recreational fishing.
 - (5) The For Hire Fishing Permit is valid for one year from the date of issuance.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

SUBCHAPTER 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

SECTION .0200 - BOUNDARY LINES: COASTAL-JOINT-INLAND FISHING WATERS

15A NCAC 03Q .0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

Descriptive boundaries for Coastal-Joint-Inland Waters referenced in 15A NCAC 03Q .0201 are as follows:

- (1) Beaufort County
 - (a) Pamlico -Tar River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 32.2167' N - 77° 02.8701' W; running southwesterly along the east side of the railroad bridge to a point on the south shore 35° 32.0267' N - 77° 03.5179' W;
 - (i) All Manmade tributaries - All manmade tributaries within Pamlico – Tar River in Beaufort County are designated as Joint.
 - (b) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on

the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067' W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.

- (i) Flax Pond Bay - All waters within this waterbody are designated as Coastal.
- (ii) Upper Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 31.8946' W - 76° 32.1231' W; running northeasterly to a point on the east shore 35° 31.9656' N - 76° 32.0114' W.
- (iii) Lower Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 32.4188' N - 76° 35.3924' W; running northeast to a point on the east shore 35° 32.4691' N - 76° 35.2748' W.
- (iv) George Best Creek - All waters within this waterbody are designated as Coastal.
- (v) Toms Creek - All waters within this waterbody are designated as Coastal.
- (vi) Pantego Creek – Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 31.9908' N – 76° 36.6105' W; running southerly along the Breakwater to a point 35° 31.6628' N – 76° 36.9840' W; running southwesterly to a point on the south shore 35° 31.5653' N – 76° 37.3832' W.
- (vii) Pungo Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 29.9986' N - 76° 40.3564' W; running southerly to a point on the south shore 35° 29.8887' N - 76° 40.3262' W.
- (A) Vale Creek - Inland Waters north and

- Coastal Waters south of a line beginning at a point on the west shore 35° 31.0370' W - 76° 38.9044' W; running northeasterly to a point on the east shore 35° 31.0528' N - 76° 38.8536' W.
- (B) Scotts Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 30.4264' N - 76° 40.1156' W; running easterly to a point on the east shore 35° 30.4264' N - 76° 39.9430' W.
- (C) Smith Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 30.2844' N - 76° 40.2941' W; running southerly to a point on the south shore 35° 30.1982' N - 76° 40.2621' W.
- (viii) Woodstock (Little) Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 30.5291' N - 76° 38.1600' W; running easterly to a point on the east shore 35° 30.4852' N - 76° 38.0278' W.
- (ix) Jordan Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 27.7256' N - 76° 36.2159' W; running southerly to a point 35° 27.5587' N - 76° 36.2704' W; following the eastern shore to a point 35° 27.4651' N - 76° 36.3294' W; running southerly to a point on the south shore 35° 27.3429' N - 76° 36.4498' W.
- (x) Satterthwaite Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 35° 25.2994' N - 76° 35.4281' W; running southerly to a point on the south shore 35° 25.1284' N - 76° 35.4949' W.
- (xi) Wright Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the west shore 35° 24.8664' N - 76° 35.4240' W; running southeasterly to a point on the east shore 35° 24.7995' N - 76° 35.3086' W.
- (c) North Creek - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.1667' N - 76° 40.1042' W; running easterly to a point on the east shore 35° 25.0971' N - 76° 39.6340' W.
- (d) St. Clair Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.7691' N - 76° 42.6406' W; running easterly to a point on the east shore 35° 25.7695' N - 76° 42.5967' W.
- (e) Mixon Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.7601' N - 76° 46.5971' W; running easterly to a point 35° 25.7304' N - 76° 46.2547' W; following the southern shoreline to a point 35° 25.6878' N - 76° 46.2034' W; running southeasterly to a point 35° 25.6606' N - 76° 46.1892' W; following the southern shoreline to a point 35° 25.6267' N - 76° 46.1494' W; running southeasterly to a point on the east shore 35° 25.6166' N - 76° 46.1361' W.
- (f) Bath Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.1685' N - 76° 49.4087' W; running northeasterly to a point on the east shore 35° 27.2371' N - 76° 49.0969' W.
- (g) Duck Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 35° 27.5395' N - 76° 52.0074' W; running southerly to a point on

- the east shore 35° 27.4401' N - 76° 51.9827' W.
- (h) Mallard Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.6461' N - 76° 53.6398' W; running easterly to a point on the east shore 35° 27.6425' N - 76° 53.5816' W.
- (i) Upper Goose Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 35° 28.5346' N - 76° 56.0229' W; running southeasterly to a point on the east shore 35° 28.4014' N - 76° 55.8714' W.
- (j) Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 29.1023' N - 76° 57.3738' W; running easterly to a point on the east shore 35° 29.1059' N - 76° 57.1188' W.
- (k) Herring Run (Runyan Creek) - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 32.1615' N - 77° 02.3606' W; running southeasterly to a point on the east shore 35° 32.1340' N - 77° 02.3438' W.
- (l) Chocowinity Bay - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 35° 29.4751' N - 77° 01.8507' W; running northeasterly to a point on the east shore 35° 29.8780' N - 77° 01.3169' W.
- (m) Calf Tree Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 29.2268' N - 77° 01.2973' W; running southeasterly to a point on the south shore 35° 29.2115' N - 77° 01.2831' W.
- (n) Hills Creek - Inland Waters south and Coastal waters north of a line beginning at a point on the west shore 35° 28.5227' N - 77° 00.2664' W; running easterly to a point on the east shore 35° 28.5193' N - 77° 00.2270' W.
- (o) Blounts Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 26.2010' N - 76° 58.1716' W; running southerly to a point on the south shore 35° 26.1369' N - 76° 58.1671' W.
- (p) Nevil Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 26.1117' N - 76° 54.5233' W; running southeasterly to a point on the east shore 35° 26.0966' N - 76° 54.5045' W.
- (q) Barris Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 24.8423' N - 76° 49.9928' W; running easterly to a point on the east shore 35° 24.8451' N - 76° 49.9745' W.
- (r) Durham Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 23.7824' N - 76° 49.3016' W; running easterly to a point on the east shore 35° 23.7821' N - 76° 48.8703' W.
- (s) Huddles Cut - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 22.5817' N - 76° 44.8727' W; running easterly to a point on the east shore 35° 22.5782' N - 76° 44.8594' W.
- (t) Huddy Gut - All waters within this waterbody are designated as Coastal.
- (u) South Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 18.9589' N - 76° 47.4298' W; running easterly to a point on the east shore 35° 18.9994' N - 76° 47.3007' W.
- (i) Tooleys Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.7080' N - 76° 44.8937' W; running northeasterly to a point on the east shore 35° 20.7440' N - 76° 44.8324' W.
- (ii) Drinkwater Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.1441' N - 76° 45.8262' W; running easterly to a point on the east shore 35° 20.1333' N - 76° 45.7530' W.
- (iii) Jacobs Creek - Inland Waters northwest and

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|--------|--|-------|--|
| | Coastal Waters southeast of a line beginning at a point on the north shore 35° 20.1420' N - 76° 45.8395' W; running southwesterly to a point on the south shore 35° 20.0692' N - 76° 45.8912' W. | | 20.2539' N - 76 ° 41.8254' W. |
| (iv) | Jacks Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 19.5455' N - 76° 47.0155' W; running southwesterly to a point on the south shore 35° 19.4986' N - 76° 47.0741' W. | (x) | Muddy Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.1523' N - 76° 41.2074' W; running northeasterly to a point on the east shore 35° 20.2413' N - 76° 41.0572' W. |
| (v) | Whitehurst Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.2878' N - 76° 47.4778' W; running southerly to a point on the south shore 35° 19.2295' N - 76° 47.4430' W. | (v) | Davis Creek - Inland Waters south Coastal Waters north of a line beginning at a point on the west shore 35° 20.7032' N - 76° 40.3404' W; running easterly to a point on the east shore 35° 20.7112' N - 76° 40.1637' W. |
| (vi) | Little Creek - Inland Waters south and Coastal waters north of a line beginning at a point on the west shore 35° 18.9873' N - 76° 45.9292' W; running easterly to a point on the east shore 35° 19.0209' N - 76° 45.8258' W. | (w) | Strawhorn Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4091' N - 76° 39.0998' W; running northeasterly to a point on the east shore 35° 20.4750' N - 76° 38.8874' W. |
| (vii) | Short Creek - Inland Waters southeast and Coastal Waters northwest of a line beginning at a point on the north shore 35° 20.1228' N - 76° 44.6031' W; running southwesterly to a point on the south shore 35° 20.0527' N - 76° 44.6667' W. | (x) | Lower Goose Creek – All waters within this waterbody are designated as Coastal. |
| (viii) | Long Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.3050' N - 76° 44.3444' W; running northeasterly to a point on the east shore 35° 20.4185' N - 76° 43.8949' W. | (i) | Lower Spring Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.7932' N - 76° 37.5347' W; running southerly to a point on the south shore 35° 19.4670' N - 76° 37.4134' W. |
| (ix) | Bond Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4231' N - 76° 42.0469' W; running southeasterly to a point on the east shore 35° | (ii) | Peterson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 18.7722' N - 76° 37.5059' W; running northeasterly to a point on the east shore 35° 18.8406' N - 76° 37.4111' W. |
| | | (iii) | Snoder Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 18.2787' N - 76° 37.4679' W; running southwesterly to a point on the south shore 35° 18.0821' N - 76° 37.5544' W. |
| | | (iv) | Campbell Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the |

- north shore 35° 17.1203' N - 76° 37.9248' W; running southerly to a point on the south shore 35° 16.8807' N - 76° 37.9101' W.
- (A) Smith Creek – All waters within this waterbody are designated as Inland.
- (v) Hunting Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W.
- (2) Bertie County
- (a) Albemarle Sound - All waters in this waterbody are designated as Coastal.
- (i) All Manmade Tributaries – All manmade tributaries within this waterbody for Bertie County are designated as Joint.
- (ii) Roanoke River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore of the Roanoke River 35° 56.5068' N - 76° 41.8858' W; running easterly to a point on the east shore 35° 56.5324' N - 76° 41.5896' W.
- (A) Sandy Run (Norfleet Gut) – Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.1119' N - 77° 17.5396' W; running northeasterly to a point on the east shore 36° 10.1172' N - 77° 17.5316' W.
- (B) Quinine - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 09.6041' N - 77° 15.9091' W; running easterly to a point on the east shore 36° 09.6068' N - 77° 15.8912' W.
- (C) Wire Gut - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 00.9580' N - 77° 13.0755' W; running easterly to a point on the east shore 36° 00.9542' N - 77° 13.0320' W.
- (D) Apple Tree Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 00.4174' N - 77° 12.3252' W; running southeasterly to a point on the south shore 36° 00.3987' N - 77° 12.3088' W.
- (E) Indian Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 59.0794' N - 77° 11.4926' W; running southerly to a point on the south shore 35° 59.0597' N - 77° 11.4967' W.
- (F) Coniott Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 56.6562' N - 77° 04.2860' W; running southwesterly to a point on the south shore 35° 56.6397' N - 77° 04.3066' W.
- (G) Conine Creek - All waters in this

- waterbody are designated as Joint.
- (H) Old Mill Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 53.9483' N - 76° 55.3921' W; running southeasterly to a point on the east shore 35° 53.9378' N - 76° 55.3710' W.
- (I) Cut Cypress Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 35° 51.9465' N - 76° 53.5762' W; running southeasterly to a point on the south shore 35° 51.9229' N - 76° 53.5556' W.
- (J) Broad Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore ~~35° 52.5265' N - 76° 50.3993' W;~~ 35° 52.5191' N - 76° 50.4235' W; running southerly to a point on the south shore 35° 52.4262' N - 76° 50.3791' W.
- (K) Thorofare - All waters within this waterbody are designated as Joint.
- (iii) Cashie River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 54.7865' N - 76° 49.0521' W; running southerly to a point on the south shore 35° 54.6691' N - 76° 49.0553' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 56.4598' N - 76° 43.8093' W; running southerly to a point on the north shore of an island in the mouth of the river 35° 56.2250' N - 76° 43.9265' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the south shore of an island in the mouth of the river 35° 56.1254' N - 76° 43.9846' W; running southerly to a point on the south shore 35° 56.0650' N - 76° 43.9599' W.
- (A) Cashoke Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 56.2934' N - 76° 44.1769' W; running southwesterly to a point on the south shore 35° 56.2623' N - 76° 44.1993' W.
- (B) Broad Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.0568' N - 76° 45.2632' W; running easterly to a point on the east shore 35° 55.0543' N - 76° 45.1309' W.
- (C) Grinnel Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 55.3147' N - 76° 44.5010' W; running southerly to a point on the south shore 35° 55.2262' N - 76° 44.5495' W.
- (iv) Middle River - All waters within this waterbody are designated Joint.
- (v) Eastmost River - Joint Waters south and Coastal

- Waters north of a line beginning at a point on the west shore 35° 56.5024' N - 76° 42.4877' W; running westerly to a point on the east shore 35° 56.4070' N - 76° 42.7647' W.
- (vi) Mud Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 53.2880' N - 76° 45.4463' W; running southwesterly to a point on the south shore 35° 53.2527' N - 76° 45.4678' W.
- (b) Black Walnut Swamp - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 59.4680' N - 76° 40.9556' W; running southerly to a point on the south shore 35° 59.3946' N - 76° 40.9629' W.
- (c) Salmon Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 36° 00.4648' N - 76° 42.3513' W; running southeasterly to a point on the south shore 36° 00.3373' N - 76° 42.1499' W.
- (d) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
- (i) Barkers Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 14.0709' N - 76° 44.2451' W; running southerly to a point on the south shore 36° 14.0492' N - 76° 44.2456' W.
- (ii) Willow Branch - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 04.7206' N - 76° 43.7667' W; running southeasterly to a point on the south shore 36° 04.7138' N - 76° 43.7580' W.
- (iii) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east shore 36° 14.0899' N - 76° 43.8533' W.
- (3) Bladen County
- (a) Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2628' N - 78° 17.6390' W; running northeasterly along the Lock and Dam # 1 to a point on the east shore 34° 24.2958' N - 78° 17.5634' W.
- (i) Natmore Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2841' N - 78° 16.4405' W; running easterly to a point on the east shore 34° 24.2852' N - 78° 16.4039' W.
- (4) Brunswick County
- (a) Calabash River And Tributaries - All waters within this waterbody in Brunswick County are designated as Coastal.
- (b) Saucepan Creek - All waters within this waterbody are designated as Coastal.
- (c) Shallotte River - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore 33° 58.3412' N - 78° 23.1948' W; running northeasterly to a point on the north shore 33° 58.3518' N - 78° 23.1816' W.
- (i) Mill Dam Branch - All waters within this waterbody are designated as Coastal.
- (ii) Squash Creek - All waters within this waterbody are designated as Coastal.
- (iii) Mill Pond - All waters within this waterbody are designated as Coastal
- (iv) Charles Branch - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 58.6276' N - 78° 21.2919' W; running easterly to a point on the east shore 33° 58.6257' N - 78° 21.2841' W.

- (v) Grisset Swamp - All waters within this waterbody are designated as Coastal.
- (vi) Little Shallotte River And Tributaries - All waters within this waterbody are designated as Coastal.
- (d) Lockwood Folly River- Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the north shore 34° 00.6550' N - 78° 15.8134' W; running southeasterly along the south side of NC Hwy 211 bridge to a point on the south shore 34° 00.6285' N - 78° 15.7928' W.
 - (i) Stanberry Creek - All waters within this waterbody are designated as Coastal.
 - (ii) Pompeys Creek - All waters within this waterbody are designated as Coastal.
 - (iii) Maple Creek - All waters within this waterbody are designated as Coastal.
 - (iv) Rubys Creek - All waters within this waterbody are designated as Coastal.
 - (v) Big Doe Creek - All waters within this waterbody are designated as Coastal.
 - (vi) Lennons Creek - All waters within this waterbody are designated as Coastal.
 - (vii) Mercers Mill Pond Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 57.7498' N - 78° 12.3532' W; running southeasterly to a point on the east shore 33° 57.7439' N - 78° 12.3440' W.
- (e) Elizabeth River - All waters within this waterbody are designated as Coastal.
 - (i) Ash Creek - All waters within this waterbody are designated as Coastal.
- (f) Beaverdam Creek - All waters within this waterbody are designated as Coastal.
- (g) Dutchman Creek - All waters within this waterbody are designated as Coastal.
 - (i) Calf Gully Creek - All waters within this waterbody are designated as Coastal.
- (ii) Jumpin Run - All waters within this waterbody are designated as Coastal.
- (iii) Fiddlers Creek - All waters within this waterbody are designated as Coastal.
- (h) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side 34° 13.6953' N - 77° 57.2396' W; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side 34° 13.6214' N - 77° 57.0341' W.
 - (i) Carolina Power And Light Intake Canal - All waters within this waterbody are designated as Coastal.
 - (ii) Walden Creek - All waters within this waterbody are designated as Coastal.
 - (iii) Orton Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 02.8436' N - 77° 56.7498' W; running southerly to a point on the south shore 34° 02.8221' N - 77° 56.7439' W.
 - (iv) Lilliput Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 04.1924' N - 77° 56.5361' W; running southerly to a point on the south shore 34° 04.1487' N - 77° 56.5447' W.
 - (v) Sandhill Creek -Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 34° 06.9584' N - 77° 57.0085' W; running southeasterly to a point on the south shore 34° 06.9371' N - 77° 56.9943' W.
 - (vi) Town Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 07.7492' N - 77° 57.3445' W; running southerly to a point on the south shore 34° 07.7034' N - 77° 57.3431' W.
 - (vii) Mallory Creek - Inland Waters west and Coastal

- Waters east of a line beginning at a point on the north shore 34° 09.9868' N - 77° 58.2023' W; running southerly to a point on the south shore 34° 09.9618' N - 77° 58.2133' W.
- (viii) Brunswick River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore 34° 10.7281' N - 77° 57.7793' W; running northeasterly to a point on the north shore 34° 10.9581' N - 77° 57.6452' W.
- (A) Alligator Creek - For the southernmost entrance into the Brunswick River: Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 13.5040' N - 77° 58.6331' N; running northwesterly to a point on the north shore 34° 13.5472' N - 77° 58.6628' N. For the northernmost entrance into the Brunswick River: Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 14.4300' N - 77° 59.2346' N; running northerly to a point on the north shore 34° 14.4618' N - 77° 59.2300' N.
- (B) Jackeys Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the south shore 34° 11.9400' N - 77° 58.5859' W; running northerly to a point on the north shore 34° 11.9565' N - 77° 58.5859' W.
- (C) Sturgeon Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 14.6761' N - 77° 59.4145' W; running southerly to a point on the south shore 34° 14.6404' N - 77° 59.4058' W.
- (ix) Cartwheel Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 15.7781' N - 77° 59.3852' W; running southerly to a point on the south shore 34° 15.7564' N - 77° 59.3898' W.
- (x) Indian Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 17.0441' N - 78° 00.3662' W; running southwesterly to a point on the south shore 34° 17.0006' N - 78° 00.3977' W.
- (xi) Hood Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 20.3713' N - 78° 04.7492' W; running southwesterly to a point on the south shore 34° 20.3393' N - 78° 04.7373' W.
- (xii) Northwest Creek - All waters within this waterbody are designated as Inland.
- (5) Camden County
- (a) Albemarle Sound – All waters within this waterbody are designated Coastal.
- (i) All Manmade Tributaries – All waters within this waterbody are designated as Joint.
- (ii) Pasquotank River – Inland Waters north and Joint Waters south of a line beginning at a point on the west shore ~~36° 18.0768' N - 76° 13.0979' W;~~ 36° 18.0768' N - 76° 13.0979' W; running easterly along

the south side of the Highway 158 Bridge to a point on the east shore 36° 18.0594' N - 76° 12.9620' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 11.4282' N - 76° 01.2876' W; running southwesterly to a point on the south shore ~~36° 08.7563' N - 76° 03.6991' W~~ 36° 08.7563' N - 76° 03.6991' W.

(A) Raymond Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.0746' W - 76° 03.3952' W; running easterly to a point on the east shore 36° 14.0711' N - 76° 03.3668' W.

(B) Portohonk Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 15.0519' N - 76° 05.2793' W; running southeasterly to a point on the east shore 36° 15.0391' N - 76° 05.2532' W.

(C) Areneuse Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 17.3133' N - 76° 08.1655' W; running southeasterly to a point on the east shore ~~36° 17.1313' N - 76° 08.1655' W~~ 36° 17.1328' N - 76° 07.6269' W.

(iii) North River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.7703'

N - 75° 58.7384' W; running southerly to a point on the south shore 36° 18.4130' N - 75° 58.7228' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 09.8986' N - 75° 54.6771' W; running easterly to a point on the east shore 36° 10.0108' N - 75° 52.0431' W.

(A) Wading Gut - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 10.6054' N - 75° 55.9529' W; running southeasterly to a point on the east shore 36° 10.5777' N - 75° 55.8654' W.

(B) Little Broad Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 11.6530' N - 75° 57.2035' W; running southeasterly to a point on the east shore 36° 11.5587' N - 75° 56.9160' W.

(C) Broad Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 12.2197' N - 75° 57.2685' W; running southerly to a point on the south shore 36° 11.6766' N - 75° 57.2254' W.

(D) Hunting Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 15.0480' N - 75° 57.5820'

- W; running southeasterly to a point on the south shore 36° 14.9308' N - 75° 57.4635' W.
- (E) Abel Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 15.9530' N - 75° 58.0348' W; running southerly to a point on the south shore 36° 15.8553' N - 75° 58.0842' W.
- (F) Back Landing Creek - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 36° 16.4746' N - 76° 07.6377' W; running southwesterly to a point on the south shore 36° 16.2030' N - 76° 57.8897' W.
- (G) Public Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 17.2462' N - 75° 58.2774' W; running southerly to a point on the south shore 36° 17.2121' N - 75° 58.2788' W.
- (H) Cow Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 17.8667' N - 75° 58.3483' W; running southerly to a point on the marsh island 36° 17.7600' N - 75° 58.3300' W; running southerly following the eastern shoreline of the island to a point 36° 17.7122' N - 75° 58.3273' W; running southwesterly to a point on the south shore 36° 17.6522' N - 75° 58.3543' W.
- (I) Great Creek - Mouth: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.1045' N - 75° 58.4289' W; running southerly to a point on the south shore 36° 17 9882' N - 75° 58.4458' W. On north shore of Great Creek within the fourth tributary: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 18.1729' N - 75° 58.9137' W; running southeasterly to a point on the south shore 36° 18.1640' N - 75° 58.9022' W.
- (J) Indiantown Creek – All waters within this waterbody are designated as Inland.
- (6) Carteret County
- (a) Neuse River - All waters in this waterbody are designated as Coastal.
- (i) Adams Creek - All waters in this waterbody are designated as Coastal.
- (A) Back (Black) Creek - All waters in this waterbody are designated as Coastal.
- (B) Cedar Creek - All waters in this waterbody are designated as Coastal

- (ii) Garbacon Creek - All waters in this waterbody are designated as Coastal.
- (iii) South River - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 34° 53.5068' N - 76° 31.1233' W; running northeasterly to a point on the east shore 34° 53.4494' N - 76° 31.3032' W.
 - (A) Big Creek - All waters in this waterbody are designated as Coastal.
 - (B) Southwest Creek - All waters in this waterbody are designated as Coastal.
 - (C) West Fork - All waters in this waterbody are designated as Inland.
 - (D) East Creek - All waters in this waterbody are designated as Inland.
 - (E) Eastman Creek - All waters in this waterbody are designated as Coastal.
- (iv) Browns Creek - All waters in this waterbody are designated as Coastal.
- (b) North River And Tributaries - All waters in this waterbody are designated as Coastal.
 - (i) Panter Cat Creek - All waters in this waterbody are designated as Coastal.
 - (ii) Cypress Creek - All waters in this waterbody are designated as Coastal.
- (c) Newport River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 45.2478' N - 76° 46.4479' W; running southerly to a point on the south shore 34° 45.1840' N - 76° 46.4488' W.
 - (i) Core Creek - All waters in this waterbody are designated as Coastal.
- (ii) Harlowe Creek - All waters in this waterbody are designated as Coastal.
- (iii) Bogue Sound And Tributaries - All waters in this waterbody are designated as Coastal.
- (d) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running easterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
 - (i) Pettiford Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 42.6935' N - 77° 04.0745' W; running along the west side of the Highway 58 bridge to a point on the south shore 34° 42.6569' N - 77° 04.0786' W.
 - (ii) Little Hadnotts Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 45.0839' N - 77° 06.5931' W; running northerly to an easterly point on the east shore 34° 45.0867' N - 77° 06.5780' W.
 - (iii) Hadnotts Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 45.9908' N - 77° 05.7847' W; running along the west side of the Highway 58 bridge to a point on the south shore 34° 45.9738' N - 77° 05.7810' W.
 - (iv) Neds Creek - All waters in this waterbody are designated as Coastal.
 - (v) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N - 77° 09.9160' W.

(7) Chowan County

- (a) Albemarle Sound - All waters within this waterbody in Chowan County are designated as Coastal.
- (i) All Manmade Tributaries - All manmade tributaries are designated as Joint.
- (ii) Yeopim River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore ~~36° 05.1203' N - 76° 29.5051' W;~~ 36° 05.4526' N - 76° 27.7651' W; running southerly to a point on the south shore at Norcum Point ~~36° 05.0571' N - 76° 29.4657' W;~~ 36° 05.1029' N - 76° 27.7120' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 04.7426' N - 76° 24.2536' W; running southwesterly to a point on the south shore 36° 04.1136' N - 76° 24.5365' W.
- (iii) Queen Anne Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 03.3757' N - 76° 36.3629' W; running southerly to a point on the south shore 36° 03.3551' N - 76° 36.3574' W.
- (iv) Pembroke Creek (Pollock Swamp) - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 36° 03.2819' N - 76° 37.0138' W; running northeasterly to a point on the east shore 36° 03.4185' N - 76° 36.6783' W.
- (v) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
- (A) Rocky Hock Creek - Inland Waters ~~northeast-east~~ and Joint Waters ~~southwest-west~~ of a line beginning ~~on the west shore at a point on the north shore~~ 36° 06.6879' N - 76° 41.3804' W; 36° 06.5662' N - 76° 41.3108' W; running southeasterly to a point on the ~~south~~ east shore ~~at~~ 36° 06.6096' N - 76° 41.3026' W. 36° 06.6406' N - 76° 41.4512' W.
- (B) Dillard (Indian) Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 14.2234' N - 76° 41.5901' W; running southerly to a point on the south shore 36° 14.2023' N - 76° 41.5855' W.
- (C) Stumpy Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 16.6440' N - 76° 40.4251' W; running southerly to a point on the south shore 36° 16.6255' N - 76° 40.4196' W.
- (D) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
- (8) Columbus County

- (a) Cape Fear River – All waters within this waterbody of Columbus County are designated as Joint.
 - (i) Livingston Creek – Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 21.1518' N – 78° 12.0358' W; running easterly to a point on the east shore 34° 21.1420' N – 78° 12.0018' W.
 - (ii) Waymans Creek – Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 34° 22.9861' N – 78° 14.5266' W; running southeasterly to a point on the east shore 34° 22.9838' N – 78° 14.5236' W.
- (9) Craven County
- (a) Neuse River - Inland Waters west and Joint Waters east of a line at Pitch Kettle Creek beginning at a point on the north shore 35° 16.9793' N - 77° 15.5529' W; running south to a point on the south shore 35° 16.9237' N - 77° 15.5461' W. Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the east shore 35° 07.7096' N - 77° 01.6749' W; running southwesterly along the southern side of the Southern Railroad bridge to a point on the west shore 35° 07.1530' N - 77° 02.5570' W.
 - (i) Adams Creek - All waters in this waterbody are designated as Coastal.
 - (A) Back Creek – All waters in this waterbody are designated as Coastal.
 - (ii) Courts Creek - Inland Waters east Joint Waters west of a line beginning at a point on the north shore 34° 56.6958' N - 76° 42.7175' W; running southwesterly to a point on the south shore 34° 56.6606' N - 76° 42.7450' W.
 - (iii) Long Branch - Inland Waters south and Coastal Waters north of a line beginning on the west shore 34° 55.6189' N - 76° 43.8180' W; running easterly to a point on the east shore 34° 55.6175' N - 76° 43.7846' W.
- (iv) Clubfoot Creek - All waters in this waterbody are designated as Coastal.
 - (A) Gulden Creek - All waters in this waterbody are designated as Coastal.
 - (B) Mitchell Creek - All waters in this waterbody are designated as Coastal.
 - (C) Morton Mill Pond - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 51.9245' N - 76° 45.7754' W; running southerly to a point on the south shore 34° 51.7799' N - 76° 45.8184' W.
 - (v) Hancock Creek - Coastal Waters east and Inland Waters west of a line beginning on the north shore at 34° 56.3420' N - 76° 51.2809' W; running southerly to a point on the south shore at 34° 56.2731' N - 76° 51.3034' W.
 - (vi) Slocum Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore at 34° 57.1875' N - 76° 53.7648' W; running southwesterly to a point on the south shore 34° 57.1334' N - 76° 53.8069' W.
 - (vii) Scott Creek - Inland Waters west and Coastal Waters east of a line from a point on the north shore 35° 05.5723' N - 77° 02.0677' W; running southerly to a point on the south shore 35° 05.5316' N - 77° 02.0745' W.
 - (viii) Trent River – Inland Waters west and Joint Waters east of a line at Wilson Creek

beginning at a point on the north shore 35° 04.05490' N - 77° 06.0987' W; running southerly to a point on the south shore 35° 04.3837' N - 77° 06.1230' W. Joint Waters west and Coastal Waters east of a line on the western side of the Highway 70 Trent River Bridge beginning at a point on the north shore 35° 06.2136' N - 77° 02.1968' W; running southerly to a point on the south shore 35° 05.9351' N - 77° 02.2645' W.

- (A) Brice Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 04.5114' N - 77° 03.6433' W; running easterly to a point on the east shore 35° 04.5634' N - 77° 03.4469' W.
- (ix) Jack Smith Creek - Inland Waters southwest and Joint Waters northeast of a line beginning on the west shore 35° 07.5482' N - 77° 03.1613' W; running southeasterly to a point on the east shore 35° 07.5320' N - 77° 03.1338' W.
- (x) Bachelor Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 09.0099' N - 77° 04.5858' W; running southerly to a point on the south shore 35° 08.9085' N - 77° 04.7172' W.
- (xi) Dollys Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 13.6303' N - 77° 09.9847' W; running southerly to a point on the south shore 35° 13.5937' N - 77° 09.9778' W.
- (xii) Greens Thoroughfare - Easternmost entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the

north shore 35° 13.7807' N - 77° 09.9224' W; running southwesterly to a point on the south shore 35° 13.7587' N - 77° 09.9728' W. Westernmost entrance: Inland Waters south and Joint Waters north of a line beginning on the west shore 35° 14.1398' N - 77° 11.5530' W; running easterly to a point on the east shore 35° 14.1481' N - 77° 11.5036' W.

- (xiii) Greens Creek - Inland Waters west and Joint Waters east of a line beginning on the north shore 35° 14.1883' N - 77° 11.8862' W; running southeasterly to a point on the south shore 35° 14.1389' N - 77° 11.7535' W.
- (xiv) Turkey Quarter Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 15.6738' N - 77° 14.6823' W; running southeasterly to a point on the east shore 35° 15.6534' N - 77° 14.6470' W.
- (xv) Pitch Kettle Creek - All waters within this waterbody are designated as Inland.
- (xvi) Taylors Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 14.3719' N - 77° 10.8050' W; running southwesterly to a point on the south shore 35° 14.3300' N - 77° 10.8352' W.
- (xvii) Pine Tree Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 12.6663' N - 77° 07.4285' W; running southwesterly to a point on the south shore 35° 12.7033' N - 77° 07.3594' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 12.8553' N - 77° 07.8300' W; running easterly to a point on the east

- shore 35° 12.8372' N - 77° 07.7934' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 13.2012' N - 77° 08.7753' W; running southeasterly to a point on the east shore 35° 13.1714' N - 77° 08.7071' W.
- (xviii) Stumpy Creek - Southern entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 35° 11.5752' N - 77° 06.1866' W; running southwesterly to a point on the south shore 35° 11.5550' N - 77° 06.2411' W. Northern entrance: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.9377' N - 77° 06.7263' W; running southeasterly to a point on the south shore 35° 11.9169' N - 77° 06.7044' W.
- (xix) Swift Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.5972' N - 77° 06.0562' W; running easterly to a point on the east shore 35° 11.5816' N - 77° 05.9861' W.
- (xx) Mill Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 08.5041' N - 77° 02.3400' W; running south easterly to a point on the south shore 35° 08.4711' N - 77° 02.3176' W.
- (xxi) Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 05.7648' N - 77° 00.5191' W; running south easterly to a point on the south shore at 35° 05.6803' N - 77° 00.4179' W.
- (xxii) Northwest Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.5096' N - 76° 58.2604' W; running northeasterly to a point on the east shore at 35° 03.5948' N - 76° 58.0297' W.
- (xxiii) Upper Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - 76° 56.5269' W; running easterly along the Tideland EMC power lines to a point on the east shore at 35° 04.4705' N - 76° 56.2115' W.
- (10) Currituck County
- (a) Albemarle Sound - All waters within Albemarle Sound in Currituck County are designated as Coastal.
- (i) All Manmade Tributaries - All Manmade Tributaries to Albemarle Sound in Currituck County are designated as Joint.
- (ii) North River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.7703' N - 75° 58.7384' W; running southerly to a point on the south shore 36° 18.4130' N - 75° 58.7228' W. Joint Waters north and Coastal Waters south of a line beginning on the west shore 36° 09.8986' N - 75° 54.6771' W; running easterly to a point on the east shore 36° 10.0108' N - 75° 52.0431' W.
- (A) Duck Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 12.4056' N - 75° 54.2967' W; running southeasterly to a point on the east shore 36° 12.1865' N - 75° 54.0298' W.
- (B) Barnett Creek - Inland Waters northeast and Joint

- Waters southwest of line beginning at a point on the north shore 36° 14.2405' N - 75° 55.0112' W; running southeasterly to a point on the south shore 36° 14.0956' N - 75° 54.9774' W.
- (C) Lutz Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 14.7397' N - 75° 55.4914' W; running southeasterly to a point on the east shore 36° 14.4948' N - 75° 55.1989' W.
- (D) Goose Pond - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 15.5152' N - 75° 57.0936' W; running easterly to a point on the east shore 36° 15.4016' N - 75° 56.7842' W. Also south of a line beginning at a point on the west shore 36° 16.0334' N - 75° 57.1018' W; running easterly to a point on the east shore 36° 16.0301' N - 75° 57.0629' W.
- (E) Deep Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 17.1576' N - 75° 56.7594' W; running southerly to a point on the south shore 36° 16.9846' N - 75° 56.6802' W.
- (F) Narrow Ridges Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 18.3249' N - 75° 57.8910' W; running southerly to a point on the south shore 36° 18.1388' N - 75° 57.9029' W.
- (G) Bump Landing Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 19.3757' N - 75° 57.9057' W; running southerly to a point on the south shore 36° 19.2496' N - 75° 57.9107' W.
- (H) Taylor Bay - All waters within Taylor Bay are designated Joint.
- (I) Intracoastal Waterway From Taylor Bay To Coinjock Bay - All waters within the IWW are designated Joint.
- (J) Indiantown Creek - All waters within this waterbody are designated Inland.
- (b) Currituck Sound - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore of Currituck Sound 36° 04.8195' N - 75° 47.4101' W; running easterly to a point on the east shore 36° 05.5739' N - 75° 44.5729' W.
- (i) All Manmade Tributaries - All manmade tributaries within this waterbody are designated as Joint.
- (ii) Coinjock Bay - All waters within this waterbody are designated as Joint.
- (iii) Nelson (Nells) Creek - Northern entrance: Inland Waters south and Joint Waters north of a line

- beginning at a point on the west shore 36° 16.5806' N - 75° 52.1168' W; running northeasterly to a point on the east shore 36° 16.6410' N - 75° 51.9580' W. Southern entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 15.9816' N - 75° 51.7245' W; running southerly to a point on the south shore 36° 15.8640' N - 75° 51.6897' W.
- (iv) Hog Quarter Creek - Northernmost entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 07.7400' N - 75° 48.6254' W; running southerly to a point on the south shore 36° 07.7210' N - 75° 48.6135' W. Southernmost entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 07.4118' N - 75° 48.4986' W; running southerly to a point on the south shore 36° 07.3532' N - 75° 48.5110' W.
- (v) Parkers Creek - Inland Waters northwest and Joint Waters southeast of a line beginning on the west shore 36° 22.1079' N - 75° 55.5459' W; running northeasterly to a point on the east shore 36° 22.1607' N - 75° 55.4512' W. Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 22.3928' N - 75° 55.6970' W; running northeasterly to a point on the east shore 36° 22.4011' N - 75° 55.6782' W.
- (vi) North Landing River - All waters in this waterbody are designated as Joint.
- (A) Northwest River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 30.8374' N - 76° 04.8770' W; running southerly to a point on the south shore 36° 30.7061' N - 76° 04.8916' W.
- (I) Gibbs Canal - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 32.2322' N - 76° 01.8923' W; running southerly to a point on the south shore 36° 32.1997' N - 76° 01.8937' W.
- (II) Tull Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 30.0991' N - 76° 04.8587' W; running southeasterly to a point on the south shore 36° 29.9599' N - 76° 04.7126' W.
- (B) West Landing - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 30.9867' N - 76° 02.5868' W; running easterly to a point on the east shore 36° 31.0045' N - 76° 02.3780' W.
- (11) Dare County
- (a) Alligator River - Coastal Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 54.2903' N - 76° 01.6818' W;

running along the south side of the US 64 bridge to a point on the east shore 35° 53.6835' N - 75° 58.8578' W.

- (i) Whipping Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore ~~35° 41.23930' N - 76° 00.2481' W;~~ 35° 41.3930' N - 76° 00.2481' W; running southerly to a point on the south shore 35° 41.3717' N - 76° 00.2554' W.
- (ii) Swan Creek and Lake - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 40.2674' N - 76° 00.7360' W; running southerly to a point on the south shore 35° 40.2420' N - 76° 00.7548' W.
- (iii) Milltail Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore ~~35° 41.3717' N - 76° 00.2554' W;~~ 35° 50.5192' N - 75° 58.6134' W; running southerly to a point on the south shore ~~35° 41.3930' N - 76° 00.2481' W.~~ 35° 50.4956' N - 75° 58.6158' W.
- (iv) Laurel Bay Lake (Creek) - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 52.4036' N - 75° 58.8560' W; running southerly to a point on the south shore 35° 52.3960' N - 75° 58.8528' W.
- (v) East Lake - Coastal Waters west and Inland Waters east of a line beginning at a point on the north shore 35° 56.1676' N - 75° 55.2603' W; running southerly to a point on the south shore 35° 55.4727' N - 75° 55.5043' W. Joint Waters north and Inland Waters south of a line beginning at a point on the west shore 35° 58.6402' N - 75° 52.1855' W; running easterly to a point on the east

shore 35° 58.5887' N - 75° 51.7080' W.

- (b) Albemarle Sound - All waters in this waterbody in Dare County are designated as Coastal.
 - (i) All Manmade Tributaries - All manmade tributaries in Dare County for this waterbody are designated as Joint.
 - (ii) Kitty Hawk Bay - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 03.1967' N - 75° 44.3087' W; running easterly to a point on the east shore 36° 03.1871' N - 75° 44.2716' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 03.1338' N - 75° 44.2423' W; running southerly to a point on the south shore 36° 03.0919' N - 75° 44.2533' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.9960' N - 75° 44.2840' W; running southerly to a point on the south shore 36° 02.9592' N - 75° 44.2291' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.4964' N - 75° 44.2089' W; running southerly to a point on the south shore 36° 01.3270' N - 75° 43.6422' W.
 - (iii) Peter Mashoes Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 57.2344' N - 75° 48.3087' W; running southerly to a point on the south shore 35° 56.7805' N - 75° 48.3563' W.
 - (iv) Tom Mann Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 58.5296' N - 75° 52.8982' W; running easterly to a point on the east

- shore 35° 58.5175' N - 75° 53.6851' W.
- (v) Collington Harbor – Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 01.0828' N - 75° 43.6070' W; running southerly to a point on the south shore 36° 01.0510' N - 75° 43.6015' W.
- (c) Croatan Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (ii) Spencer Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.4205' N - 75° 45.0645' W; running southerly to a point on the south shore 35° 51.3876' N - 75° 45.0640' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.5597' N - 75° 45.0141' W; running southerly to a point on the south shore 35° 51.4624' N - 75° 45.0498' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.6783' N - 75° 44.9125' W; running southerly to a point on the south shore 35° 51.5693' N - 75° 45.0109' W.
- (iii) Calahan Creek (Callaghan Creek) - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.1312' N - 75° 45.1327' W; running southwesterly to a point on the south shore 35° 51.0953' N - 75° 45.1629' W.
- (d) Roanoke Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) Buzzard Bay - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 59.6662' N - 75° 41.8400' W; running easterly to a point on the east shore 35° 59.4376' N - 75° 40.5770' W.
- (e) Pamlico Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) Stumpy Point Bay - All waters in this waterbody are designated as Coastal.
- (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (ii) Long Shoal River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' W
- (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (B) Pains Bay - All waters in this waterbody are designated as Coastal.
- (I) Pains Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 36.4464' N - 75° 49.0420' W; running easterly to a point on the east shore 35° 36.4439' N - 75° 49.0324' W.
- (C) Deep Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 37.8971' N - 75° 51.3125' W;

- running easterly to
a point on the east
shore 35° 37.8840'
N - 75° 51.2928' W.
- (f) Currituck Sound - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 04.8195' N - 75° 47.4101' W; running easterly to a point on the east shore 36° 05.5739' N - 75° 44.5729' W.
- (i) All Manmade Tributaries – All manmade tributaries are designated as Joint.
- (ii) Martin Point Creek (Jean Guite Creek) - Inland Waters south Joint Waters north of a line beginning at a point on the west shore 36° 07.6716' N - 75° 44.9656' W; running easterly to a point on the east shore 36° 07.7568' N - 75° 44.6823' W.
- (12) Gates County
- (a) Chowan River - All waters within this waterbody for Gates County are designated as Joint.
- (i) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
- (ii) Bennetts Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.3499' N - 76° 42.0286' W; running northeasterly to a point on the east shore 36° 18.4057' N - 76° 41.6986' W.
- (iii) Beef Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 20.3235' N - 76° 44.6401' W; running easterly to a point on the east shore 36° 20.3070' N - 76° 44.5797' W.
- (iv) Sarem Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 21.7259' N - 76° 46.4085' W; running
- southerly to a point on the south shore 36° 21.6748' N - 76° 46.4392' W
- (v) Shingle (Island) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the north shore of the westernmost entrance into Chowan River 36° 21.8449' N - 76° 48.0940' W; running southeasterly to a point on the south shore 36° 21.7831' N - 76° 48.0427' W. At the easternmost entrance to the creek: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 21.8469' N - 76° 47.2668' W; running northeasterly to a point on the east shore 36° 21.9062' N - 76° 47.1862' W.
- (vi) Barnes Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the western shore 36° 21.8820' N - 76° 48.6419' W; running easterly to a point on the east shore 36° 21.8978' N - 76° 48.5902' W.
- (vii) Spikes Creek - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 22.6515' N - 76° 50.8882' W; running northeasterly to a point on the east shore 36° 22.6684' N - 76° 50.8493' W.
- (viii) Buckhorn Creek (Run Off Swamp) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 22.9682' N - 76° 51.9172' W; running easterly to a point on the east shore 36° 22.9614' N - 76° 51.8870' W.
- (ix) Mud Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 23.5134' N - 76° 53.9131' W; running easterly to a point on the east shore 36°

- 23.5132' N - 76° 53.8815' W.
- (x) Somerton Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 31.7177' N - 76° 54.8327' W; running easterly to a point on the east shore 36° 31.7143' N - 76° 54.7810' W.
- (13) Halifax County
- (a) Roanoke River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5264' N - 77° 23.0223' W; running northeasterly along the south side of the Highway 258 Bridge to a point on the east shore 36° 12.5674' N - 77° 22.9724' W.
- (i) Kehukee Swamp - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.1942' N - 77° 18.9596' W; running southwesterly to a point on the south shore 36° 05.1670' N - 77° 18.9761' W.
- (ii) Clarks Canal - Inland Waters north and Joint Waters south of a line of a line beginning at a point on the west shore 36° 04.6165' N - 77° 19.5817' W; running easterly to a point on the east shore 36° 04.6215' N - 77° 19.5643' W.
- (14) Hertford County
- (a) Chowan River - All waters within this waterbody for Hertford County are designated as Joint.
- (i) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east shore 36° 14.0899' N - 76° 43.8533' W.
- (ii) Swain Mill (Taylor Pond) Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.5808' N - 76° 43.4729' W; running southerly to a point on the south shore 36° 18.5616' N - 76° 43.4706' W.
- (iii) Goose Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 19.5838' N - 76° 44.5971' W; running southerly to a point on the south shore 36° 19.5375' N - 76° 44.5925' W.
- (iv) Wiccacon River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 20.5439' N - 76° 45.4550' W; running southeasterly to a point on the south shore 36° 20.4684' N - 76° 45.3392' W.
- (v) Hodges Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 21.2459' N - 76° 46.3421' W; running southerly to a point on the south shore 36° 21.1823' N - 76° 46.3243' W.
- (vi) Catherine Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 22.9579' N - 76° 53.1994' W; running southeasterly to a point on the east shore 36° 22.9456' N - 76° 53.1742' W.
- (vii) Harris (Hares) Mill Creek - All waters within this waterbody are designated as Inland.
- (viii) Meherrin River - All waters within this waterbody are designated as Joint.
- (A) Potecasi Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 36° 26.1234' N - 76° 57.5262' W; running southeasterly to a point on the east shore 36° 26.1005' N - 76° 57.4960' W.
- (B) Liverman Creek - Inland Waters north

- and Joint Waters south of a line beginning at a point on the west shore 36° 26.7244' N - 76° 58.2797' W; running easterly to a point on the east shore 36° 26.7086' N - 76° 58.2499' W.
- (C) Vaughan's Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 28.3541' N - 77° 05.6259' W; running southerly to a point on the south shore 36° 28.3307' N - 77° 05.6369' W.
- (D) Banks Creek - All waters in this waterbody are designated as Inland.
- (ix) Buckhorn Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 31.9519' N - 76° 55.2580' W; running easterly to a point on the east shore 36° 31.9628' N - 76° 55.2429' W
- (15) Hyde County
- (a) Pamlico Sound - All waters within this waterbody in Hyde County are designated as Coastal.
- (i) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067' W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.
- (A) Rutman Creek - Inland Waters north
- and Joint Waters south of a line beginning at a point on the west shore 35° 33.1874' N - 76° 27.4090' W; running easterly to a point 35° 33.1759' N - 76° 27.2525' W; running northeasterly to a point on the east shore 35° 33.2455' N - 76° 26.9119' W.
- (B) Wilkerson Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 33.1251' N - 76° 27.2328' W; running northerly to a point 35° 33.1553' N - 76° 27.2447' W; running easterly to a point on the east shore 35° 33.3286' N - 76° 26.2019' W.
- (C) Atlantic Intracoastal Waterway From Wilkerson Creek To Alligator River At Winn Bay – All waters within this part of the IWW are designated as Joint.
- (D) Horse Island Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 32.1965' N - 76° 28.0462' W; running southerly to a point on the south shore 35° 32.1480' N - 76° 28.0705' W.
- (E) Tarklin Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 31.1553' N -

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|---|---|---|
| <p>(F) 76° 28.1478' W; running southeasterly to a point on the south shore 35° 31.0974' N - 76° 28.0984' W. Scranton Creek - Inland Waters east and Joint Waters west of line beginning at a point on the north shore 35° 30.0080' N - 76° 26.7759' W; running southerly to a point on the south shore 35° 29.9574' N - 76° 26.7750' W.</p> | <p>(A) Rose Bay Creek - All waters within this waterbody are designated as Coastal.</p> <p>(B) Rose Bay Canal - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 28.5607' N - 76° 19.6545' W; running southerly to a point on the south shore 35° 28.5509' N - 76° 19.6572' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.8491' W - 76° 24.2198' W; running easterly to a point on the east shore 35° 27.8404' N - 76° 24.2065' W.</p> | <p>(iii) Swan Quarter Bay - All waters within this waterbody are designated as Coastal.</p> |
| <p>(G) Smith Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 30.2812' N - 76° 29.7546' W; running southeasterly to a point on the east shore 35° 30.1904' N - 76° 29.4657' W.</p> | <p>(A) Oyster Creek - All waters within this waterbody are designated as Coastal.</p> | <p>(iv) Juniper Bay - All waters within this waterbody are designated as Coastal.</p> |
| <p>(H) Fishing Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the west shore 35° 30.2400' N - 76° 35.0143' W; running southeasterly to a point on the east shore 35° 30.0645' N - 76° 34.8211' W.</p> | <p>(A) Juniper Bay Creek - Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 23.2472' N - 76° 14.8754' W; running southwesterly to a point on the south shore 35° 23.1738' N - 76° 14.9794' W.</p> | <p>(B) Juniper Bay Creek Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the</p> |
| <p>(I) Slades Creek - All waters within this waterbody are designated as Coastal.</p> | | |
| <p>(J) Fortescue Creek - All waters within this waterbody are designated as Coastal.</p> | | |
| <p>(ii) Rose Bay - All waters within this waterbody are designated as Coastal.</p> | | |

- west shore 35°
23.8618' N - 76°
13.1044' W;
running easterly to
a point on the east
shore 35° 23.8677'
N - 76° 13.0888' W.
- (v) Lake Mattamuskeet – All waters in this waterbody are designated as Inland.
- (A) Outfall Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 26.6017' N - 76° 10.1715' W; running easterly to a point on the east shore 35° 26.6093' N - 76° 10.1513' W. Joint Waters north and Coastal waters south of a line beginning at a point on the west shore 35° 21.4945' N - 76° 06.5336' W; running northeasterly to a point on the east shore 35° 21.5480' N - 76° 06.4819' W.
- (B) Lake Landing Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 28.7878' N - 76° 04.5867' W; running easterly to a point on the east shore 35° 28.7910' N - 76° 04.5726' W. Joint Waters north and Coastal waters south of a line beginning at a point on the west 35° 25.9529' N - 76° 03.6785' W; running easterly to a point on the east shore 35° 25.9568' N - 76° 03.6566' W. Joint Waters north
- and Coastal Waters south of a line beginning at a point on the west shore 35° 25.9666' N - 76° 03.5856' W; running easterly to a point on the east shore 35° 25.9819' N - 76° 03.5600' W.
- (C) Waupopin Canal - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 31.8413' N - 76° 01.7779' W; running southerly to a point on the south shore 35° 31.8283' N - 76° 01.7637' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 31.5557' N - 75° 58.8725' W; running easterly to a point on the east shore 35° 31.5648' N - 75° 58.8555' W.
- (D) Rattlesnake Canal - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 26.6965' N - 76° 00.8079' W; running easterly to a point on the east shore 35° 26.7116' N - 76° 00.7749' W.
- (E) All Other Manmade Tributaries To Lake Mattamuskeet – All manmade tributaries of this waterbody are designated as Inland.
- (vi) Middletown Creek - All waters within this waterbody are designated as Coastal.
- (vii) Long Shoal River - Inland Waters north and Coastal

- Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' W.
- (A) All Manmade Tributaries – All manmade tributaries of this waterbody are designated as Joint.
- (B) Broad Creek - All waters within this waterbody are designated as Coastal.
- (C) Flag Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 37.3782' N - 75° 53.0699' W; running easterly to a point on the east shore 35° 37.3894' N - 75° 53.0593' W.
- (D) Cumberland Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 38.3026' N - 75° 53.3010' W; running southerly to a point on the south shore 35° 38.2692' N - 75° 53.3038' W.
- (b) Alligator River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore at Cherry Ridge Landing 35° 42.2172' N - 76° 08.4686' W; running southerly to a point on the south shore 35° 42.1327' N - 76° 08.5002' W.
- Swan Creek and Lake - All waters within this waterbody are designated as Inland.
- (16) Jones County
- (a) White Oak River – Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running easterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (i) Grants Creek - All waters within this waterbody are designated as Inland.
- (ii) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N - 77° 09.9160' W.
- (17) Martin County
- (a) Roanoke River – All waters within this waterbody in Martin County are designated as Joint.
- (i) Prices Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 57.3701' N - 77° 11.9815' W; running southerly to a point on the south shore 35° 57.3552' N - 77° 11.9796' W.
- (ii) Rainbow Gut - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.9334' N - 77° 11.3246' W; running easterly to a point on the east shore 35° 55.9275' N - 77° 11.3136' W.
- (iii) Conoho Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 52.5439' N - 77° 02.6673' W; running easterly to a point on the east shore 35° 52.5407' N - 77° 02.6280' W.
- (iv) Sweetwater Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the west shore 35° 51.6464' N - 77° 00.5090' W; running southeasterly to a point on the east shore 35° 51.6252' N - 77° 00.4879' W.
- (A) Peter Swamp – All waters within this waterbody are designated as Inland.

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|-------|---|-------|--|
| (v) | Devils Gut - All waters in this waterbody are designated as Joint | | 05.1562' N - 77° 55.3816' W; running southerly to a point on the south shore 34° 05.1303' N - 77° 55.4008' W. |
| | (A) Upper Deadwater Creek - All waters in this waterbody are designated Joint. | (ii) | Todds Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 07.4791' N - 77° 55.5175' W; running southeasterly to a point on the south shore 34° 07.4578' N - 77° 55.5116' W. |
| | (B) Lower Deadwater Creek - All waters in this waterbody are designated Joint. | | |
| | (C) Gardner Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 50.1599' N - 76° 56.0211' W; running easterly to a point on the east shore 35° 50.1633' N - 76° 55.9899' W. | (iii) | Barnards Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 09.4347' N - 77° 56.5969' W; running southerly to a point on the south shore 34° 09.3887' N - 77° 56.5791' W. |
| (vi) | Roses Creek - Inland Waters southeast and Joint Waters northwest of a line beginning at a point on the north shore 35° 50.1683' N - 76° 50.9664' W; running southwesterly to a point on the south shore 35° 50.1363' N - 76° 56.9907' W. | (iv) | Greenfield Lake Outlet - Greenfield Lake Outlet Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 12.7210' N - 77° 57.2058' W; running southerly to a point on the south shore 34° 12.7075' N - 77° 57.2085' W. |
| (vii) | Welch Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the western shore 35° 51.8458' N - 76° 45.8381' W; running easterly along the shoreline and across the mouths of the three creek entrances to a point on the east shore 35° 51.8840' N - 76° 45.6207' W. | (v) | Tommer Creek - For the southernmost entrance into the Cape Fear: Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the west shore 34° 15.6397' N - 77° 58.9608' W; running northeasterly to a point on the east shore 34° 15.6589' N - 77° 58.9338' W. For the northernmost entrance into the Cape Fear: Inland Waters south and Joint Waters north of a line beginning <u>beginning</u> at a point on the west shore 34° 16.6630' N - 77° 59.4699' W; running northeasterly to a point on the east shore 34° 16.6767' N - 77° 59.4506' W. |
| (18) | New Hanover County | | |
| | (a) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side 34° 13.6953' N - 77° 57.2396' W; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side 34° 13.6214' N - 77° 57.0341' W. | | |
| | (i) Lords Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° | (vi) | Catfish Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° |

- 16.7546' N - 77° 59.3751' W
; running southeasterly to a
point on the south shore 34°
16.7118' N - 77° 59.3870'
W.
- (vii) Northeast Cape Fear River -
Inland Waters north and
Joint Waters south of a line
beginning at a point on the
west side 34° 26.5658' N -
77° 50.0871' W; running
northeasterly along the
southern side of NC 210
bridge to a point on the east
side 34° 26.6065' N - 77°
49.9955' W.
- (A) Smiths Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the north shore
34° 16.0366' N -
77° 56.8405' W;
running
southeasterly to a
point on the south
shore 34° 15.9919'
N - 77° 56.7961' W.
- (B) Ness Creek - Inland
Waters east and
Joint Waters west
of a line beginning
at a point on the
north shore 34°
17.1741' N - 77°
57.2460' W;
running
southeasterly to a
point on the south
shore 34° 17.1494'
N - 77° 57.2044' W.
- (C) Dock Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the north shore
34° 18.1274' N -
77° 57.3847' W;
running
southwesterly to a
point on the south
shore 34° 18.1173'
N - 77° 57.3678' W.
- (D) Fishing Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the north shore
34° 19.1613' N -
77° 57.2460' W;
running
southwesterly to a
point on the south
shore 34° 19.1331'
N - 77° 57.2245' W.
- (E) Prince George
Creek - Inland
Waters south and
Joint Waters north
of a line beginning
at a point on the
west shore 34°
21.8481' N - 77°
57.0066' W;
running
northeasterly to a
point on the east
shore 34° 21.8778'
N - 77° 57.9755' W.
- (F) Sturgeon Creek -
Inland Waters south
and Joint Waters
north of a line
beginning at a point
on the west shore
34° 22.6796' N -
77° 51.6018' W;
running
northeasterly to a
point on the east
shore 34° 22.6931'
N - 77° 51.5776' W.
- (G) Island Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the south shore
34° 23.2509' N -
77° 47.3377' W ;
running
northeasterly to a
point on the north
shore 34° 23.3322'
N - 77° 49.3208' W.
- (19) Northampton County
(a) Roanoke River - Inland Waters
northwest and Joint Waters southeast
of a line beginning at a point on the
west shore 36° 12.5264' N - 77°
23.0223' W; running northeasterly
along the south side of the Highway
258 Bridge to a point on the east
shore 36° 12.5674' N - 77° 22.9724'
W.

- (i) Sandy Run (Norfleet Gut) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.1119' N - 77° 17.5396' W; running northeasterly to a point on the east shore 36° 10.1172' N - 77° 17.5316' W.
 - (b) Meherrin River - All waters of Meherrin River up to the Virginia state line within Northampton County are designated as Joint.
 - (i) Vaughan's Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 28.3541' N - 77° 05.6259' W; running southerly to a point on the south shore 36 ° 28.3307' N - 77° 05.6369' W.
- (20) Onslow County
 - (a) Beasleys Creek (Barlow Creek) - All waters within this waterbody are designated as Coastal.
 - (b) Kings Creek - All waters within this waterbody are designated as Coastal.
 - (c) Turkey Creek - All waters within this waterbody are designated as Coastal.
 - (d) Mill Creek - All waters within this waterbody are designated as Coastal.
 - (e) New River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 45.1654' N - 77° 26.1222' W; running easterly along the southern side of the US Hwy 17 bridge to a point on the east shore 34° 45.2007' N - 77° 25.9790' W.
 - (i) Wheeler Creek - All waters within this waterbody are designated as Coastal.
 - (ii) Everett Creek - All waters within this waterbody are designated as Coastal.
 - (iii) Stones Creek - All waters within this waterbody are designated as Coastal.
 - (iv) Muddy Creek - All waters within this waterbody are designated as Coastal.
 - (v) Mill Creek - All waters within this waterbody are designated as Coastal.
 - (vi) Lewis Creek - All waters within this waterbody are designated as Coastal.
- (vii) Southwest Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 40.8723' N - 77° 26.2399' W; running northeasterly to a point on the east shore 34° 40.9112' N - 77° 26.1758' W.
 - (viii) Brinson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 44.0945' N - 77° 26.4335' W; running southerly to a point on the south shore 34° 44.0654' N - 77° 26.4239' W.
 - (ix) Northeast Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 34° 44.0778' N - 77° 21.2640' W; running southeasterly along the southern side of the railroad bridge to a point on the east shore 34° 44.0446' N - 77° 21.2126' W.
 - (x) Wallace Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 40.9604' N - 77° 21.5698' W; running southwesterly along the western side of the first bridge upstream from the mouth, to a point on the south shore 34° 40.8576' N - 77° 21.4787' W.
 - (xi) Codels Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.8845' N - 77° 20.4533' W; running southerly to a point on the south shore 34° 38.8691' N - 77° 20.4515' W.
 - (xii) French Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.4059' N - 77° 20.2619' W; running southerly to a point on the south shore 34° 38.2566' N - 77° 20.3233' W.

- (xiii) Duck Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 34° 38.0179' N - 77° 20.5169' W; running southwesterly to a point on the south shore 34° 37.9172' N - 77° 20.6520' W.
- (f) Freeman (Browns) Creek - All waters within this waterbody are designated as Coastal.
- (g) Bear Creek - All waters within this waterbody are designated as Coastal.
- (h) Queens Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 42.1815' N - 77° 11.5690' W; running easterly to a point on the east shore 34° 42.2273' N - 77° 11.4193' W.
- ~~(A)~~(i) Parrotts Swamp - All waters within this waterbody are designated as Coastal.
- (i) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running northeasterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (i) Stevens Creek - All waters within this waterbody are designated as Coastal.
- (ii) Holland Mill (Mill Pond) Creek - All waters within this waterbody are designated as Coastal.
- (iii) Webbs Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 34° 45.7559' N - 77° 10.1321' W; running southwesterly to a point on the south shore 34° 45.7404' N - 77° 10.1486' W.
- (iv) Freemans Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 46.9791' N - 77° 10.3935' W; running southerly to a point on the south shore 34° 46.9663' N - 77° 10.3999' W.
- (v) Calebs Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 48.1354' N - 77° 11.4688' W; running southeasterly to a point on the south shore 34° 48.1192' N - 77° 11.4546' W.
- (vi) Grants Creek - All waters within this waterbody are designated as Inland.
- (21) Pamlico County
 - (a) Pamlico River - All waters within this waterbody are designated as Coastal.
 - (i) Lower Goose Creek - All waters within this waterbody are designated as Coastal.
 - (A) Dixons Creek - All waters within this waterbody are designated as Coastal.
 - (B) Patons Creek - All waters within this waterbody are designated as Coastal.
 - (C) Wilson Creek - All waters within this waterbody are designated as Coastal.
 - (D) Eastham Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 17.8205' N - 76° 35.1828' W; running southerly to a point on the south shore 35° 17.6797' N - 76° 35.1840' W.
 - (E) Upper Spring Creek - All waters within this waterbody are designated as Coastal.
 - (F) Intracoastal Waterway from Upper Spring Creek To Gale Creek - All waters within this waterbody are designated as Coastal.
 - (G) Hunting Creek - Inland Waters south and Coastal Waters

- north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W.
- (ii) Oyster Creek - All waters within this waterbody are designated as Coastal.
- (iii) Clark Creek - All waters within this waterbody are designated as Coastal.
- (A) Middle Prong - All waters within this waterbody are designated as Coastal.
- (B) James Creek - All waters within this waterbody are designated as Coastal.
- (b) Pamlico Sound - All waters within this waterbody are designated as Coastal.
- (i) Porpoise Creek - All waters within this waterbody are designated as Coastal.
- (ii) Drum Creek - All waters within this waterbody are designated as Coastal.
- (iii) Bay River - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 08.4601' N - 76° 45.9173' W; running southeasterly to a point on the south shore 35° 08.4436' N - 76° 45.8885' W.
- (A) Gale Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 13.3142' N - 76° 36.7089' W; running southwesterly to a point on the south shore 35° 13.2964' N - 76° 36.7222' W.
- (B) Chadwick Creek - All waters within this waterbody are designated as Coastal.
- (C) Bear Creek - All waters within this waterbody are designated as Coastal.
- (D) Vandemere Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 12.0330' N - 76° 40.7460' W; running northeasterly to a point on the east shore 35° 12.0433' N - 76° 40.7235' W.
- (I) Long Creek - All waters within this waterbody are designated as Coastal.
- (E) Smith Creek - All waters within this waterbody are designated as Coastal.
- (F) Chapel Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 10.0076' N - 76° 42.4909' W; running easterly to a point on the east shore 35° 10.0096' N - 76° 42.4722' W.
- (G) Raccoon Creek - All waters within this waterbody are designated as Coastal.
- (H) Trent Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 06.2738' N - 76° 43.1071' W; running southeasterly to a point on the east shore 35° 06.2738' N - 76° 43.1071' W.

- shore 35° 06.2603' N - 76° 43.0741' W.
- (I) Thomas Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 07.2024 ' N - 76° 43.0929' W; running southerly to a point on the south shore 35° 07.1610' N - 76° 43.0947' W.
- (iv) Masons Creek - All waters within this waterbody are designated as Coastal.
- (v) Moore Creek - All waters within this waterbody are designated as Coastal.
- (vi) Rices Creek - All waters within this waterbody are designated as Coastal.
- (vii) Ball Creek - All waters within this waterbody are designated as Coastal.
- (viii) Cabin Creek - All waters within this waterbody are designated as Coastal.
- (ix) Riggs Creek - All waters within this waterbody are designated as Coastal.
- (x) Spring Creek - All waters within this waterbody are designated as Coastal.
- (xi) Long Creek - All waters within this waterbody are designated as Coastal.
- (c) Neuse River - All waters within this waterbody are designated as Coastal.
- (i) Swan Creek - All waters within this waterbody are designated as Coastal.
- (ii) Lower Broad Creek - All waters within this waterbody are designated as Coastal.
- (A) Greens Creek - All waters within this waterbody are designated as Coastal.
- (B) Pittman Creek - All waters within this waterbody are designated as Coastal.
- (C) Burton Creek - All waters within this
- waterbody are designated as Coastal.
- (D) Brown Creek - All waters within this waterbody are designated as Coastal.
- (I) Spice Creek - All waters within this waterbody are designated as Coastal.
- (E) Gideon Creek - All waters within this waterbody are designated as Coastal.
- (F) Tar Creek - All waters within this waterbody are designated as Coastal.
- (G) Parris Creek - All waters within this waterbody are designated as Coastal.
- (iii) Orchard Creek - All waters within this waterbody are designated as Coastal.
- (iv) Pierce Creek - All waters within this waterbody are designated as Coastal.
- (v) Whitaker Creek - All waters within this waterbody are designated as Coastal.
- (vi) Smith Creek - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore at the Oriental Bridge 35° 01.5149' N - 76° 41.9549' W; running southwesterly to a point on the south shore 35° 01.3391' N - 76° 42.1774' W.
- (vii) Greens Creek - All waters within this waterbody are designated as Joint.
- (A) Kershaw Creek - All waters within this waterbody are designated as Joint.
- (viii) Dawson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 00.3371' N -

- 76° 45.6513' W; running southerly to a point on the south shore 35° 00.1492' N - 76° 45.6202' W.
- (A) Tarkiln Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.4124' N - 76° 45.5392' W; running easterly to a point on the east shore 35° 00.4289' N - 76° 45.4472' W.
- (ix) Gatlin Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.4165' N - 76° 47.4645' W; running easterly to a point on the east shore 34° 58.4154' N - 76° 47.4371' W.
- (x) Little Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.5175' N - 76° 49.5822' W; running southeasterly to a point on the east shore 34° 58.5086' N - 76° 49.5680' W.
- (xi) Mill Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 59.6024' N - 76° 51.1276' W; running easterly to a point on the east shore 34° 59.5955' N - 76° 51.0864' W.
- (xii) Beard Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.3293' N - 76° 52.1855' N; running easterly to a point on the east shore 35° 00.3055' N - 76° 51.9012' W.
- (xiii) Lower Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 01.5781' N - 76° 54.1580' W; running easterly to a point on the east shore 35° 01.5566' N - 76° 54.0248' W.
- (xiv) Goose Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.4414' N - 76° 55.1170' W; running easterly to a point on the east shore 35° 03.3567' N - 76° 54.9728' W.
- (xv) Upper Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - 76° 56.5269' W; running easterly to a point on the east shore 35° 04.4705' N - 76° 56.2115' W.
- (22) Pasquotank County
- (a) Albemarle Sound - All waters within this waterbody in Pasquotank County are designated Coastal.
- (i) All Manmade Tributaries - All manmade tributaries of Pasquotank County are designated as Joint.
- (ii) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore ~~36° 12.5237' N 76° 16.9418' W;~~ 36° 12.2950' N - 76° 17.1405' W; running ~~southeasterly~~ northeasterly to a point on the east shore ~~36° 12.2950' N - 76° 17.1405' W;~~ 36° 12.5237' N - 76° 16.9418' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.
- (A) Symonds Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 10.2898' N - 76° 14.1801' W; running southeasterly to a

- point on the south shore 36° 10.2042' N - 76° 14.0368' W.
- (iii) Big Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 09.3267' N - 76° 08.2562' W; running southerly to a point on the south shore 36° 08.9730' N - 76° 08.3175' W. Joint waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 07.9621' N - 76° 07.1818' W; running easterly to a point on the east shore 36° 08.2706' N - 76° 06.2525' W.
- (iv) Pasquotank River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.0768' N - 76° 13.0979' W; running easterly along the south side of the Highway 158 Bridge to a point on the east shore 36° 18.0594' N - 76° 12.9620' W. Joint Waters west and Coastal Waters east of a line beginning on the north shore 36° 11.4282' N - 76° 01.2876' W; running southwesterly to a point on the south shore 36° 08.7563' N - 76° 03.6991' W.
- (A) Little Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 11.5209' N - 76° 04.6517' W; running southerly to a point on the south shore 36° 10.9973' N - 76° 04.5149' W.
- (B) New Begun Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 13.3298' N - 76° 08.2878' W; running southerly to a point on the south shore 36° 13.0286' N - 76° 08.1820' W.
- (I) Paling Creek – All waters in this waterbody are designated as Inland.
- (II) James Creek – All waters in this waterbody are designated as Inland.
- (C) Charles Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 17.8090' N - 76° 13.0732' W; running easterly to a point on the east shore 36° 17.8024' N - 76° 13.0407' W.
- (23) Pender County
- (a) Cape Fear River – All waters within this waterbody for Pender County are designated as Joint.
- (i) Thorofare – For the easternmost entrance into the Black River: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 34° 22.0493' N - 78° 04.4435' W; running northeasterly to a point on the east shore 34° 22.0783' N - 78° 04.4123' W. For the westernmost entrance into the Cape Fear River: Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 21.9197' N - 78° 07.0527' W; running southeasterly to a point on the south shore 34° 21.8618' N - 78° 06.9992' W
- (ii) Black River - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 34° 22.0783' N - 78° 04.4123' W; running southeasterly to a point on

- the south shore 34° 21.9950' N - 78° 04.2864' W.
- (iii) Northeast Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of NC 210 bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.
- (A) Cowpen Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 22.1417' N - 77° 59.3357' W; running southerly to a point on the south shore 34° 22.1298' N - 77° 59.3426' W.
- (B) Long Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the west shore 34° 22.7149' N - 77° 58.2797' W; running northeasterly to a point on the east shore 34° 22.7428' N - 77° 58.2348' W.
- (C) Turkey Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 22.8465' N - 77° 57.4827' W; running southerly to a point on the south shore 34° 22.7895' N - 77° 57.4452' W.
- (D) Old Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.5249' N - 77° 52.1493' W; running northeasterly to a point on the east shore 34° 22.5327' N - 77° 52.1278' W.
- (E) Honey Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.8627' N - 77° 51.0887' W; running easterly to a point on the east shore 34° 22.8609' N - 77° 51.0507' W.
- (F) Harrisons Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 24.1859' N - 77° 48.6570' W; running southwesterly to a point on the south shore 34° 24.1387' N - 77° 48.6982' W.
- (G) Island Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 23.2509' N - 77° 47.3377' W; running northeasterly to a point on the north shore 34° 23.3322' N - 77° 49.3208' W.
- (b) Topsail Sound And Tributaries - All waters within this these waterbodies are designated as Coastal.
- (c) Beasleys (Barlow) Creek - All waters within this waterbody are designated as Coastal.
- (24) Perquimans County
- (a) Albemarle Sound – All waters within this waterbody in Perquimans County are designated as Coastal.
- (i) All Manmade Tributaries – All waters within this water body are designated as Joint.
- (ii) Yeopim River – Inland Waters west and Joint

Waters east of a line beginning at a point on the north shore ~~36° 05.1203' N - 76° 29.5051' W~~; 36° 05.4526' N - 76° 27.7651' W; running southerly to a point on the south shore at Norcum Point ~~36° 05.0571' N - 76° 29.4657' W~~; 36° 05.1029' N - 76° 27.7120' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 04.7426' N - 76° 24.2536' W; running southwesterly to a point on the south shore 36° 04.1136' N - 76° 24.5365' W.

(A) Yeopim Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore of 36° 04.7206' N - 76° 24.8396' W; running easterly to a point on the east shore 36° 04.7426' N - 76° 24.2536' W

(iii) Perquimans River - Joint Waters west and Coastal Waters east of a line beginning at a point on the west shore 36° 05.9669' N - 76° 18.1791' W; running northeasterly to a point on the east shore 36° 06.7655' N - 76° 16.5953' W. Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 36° 11.6569' N - 76° 28.0055' W; running southeasterly to a point on the east shore 36° 11.6123' N - 76° 27.9382' W.

(A) Walter's Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 11.1305' N - 76° 27.9185' W; running southeasterly to a point on the south

shore 36° 11.0224' N - 76° 27.6626' W. (B) Mill Pond Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore ~~36° 11.9766' N - 76° 27.2511' W~~; 36° 11.9757' N - 76° 27.5752' W; running easterly to a point on the east shore ~~36° 11.9757' N - 76° 27.5752' W~~; 36° 11.9766' N - 76° 27.2511' W.

(C) Suttons Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.0394' N - 76° 23.7945' W; running southeasterly to a point on the east shore 36° 09.9325' N - 76° 23.5263' W.

(D) Jackson (Cove) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 08.4642' N - 76° 20.3324' W; running southeasterly to a point on the east shore 36° 08.4159' N - 76° 20.2890' W.

(E) Muddy Creek - Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the north shore 36° 07.0381' N - 76° 17.1350' W; running southeasterly to a point on the east shore 36° 07.0218' N - 76° 17.1226' W.

- (iv) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore ~~36° 12.5237' N - 76° 16.9418' W~~; 36° 12.2950' N - 76° 17.1405' W; running ~~southeasterly~~ northeasterly to a point on the east shore ~~36° 12.2950' N - 76° 17.1405' W~~; 36° 12.5237' N - 76° 16.9418' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.
 - (A) Deep Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 11.0945' N - 76° 16.6717' W; running southeasterly to a point on the south shore 36° 10.7510' N - 76° 16.2258' W.
 - (B) Davis Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 12.2950' N - 76° 17.1405' W; running southerly to a point on the south shore 36° 12.2222' N - 76° 17.1153' W.
- (25) Tyrrell County
 - (a) Albemarle Sound – All waters within this waterbody in Tyrrell County are designated as Coastal.
 - (i) All Manmade Tributaries – All manmade tributaries within this waterbody are designated as Joint.
 - (ii) Banton (Maybell) Creek – Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.0552' N - 76° 22.0664' W; running northeasterly to a point on the east shore 35° 56.1151' N - 76° 21.8760' W.
 - (iii) Scuppernong River – Coastal Waters northwest and Joint Waters southeast of a line beginning at a point on the northeast shore 35° 56.7196' N - 76° 18.8964' W; running southwesterly to a point on the southwest shore at 35° 56.3351' N - 76° 19.6609' W. Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0158' N - 76° 15.4605' W; running easterly to a point on the east shore 35° 54.0406' N - 76° 15.3007' W.
 - (A) First Creek (Rider's Creek) - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0495' N - 76° 15.2842' W; running northeasterly to a point on the east shore 35° 54.0641' N - 76° 15.2554' W.
 - (B) Furlough Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 55.6391' N - 76° 18.9797' W; running southwesterly to a point on the south shore 35° 55.6322' N - 76° 18.9907' W.
 - (iv) Alligator River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore at Cherry Ridge Landing 35° 42.2172' N - 76° 08.4686' W; running southerly to a point on the south shore 35° 42.1327' N - 76° 08.5002' W. Coastal

Waters north and Joint
Waters south of a line
running along the north side
of the Highway 64 Bridge
beginning at a point on the
west shore 35° 54.2903' N -
76° 01.6818' W; running
easterly to a point on the east
shore 35° 53.6835' N - 75°
58.8578' W.

- (A) Little Alligator
River - Inland
Waters west and
Coastal Waters east
of a line beginning
at a point on the
north shore 35°
56.7640' N - 76°
01.0299' W;
running southerly
to a point on the
south shore 35°
55.9362' N - 76°
01.2492' W.
- (B) Second Creek -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
35° 51.7616' N -
76° 03.5105' W;
running southerly
to a point on the
south shore 35°
51.1317' N - 76°
03.8003' W.
- (C) Goose Creek -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
35° 50.2658' N -
76° 03.9115' W;
running southerly
to a point on the
south shore 35°
50.2123' N - 76°
03.9120' W.
- (D) The Frying Pan -
Joint Waters by
connection with
Alligator River.
- (E) Gum Neck Landing
Ditch - Inland
Waters northeast
and Joint Waters
southwest of a line

beginning at a point
on the west shore
35° 41.6054' N -
76° 06.8215' W;
running
southeasterly to a
point on the east
shore 35° 41.5841'
N - 76° 06.7991' W.

(26) Washington County

- (a) Albemarle Sound - All waters within
this waterbody in Washington County
are designated as Coastal.
 - (i) All Manmade Tributaries -
All manmade tributaries of
Albemarle Sound within
Washington County are
designated as Joint.
 - (ii) Mackeys (Kendrick) Creek -
Inland Waters southeast and
Coastal Waters northwest of
a line beginning at a point on
the north shore 35° 56.3806'
N - 76° 36.4356' W; running
southwesterly to a point on
the south shore 35° 56.3122'
N - 76° 36.4613' W.
 - (iii) Pleasant Grove Creek
(Cherry Swamp) - Inland
Waters south and Coastal
Waters north of a line
beginning at a point on the
west shore 35° 56.4791' N -
76° 34.1624' W; running
easterly to a point on the east
shore 35° 56.5042' N - 76°
34.0319' W.
 - (iv) Chapel Swamp Creek -
Inland Waters south and
Coastal Waters north of a
line beginning at a point on
the west shore 35° 56.4150'
N - 76° 33.3494' W; running
easterly to a point on the east
shore 35° 56.4122' N - 76°
33.3091' W.
 - (v) Bull Creek - Inland Waters
west and Coastal Waters east
of a line beginning at a point
on the north shore 35°
56.9954' N - 76° 23.0291'
W; running southerly to a
point on the south shore 35°
56.9602' N - 76° 23.0282'
W.
 - (vi) Deep Creek - Inland Waters
west and Coastal Waters east
of a line beginning at a point
on the north shore 35°

- 56.1291' N - 76° 23.1179' W; running southerly to a point on the south shore 35° 56.0744' N 76° 23.1230' W.
 - (vii) Banton (Maybell) Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.0552' N - 76° 22.0664' W; running northeasterly to a point on the east shore 35° 56.1151' N - 76° 21.8760' W.
 - (b) Roanoke River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore of the Roanoke River 35° 56.5068' N - 76° 41.8858' W; running easterly to a point on the east shore 35° 56.5324' N - 76° 41.5896' W.
 - (i) Conaby Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.3779' N - 76° 42.4401' W; running easterly to a point on the east shore 35° 55.3752' N - 76° 42.3408' W.
 - (ii) Welch Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the western shore 35° 51.8458' N - 76° 45.8381' W; running easterly along the shoreline and across the mouths of the three creek entrances to a point on the east shore 35° 51.8840' N - 76° 45.6207' W.
 - (c) Scuppernong River - All waters in this waterbody in Washington County are designated as Inland.
- (2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of the line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Mauls Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;
- (3) Pungo River, east of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76° 35.1594' W on Durants Point;
- (4) Within 200 yards of any shoreline in Pungo River and its tributaries west of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76° 35.1594' W on Durants Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;
- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
- (6) Trent River and its tributaries;
- (7) Within 200 yards of any shoreline in Neuse River and its tributaries east of the Highway 17 highrise bridge and ~~west of a line beginning at a point 34° 57.9116' N - 76° 48.2240' W on Wilkinson Point; running southerly to a point 34° 56.3658' N - 76° 48.7110' W on Cherry Point; south and west of a line beginning on Maw Point at a point 35° 09.0407' N - 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N - 76° 30.8532' W; running southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N - 76° 28.5383' W; running southerly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the attendance boundary.~~

Authority G.S. 113-132; 113-134; 143B-289.52.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0112 ATTENDED GILL NET AREAS

(a) The attended gill net areas referenced in 15A NCAC 03J .0103 (g) are delineated in the following areas:

- (1) Pamlico River, west of a line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Mauls Point;

(b) The attended gill net areas referenced in 15A NCAC 03J .0103 (h) are delineated in the following coastal and joint waters of the state south of a line beginning on Roanoke Marshes Point at a point 35° 48.3693' N - 75° 43.7232' W; running southeasterly to a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay to the South Carolina State line:

- (1) All primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R

- .0104, and no trawl areas described in 15A NCAC 03R .0106 (2), (4), (5), and (6);
- (2) In the area along the Outer Banks, beginning at a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay; running northwesterly to a point 35° 45.1833' N - 75° 34.1000' W west of Pea Island; running southerly to a point 35° 40.0000' N - 75° 32.8666' W west of Beach Slough; running southeasterly and passing near Beacon "2" in Chicamicomico Channel to a point 35° 35.0000' N - 75° 29.8833' W west of the Rodanthe Pier; running southwestly to a point 35° 32.6000' N - 75° 31.8500' W west of Salvo; running southerly to a point 35° 28.4500' N - 75° 31.3500' W on Gull Island; running southerly to a point 35° 22.3000' N - 75° 33.2000' W near Beacon "2" in Avon Channel ; running southwestly to a point 35° 19.0333' N - 75° 36.3166' W near Beacon "2" in Cape Channel; running southwestly to a point 35° 15.5000' N - 75° 43.4000' W near Beacon "36" in Rollinson Channel; running southeasterly to a point 35° 14.9386' N - 75° 42.9968' W near Beacon "35" in Rollinson Channel; running southwestly to a point 35° 14.0377' N - 75° 45.9644' W near a "Danger" Beacon northwest of Austin Reef; running southwestly to a point 35° 11.4833' N - 75° 51.0833' W on Legged Lump; running southeasterly to a point 35° 10.9666' N - 75° 49.7166' W south of Legged Lump; running southwestly to a point 35° 09.3000' N - 75° 54.8166' W near the west end of Clarks Reef; running westerly to a point 35° 08.4333' N - 76° 02.5000' W near Nine Foot Shoal Channel; running southerly to a point 35° 06.4000' N - 76° 04.3333' W near North Rock; running southwestly to a point 35° 01.5833' N - 76° 11.4500' W near Beacon "HL"; running southerly to a point 35° 00.2666' N - 76° 12.2000' W; running southerly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright Island; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the Colregs Demarcation line to the point of beginning.
- (3) In Core and Back sounds, beginning at a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northwesterly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright Island; running southerly to a point 34° 58.8000' N - 76° 12.5166' W; running southeasterly to a point 34° 58.1833' N - 76° 12.3000' W; running southwestly to a point 34° 56.4833' N - 76° 13.2833' W; running

westerly to a point 34° 56.5500' N - 76° 13.6166' W; running southwestly to a point 34° 53.5500' N - 76° 16.4166' W; running northwesterly to a point 34° 53.9166' N - 76° 17.1166' W; running southerly to a point 34° 53.4166' N - 76° 17.3500' W; running southwestly to a point 34° 51.0617' N - 76° 21.0449' W; running southwestly to a point 34° 48.3137' N - 76° 24.3717' W; running southwestly to a point 34° 46.3739' N - 76° 26.1526' W; running southwestly to a point 34° 44.5795' N - 76° 27.5136' W; running southwestly to a point 34° 43.4895' N - 76° 28.9411' W near Beacon "37A"; running southwestly to a point 34° 40.4500' N - 76° 30.6833' W; running westerly to a point 34° 40.7061' N - 76° 31.5893' W near Beacon "35" in Back Sound; running westerly to a point 34° 41.3178' N - 76° 33.8092' W near Buoy "3"; running southwestly to a point 34° 39.6601' N - 76° 34.4078' W on Shackleford Banks; running easterly and northeasterly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning;

- (4) ~~Within 200 yards of any shoreline, except from October 1 through October 31, south and east of Highway 12 in Carteret County and south of a line from a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point at 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line.~~ Within 200 yards of any shoreline in the area upstream of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River.

- (5) Within 50 yards of any shoreline east of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River, except in internal coastal fishing waters located west and south of the Highway 58 Bridge at Emerald Isle during October 1 through November 30.

Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52.

15A NCAC 03R .0113 POUND NET SET PROHIBITED AREAS

The pound net set prohibited areas referenced in 15A NCAC ~~03R .0107(j)~~ 03J .0502 are delineated in the following coastal water areas of Core Sound:

- (1) The area described by a line beginning at a point 34° 58.9130' N - 76° 15.0878' W on the shoreline north of Great Ditch; running southwesterly to a point 34° 58.6399' N - 76° 15.3694' W on the south shore of Great Ditch; following the shoreline to a point 34° 58.4957' N - 76° 15.8093' W on Hog Island Point; running southwesterly to a point 34° 58.2318' N - 76° 16.0913' W near Marker "3"; running southeasterly to a point 34° 58.0773' N - 76° 15.6134' W near Beacon "2"; running southeasterly to a point 34° 57.3120' N - 76° 13.7113' W near Beacon "13"; running northeasterly to a point 34° 58.5157' N - 76° 13.2389' W near Beacon "11"; running northwesterly to the point of beginning;
- (2) The area described by a line beginning in Cedar Island Bay at a point 34° 58.2318' N - 76° 16.0913' W near Marker "3"; running southwesterly to a point 34° 57.4914' N - 76° 16.5861' W on Cedar Island Point; running southeasterly to a point 34° 56.3436' N - 76° 15.6069' W near Beacon "18"; running northerly to a point 34° 58.0773' N - 76° 15.6134' W near Beacon "2"; running northwesterly to the point of beginning;
- (3) The area described by a line beginning on the north shore of Lewis Creek at a point 34° 56.9654' N - 76° 16.7395' W; running easterly to a point 34° 56.3436' N - 76° 15.6069' W near Beacon "18"; running southwesterly to a point 34° 54.9904' N - 76° 16.5888' W near Beacon "19"; running southwesterly following the six foot contour to a point 34° 53.7599' N - 76° 18.1613' W; running southwesterly to a point 34° 50.6266' N - 76° 22.0449' W near Beacon "27"; running westerly to a point 34° 50.5496' N - 76° 22.9284' W near Beacon "28"; running southwesterly to a point 34° 49.1889' N - 76° 24.2010' W near Beacon "29"; running westerly to a point 34° 48.9514' N - 76° 24.8780' W near Beacon "31"; running southwesterly to a point 34° 45.0942' N - 76° 27.9533' W near Beacon "35"; running southwesterly to a point 34° 43.4896' N - 76° 28.9411' W near Beacon "37A"; running westerly to a point 34° 43.7782' N - 76° 30.0187' W on Bells Point; running northerly

along the shoreline of Bells Island to a point 34° 44.2190' N - 76° 30.1336' W; running northerly to a point 34° 44.2568' N - 76° 30.1419' W; running northerly along the shoreline to a point 34° 44.6759' N - 76° 30.1712' W; running northeasterly to a point 34° 45.2824' N - 76° 29.1636' W on Davis Island; running northeasterly to a point 34° 45.8196' N - 76° 28.7530' W on the north side of Spit Bay; running northeasterly along the shoreline to a point 34° 48.7982' N - 76° 26.9741' W on the south shore of Oyster Creek; running northeasterly to a point 34° 48.9701' N - 76° 26.6299' W on the north shore of Oyster Creek; running northeasterly along the shoreline to a point 34° 50.4311' N - 76° 24.9934' W on the south shore of Fulcher Creek; running northeasterly to point 34° 50.4911' N - 76° 24.9540' W on the north shore of Fulcher Creek; running northeasterly along the shoreline to a point 34° 50.9934' N - 76° 24.7727' W on the south shore of Willis Creek; running northeasterly to a point 34° 51.1866' N - 76° 24.5416' W on the south shore of Nelson Bay; running easterly to a point 34° 51.4437' N - 76° 23.6151' W on Drum Point; running easterly along the shoreline to a point 34° 51.4462' N - 76° 22.9669' W at Mill Point; running northeasterly to a point 34° 52.4143' N - 76° 20.8557' W on Steep Point; running northeasterly along the shoreline to a point 34° 54.3782' N - 76° 18.8575' W on Hall Point; running northeasterly to a point 34° 55.4257' N - 76° 17.8541' W on Lookout Point; running northeasterly along the shoreline to a point 34° 55.7679' N - 76° 17.7021' W on the south shore of Rumley Bay; running northeasterly to a point 34° 56.2513' N - 76° 17.1858' W on the north shore of Rumley Bay; running northeasterly along the shoreline to the point of beginning.

Authority G.S. 113-134; 113-181; 113-182; 143B-289.52.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on July 17, 2008.

**REGISTER CITATION TO THE
NOTICE OF TEXT****MEDICAL CARE COMMISSION**

Reporting and Investigating Abuse, Neglect or Misappropri... 10A NCAC 13D .2210* 22:14 NCR

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Scope. 10A NCAC 27G .7101* 22:13 NCR

INSURANCE, DEPARTMENT OF

Maintenance of Records 11 NCAC 19 .0102* 22:19 NCR

Complaint Records 11 NCAC 19 .0103* 22:19 NCR

Policy Records 11 NCAC 19 .0104* 22:19 NCR

Claim Records 11 NCAC 19 .0105* 22:19 NCR

Records Required for Examination 11 NCAC 19 .0106* 22:19 NCR

Definitions 11 NCAC 19 .0108* 22:19 NCR

Monitoring Activities 11 NCAC 20 .0304* 22:19 NCR

Records and Examinations 11 NCAC 20 .0409* 22:19 NCR

Records and Examinations 11 NCAC 20 .0510* 22:19 NCR

ALARM SYSTEMS LICENSING BOARD

Electrical Contracting License Requirements 12 NCAC 11 .0210* 22:08 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

Gasoline Truck Tanks and Vapor Collection Systems 15A NCAC 02D .0932* n/a G.S. 150B 21-5(a)

Other Incinerators 15A NCAC 02D .1208* n/a G.S. 150B 21-5(a)

Permit Content 15A NCAC 02Q .0508* n/a G.S. 150B 21-5(a)

PUBLIC HEALTH, COMMISSION FOR

The Hazardous Waste Permit Program-Part 270 15A NCAC 13A .0113 22:18 NCR

Definitions 15A NCAC 13B .0101* 22:15 NCR

Permit Required 15A NCAC 13B .0201* 22:15 NCR

Permit Approval or Denial 15A NCAC 13B .0203 22:15 NCR

Open Dumps 15A NCAC 13B .0502* 22:15 NCR

GENERAL CONTRACTORS, LICENSING BOARD FOR

Eligibility 21 NCAC 12 .0204* 22:16 NCR

DENTAL EXAMINERS, BOARD OF

Functions Which May Be Delegated 21 NCAC 16G .0101* 22:14 NCR

Procedures Prohibited 21 NCAC 16G .0103* 22:14 NCR

MEDICAL BOARD

| | | |
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| <u>Letter of Recommendation</u> | 21 NCAC 32B .0306 | 22:16 NCR |
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APPRAISAL BOARD

| | | |
|--|--------------------|-----------|
| <u>Fitness for Registration or Certification</u> | 21 NCAC 57A .0202* | 22:18 NCR |
| <u>Applicants Certified in Another State</u> | 21 NCAC 57A .0211* | 22:18 NCR |

REAL ESTATE COMMISSION

| | | |
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| <u>Brokerage Fees and Compensation</u> | 21 NCAC 58A .0109* | 22:16 NCR |
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SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

| | | |
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| <u>Continuing Education</u> | 21 NCAC 64 .0218* | 22:17 NCR |
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STATE PERSONNEL COMMISSION

| | | |
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| <u>Appointment to a Position</u> | 25 NCAC 01H .0629 | 22:18 NCR |
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TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION

(a) A facility shall take measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including orientation and instruction of facility staff on patients' rights, and the screening of and requesting of references for all prospective employees.

(b) The administrator shall ensure that the Health Care Personnel Registry Section of the Division of Health Service Regulation is notified within 24 hours of the health care facility becoming aware of all allegations against health care personnel as defined in G.S. 131E-256(a)(1), which includes abuse, neglect, misappropriation of resident property, misappropriation of the property of the facility, diversion of drugs belonging to a health care facility or a resident, fraud against a health care facility or a resident, and injuries of unknown source in accordance with 42 CFR subsection 483.13 which is incorporated by reference.

(c) The facility shall investigate allegations of patient abuse, patient neglect, or misappropriation of patient property in accordance with 42 CFR subsection 483.13 which is incorporated by reference, including subsequent amendments, and shall document all relevant information pertaining to such investigation and shall take the necessary steps to prevent further incidents of abuse, neglect or misappropriation of patient property while the investigation is in progress. The Code of Federal Regulations, Title 42, Public Health, Part 430 to the end, revised as of October 1, 2005, Description Item 572-B, may be purchased from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000, by a direct telephone call to the G.P.O. at (866) 512-1800 or online at

<http://bookstore.gpo.gov/> or accessed electronically at <http://ecfr.gpoaccess.gov/>.

(d) The administrator shall ensure that the report of investigation is printed or typed and postmarked to the Health Care Personnel Registry Section of the Division of Health Service Regulation within five working days of the allegation. The report shall include the date and time of the alleged incident of abuse, neglect or misappropriation of property; the patient's full name and room number; details of the allegation and any injury; names of the accused and any witnesses; names of the facility staff who investigated the allegation; results of the investigation; and any corrective action that may have been taken by the facility.

History Note: Authority G.S. 131E-104; 131E-131; 131E-255; 131E-256;
Eff. January 1, 1996;
Amended Eff. August 1, 2008; October 1, 1998.

10A NCAC 27G .7101 SCOPE

(a) The rules in this Section apply to target populations that are groups of people considered most in need of services available considering resources within the public system and who are given service priority.

History Note: Authority G.S. 122C-112.1;
Eff. August 1, 2008.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 19 .0102 MAINTENANCE OF RECORDS

(a) Every insurer licensed to do business in this State shall maintain for at least five years all records, books, documents,

and other business records that are required by this Section and by Chapter 58 of the North Carolina General Statutes.

(b) Every agency, agent, broker, or producer of record shall maintain a file for each policy sold. The file shall contain all work papers and written communications in his or her possession pertaining to that policy. These records shall be retained for at least five years after the final disposition or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-131; 58-2-132; 58-2-133; 58-2-134; 58-2-185; 58-2-190; 58-2-195; 58-2-200; 58-7-50; 58-20-30; 58-21-40; 58-21-75; 58-22-20(6); 58-23-25; 58-24-135; 58-27-10; 58-36-85(1); 58-39-70; 58-41-15; 58-41-20; 58-41-25; 58-47-100; 58-48-65; 58-49-55; 58-56-16; 58-62-66; 58-63-20; 58-64-55; 58-65-105; 58-67-100; Eff. March 1, 1993; Amended Eff. January 1, 2009; August 1, 1998.

11 NCAC 19 .0103 COMPLAINT RECORDS

Each insurer or its agents shall maintain or cause to be maintained an itemization register or log of every written complaint listing the Department's file number, the name of the insured, the nature of the complaint, the insurer's department subject to the complaint, the policy or claim number of the insured, and the final disposition of the complaint. These records shall be retained for at least five years after the final disposition of the complaint or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-131; 58-2-132; 58-2-133; 58-2-134; 58-2-195; 58-7-50; 58-20-30; 58-21-40; 58-36-85(1); 58-47-100; 58-21-75; 58-22-20(6); 58-23-25; 58-24-135; 58-27-10; 58-39-70; 58-48-65; 58-49-55; 58-56-16; 58-62-66; 58-63-20; 58-64-55; 58-65-105; 58-67-100; Eff. March 1, 1993; Amended Eff. January 1, 2009; August 1, 1998.

11 NCAC 19 .0104 POLICY RECORDS

Each insurer or its agents shall maintain or cause to be maintained a record of each policy that specifies the policy period, basis for rating, and if terminated, documentation supporting policy termination by the insurer or policyholder, and accounting records indicating return premium amounts. These records shall be retained for at least five years after the termination of the policy or, for domestic companies until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-131; 58-2-132; 58-2-133; 58-2-134; 58-2-190; 58-2-195; 58-7-50; 58-20-30; 58-21-40; 58-21-75; 58-22-20(6); 58-23-25; 58-24-135; 58-27-10; 58-36-85(1); 58-39-70; 58-47-100; 58-48-65; 58-49-55; 58-56-16; 58-62-66; 58-63-20; 58-64-55; 58-65-105; 58-67-100;

Eff. March 1, 1993;

Amended Eff. January 1, 2009; August 1, 1998.

11 NCAC 19 .0105 CLAIM RECORDS

Each insurer or its agents shall maintain or cause to be maintained a record of all claim reports that specifies the inception, handling, and disposition of each claim. These records shall be retained for at least five years after the claim is settled or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-131; 58-2-132; 58-2-133; 58-2-134; 58-2-190; 58-2-195; 58-20-30; 58-21-40; 58-21-75; 58-22-20(6); 58-23-25; 58-24-135; 58-27-10; 58-36-85(1); 58-39-70; 58-48-65; 58-47-100; 58-49-55; 58-56-16; 58-62-66; 58-63-20; 58-64-55; 58-65-105; 58-67-100; Eff. March 1, 1993; Amended Eff. January 1, 2009.

11 NCAC 19 .0106 RECORDS REQUIRED FOR EXAMINATION

(a) Market conduct examinations of property and liability insurers. Insurers being examined by the Department shall provide examiners access to information about the following areas of operation:

- (1) Company overview: history and profile, company operations and management, and certificates of authority;
- (2) Policyholder treatment: consumer complaints;
- (3) Marketing: policy forms and filings, sales and advertising, agency management;
- (4) Underwriting and rating practices: personal lines and commercial lines; all terminations (cancellations and nonrenewals) and declinations or rejections; and
- (5) Claims practices: organization and procedures, closed with payment, closed without payment, total loss settlements (salvage), subrogation, and litigation.

(b) Market conduct examinations of life and health insurers. Insurers being examined by the Department shall provide examiners access to information about the following areas of operation:

- (1) Company overview: history and profile, company operations and management, and certificates of authority;
- (2) Policyholder treatment: consumer complaints, nonforfeiture benefits (policy loans, cash surrenders, extended term and reduced paid-up);
- (3) Marketing: policy forms and filings, sales and advertising, and agency management;
- (4) Underwriting and rating practices: life (individual and group), health (individual and group), annuities (individual and group); declinations (individual and group); annuity suitability questionnaires; and

(5) Claims practices: life (individual and group), health (individual and group) annuities (individual and group).

(c) Market conduct examinations of full service and single service health maintenance organizations. Health maintenance organizations being examined by the Department shall provide examiners access to information about the following areas of operation:

- (1) Company overview: articles of incorporation, bylaws, history and profile, company operations and management, risk management policies, and data protection plan;
- (2) Provider delivery systems: provider manual, provider contracting policies and procedures, provider directories, and availability and accessibility standards and monitoring reports related to these standards;
- (3) Management agreements: management agreements, intermediary contracts, intermediary certifications, and provider agreements;
- (4) Utilization management: utilization management plan, utilization management policies and procedures, annual utilization management certifications, utilization management monthly telephone reports, precertification records, and appeals of noncertification records;
- (5) Quality management: quality management plan, quality management policies and procedures, quality management committee minutes, quality of care complaints, and quality management annual program evaluation;
- (6) Provider credentialing: credentialing plan, credentialing policies and procedures, and credential files;
- (7) Claims practices: policies and procedures, reports of processed and denied claims, claims records;
- (8) Policyholder treatment: member services' policies and procedures, member services complaint logs, member complaint records, member services monthly telephone reports, late enrollment guidelines, and member materials;
- (9) Marketing: agent and broker files, agent appointment and termination listings, marketing training materials, sales and advertising materials, and policy forms and filings;
- (10) Underwriting and rating practices: underwriting manual, annual rate filings, overview of rate development for each filed methodology, and underwriting files; and
- (11) Oversight of delegated functions: oversight committee activity, oversight monitoring tools, and audits.

(d) Market conduct examinations of managed care plans. Managed care plans being examined by the Department shall provide examiners access to information about the areas of operation referenced in Paragraphs (b) and (c) of this Rule.

(e) If the Department requests specific records relative to the areas of operations referenced in Paragraphs (a), (b), (c), and (d) of this Rule by prior written notification or in a pre-examination conference, the records shall be made available to the examinations staff when the staff arrives at the insurer's office, or shall be sent to the Department if requested.

(f) Additional records shall be made available by the insurer on the date of arrival if the Department has requested that those records be made available for the examination. Additional records, not previously requested, may be required during and after an examination. Work space that will accommodate the exam team and equipment shall be provided by the insurer to the examiners to expedite the examiners' review of the records.

(g) Information about the areas of operation referenced in Paragraphs (a), (b), (c), and (d) of this Rule shall be maintained by every insurer for at least five years.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-131; 58-2-132; 58-2-133; 58-2-134; 58-2-190; 58-2-195; 58-7-50; 58-20-30; 58-21-40; 58-21-75; 58-22-20(6); 58-23-25; 58-24-135; 58-27-10; 58-36-85(1); 58-39-70; 58-47-100; 58-48-65; 58-49-55; 58-50-56, 58-50-61, 58-50-62, 58-56-16; 58-62-66; 58-63-20; 58-64-55; 58-65-105; 58-67-10; 58-67-11; 58-67-100;

Eff. March 1, 1993;

Amended Eff. January 1, 2009; August 1, 1998.

11 NCAC 19 .0108 DEFINITIONS

As used in this Chapter:

- (1) Examination is defined in G.S. 58-2-131(b)(2).
- (2) Examiner is defined in G.S. 58-2-131(b)(3).
- (3) Health maintenance organization is defined in G.S. 58-67-5(f).
- (4) Insurer includes a health maintenance organization, service corporation, and a multiple employer welfare arrangement.
- (5) Managed care plan is defined in G.S. 58-50-61(a)(11).
- (6) Provider is defined in G.S. 58-67-5(h).

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-131; 58-2-132; 58-2-133; 58-2-134; 58-2-190; 58-2-195; 58-7-50; 58-20-30; 58-21-40; 58-21-75; 58-22-20(6); 58-23-25; 58-24-135; 58-27-10; 58-36-85(1); 58-39-70; 58-47-100; 58-48-65; 58-49-55; 58-50-56, 58-50-61, 58-50-62, 58-56-16; 58-62-66; 58-63-20; 58-64-55; 58-65-105; 58-67-10; 58-67-11; 58-67-100;

Eff. January 1, 2009.

11 NCAC 20 .0304 MONITORING ACTIVITIES

Each carrier shall, by means of site visits or review of information gathered by the carrier, monitor compliance with

this Section and evaluate provider availability and accessibility at least annually to ensure that the needs of its members are met. The documentation of these activities shall be maintained by domestic carriers for a period of five years or until the completion of the next quinquennial examination conducted by the Department, whichever is later. Foreign carriers shall maintain the documentation of these activities for a period of at least five years.

History Note: Authority G.S. 58-2-40(1); 58-2-131; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-100; 58-67-140; 58-67-150;
Eff. October 1, 1996;
Amended Eff. January 1, 2009.

11 NCAC 20 .0409 RECORDS AND EXAMINATIONS

Each domestic carrier shall maintain or cause to be maintained all records related to credential verification for a period of five years or until the completion of the next quinquennial examination conducted by the Department, whichever is later. Foreign carriers shall maintain the documentation of these activities for a period of at least five years.

History Note: Authority G.S. 58-2-40(1); 58-2-131; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-100; 58-67-140; 58-67-150;
Eff. October 1, 1996;
Amended Eff. January 1, 2009.

11 NCAC 20 .0510 RECORDS AND EXAMINATIONS

Each domestic HMO shall maintain or cause to be maintained records of quality management plans, procedures, activities, studies, and operations. The records shall be accessible to the Commissioner and shall be retained for a period of five years or until the completion of the next quinquennial examination conducted by the Department, whichever is later. Foreign HMOs shall maintain the documentation of these activities for a period of at least five years.

History Note: Authority G.S. 58-2-40(1); 58-67-5; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-100; 58-67-140; 58-67-150;
Eff. October 1, 1996;
Amended Eff. January 1, 2009.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 11 .0210 ELECTRICAL CONTRACTING LICENSE REQUIREMENTS

(a) Each firm, association, corporation, department, division, or branch office required to be licensed pursuant to G.S. 74D-2(a) must employ on a full-time basis a licensee or registered employee who holds a license for either a SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors. Pursuant to 12 NCAC 11 .0206, each firm, association, corporation, department, division, or branch office must maintain in its records a copy of the licensee's or registered employee's Electrical Contractors License.

(b) In the event the licensee holding the electrical contractor's license ceases to perform his duties, the business entity shall notify the Board in writing within 10 working days. The business entity must obtain a substitute electrical contractor licensee within 30 days after the original electrical licensee ceases to serve.

(c) If a company provides only alarm systems monitoring services and submits a written request to the Board certifying that they provide only monitoring services and do not sell, install, service, or respond to burglar alarms, the Board shall exempt the company from compliance with this rule. If the company later elects to sell, install, service or respond to burglar alarms, then the company shall be required to fulfill the requirements of this rule.

History Note: Authority G.S. 74D-2(a); 74D-5;
Eff. January 1, 1995;
Temporary Adoption Eff. May 18, 1995;
Amended Eff. September 1, 2008; May 1, 1999; October 1, 1995.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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 gasoline storage and distribution facility that has an average daily throughput of less than 20,000 gallons of gasoline and which 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) breakout tanks of an interstate oil pipeline facility; or
 - (B) 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 more 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.
- (5) The owner or operator of a gasoline truck tanks with a vapor collection system shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, 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:
 - (A) the gasoline truck tank identification number;
 - (B) the initial test pressure and the time of the reading;
 - (C) the final test pressure and the time of the reading;
 - (D) the initial test vacuum and the time of reading;
 - (E) the final test vacuum and the time of the reading;
 - (F) the date and location of the tests;
 - (G) the NC sticker number issued; and
 - (H) the final change in pressure of the internal vapor value test.

(6) 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 at least 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.

(d) Bulk Gasoline Terminals, Bulk Gasoline Plants Equipped With Vapor Balance or Vapor Control Systems

- (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 Subparagraph (2) of this Paragraph:
 - (A) For bulk gasoline plants, 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 Subparagraph (2) of this Paragraph;
 - (B) For bulk gasoline terminals, the vapor collection system or vapor control system shall be repaired following the procedures in Rule .0927 of this Section.
- (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.
- (5) The owner or operator of a 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 shall maintain records of all certification testing and repairs. The records shall identify the 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.

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

15A NCAC 02D .1208 OTHER INCINERATORS

(a) Applicability.

- (1) This Rule applies to any incinerator not covered under Rules .1203 through .1207, or .1210 through .1212 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 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-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.

Eff. July 1, 1998;

Amended Eff. August 1, 2008; June 1, 2008; July 1, 2007; January 1, 2005; August 1, 2002; July 1, 2000; July 1, 1999.

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:
 - (A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111.
 - (B) deviations quarterly from permit requirements not covered under 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken.
 - (3) The responsible official to certify all deviations from permit requirements.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);

(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;
- (5) 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;
- (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. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001; July 1, 2000.

15A NCAC 13A .0113 THE HAZARDOUS WASTE PERMIT PROGRAM - PART 270

(a) 40 CFR 270.1 through 270.6 (Subpart A), "General Information", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).

(b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit Application", are incorporated by reference including subsequent amendments and editions.

(c) The following are additional Part B information requirements for all hazardous waste facilities:

- (1) Description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);
- (2) A description of the hydrological and geological properties of the site including flood plains, depth to water table, ground water travel time, seasonal and long-term groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water

users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality information of both surface and groundwater within 1000 feet of the facility, and a description of the local air quality;

- (3) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
- (4) A description of local land use including residential, industrial, commercial, recreational, agricultural and the proximity to schools and airports;
- (5) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;
- (6) A description of facility aesthetic factors including visibility, appearance, and noise level; and
- (7) A description of any other objective factors that the Department determines are reasonably related and relevant to the proper siting and operation of the facility.

(d) In addition to the specific Part B information requirements for hazardous waste disposal facilities, owners and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:

- (1) Design drawings and specifications of the leachate collection and removal system;
- (2) Design drawings and specifications of the artificial impervious liner;
- (3) Design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and
- (4) A description of how hazardous wastes will be treated prior to placement in the facility.

(e) In addition to the specific Part B information requirements for surface impoundments, owners and operators of surface impoundments shall provide the following information:

- (1) Design drawings and specifications of the leachate collection and removal system;
- (2) Design drawings and specifications of all artificial impervious liners;
- (3) Design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and
- (4) Design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.

(f) 40 CFR 270.30 through 270.33 (Subpart C), "Permit Conditions", are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 270.40 through 270.43 (Subpart D), "Changes to Permit", are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of Permits", are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 270.60 through 270.68 (Subpart F), "Special Forms of Permits", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 270.67 and 270.68 are not incorporated by reference.

(j) 40 CFR 270.70 through 270.73 (Subpart G), "Interim Status", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1985" contained in 40 CFR 270.73(c).

(k) 40 CFR 270.235, (Subpart I), "Integration with Maximum Achievable Control Technology (MACT) Standards", is incorporated by reference including subsequent amendments and editions.

(l) The following are additional permitting requirements for hazardous waste facilities.

- (1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit or any time thereafter specified by the Department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:

- (A) A brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);
- (B) The name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation; and
- (C) A list identifying any legal action taken against any facility identified in Part (l)(1)(B) of this Rule involving:
 - (i) any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;
 - (ii) any judicial determination of liability or conviction under

- any state or federal law or local ordinance relating to waste management or environmental protection; and
 - (iii) any pending administrative or judicial proceeding of the type described in this Part.
- (D) The identification of each action described in Part (l)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.
- (2) In addition to the information set forth in Subparagraph (l)(1) of this Rule, the Department shall require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. Such information may include:
 - (A) The names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;
 - (B) The name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and
 - (C) A copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (l)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.
- (3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, such information shall not be required.
- (m) An applicant for a new, or modification to an existing, commercial facility permit, shall provide a description and justification of the need for the facility.
- (n) Requirements for Off-site Recycling Facilities.
 - (1) The permit requirements of 15A NCAC 13A .0109 apply to owners and operators of off-site recycling facilities unless excluded in Subparagraph (2) of Paragraph (n).
 - (2) Requirements of 15A NCAC 13A .0113(n)(4), (5), (6), (7) and (8) do not apply to owners and operators of off-site recycling facilities that recycle only precious metals as described in 40 CFR 266.70(a), as incorporated by reference in 15A NCAC 13A .0111(b).
- (3) Off-site facilities that recycle precious metals shall follow the regulations as described in 15A NCAC 13A .0111(b).
- (4) Notwithstanding any other statement of applicability, the following provisions of 40 CFR Part 264, as incorporated by reference, shall apply to owners and operators of off-site recycling facilities except those excluded in 15A NCAC 13A .0113(n)(2):
 - (A) Subpart B - General Facility Standards;
 - (B) Subpart C - Preparedness and Prevention;
 - (C) Subpart D - Contingency Plan and Emergency Procedures;
 - (D) Subpart E - Manifest System, Recordkeeping and Reporting;
 - (E) Subpart G - Closure and Post-closure;
 - (F) Subpart H - Financial Requirements;
 - (G) Subpart I - Use and Management of Containers;
 - (H) Subpart J - Tank Systems;
 - (I) 264.101 - Corrective Action for Solid Waste Management Units;
 - (J) Subpart X - Miscellaneous Units; and
 - (K) Subpart DD - Containment Buildings.
- (5) The requirements listed in Subparagraph (n)(4) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.
- (6) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:
 - (A) The substitute financial requirements of Rule .0109(i)(1), (2) and (4); and
 - (B) The additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).
- (7) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.
- (8) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
 - (A) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;
 - (B) The location of all hazardous waste within the facility and the quantity at each location. This information must include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
 - (C) Documentation of the fate of all hazardous wastes received from

off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.

(o) Permit Fees for Commercial Hazardous Waste Facilities.

- (1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee as follows:
 - (A) Class 1 permit modification \$100;
 - (B) Class 2 permit modification \$1,000; or
 - (C) Class 3 permit modification \$5,000.
- Note: Class 1 permit modifications which do not require prior approval of the Division Director are excluded from the fee requirement.
- (2) The application fee for a new permit, permit renewal, or permit modification must accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

History Note: Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c); 150B-21.6;

Eff. November 19, 1980;

Amended Eff. November 1, 1989; June 1, 1988; February 1, 1988; December 1, 1987;

Transferred and Recodified from 10 NCAC 10F .0034 April 4, 1990;

Amended Eff. August 1, 1990;

Recodified from 15A NCAC 13A .0014 Eff. August 30, 1990;

Amended Eff. April 1, 1993; August 1, 1991; October 1, 1990;

Recodified from 15A NCAC 13A .0013 Eff. December 20, 1996;

Amended Eff. August 1, 2008; April 1, 2006; August 1, 2004;

April 1, 2001; August 1, 2000.

15A NCAC 13B .0101 DEFINITIONS

The definitions in G.S. 130A-290 and the following definitions shall apply throughout this Subchapter:

- (1) "Agricultural Waste" means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, and vegetable matter.
- (2) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
- (3) "Backyard Composting" means the on-site composting of yard waste from residential property by the owner or tenant for non-commercial use.
- (4) "Blood products" means all bulk blood and blood products.
- (5) "Cell" means compacted solid waste completely enveloped by a compacted cover material.
- (6) "Compost" means decomposed, humus-like organic matter, free from pathogens, offensive

odors, toxins or materials harmful at the point of end use. Compost is suitable for use as a soil conditioner with varying nutrient values.

- (7) "Compost Facility" means a solid waste facility which utilizes a controlled biological process of degrading non-hazardous solid waste. A facility may include materials processing and hauling equipment; structures to control drainage; and structures to collect and treat leachate; and storage areas for the incoming waste, the final products, and residual materials.
- (8) "Composting" means the controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, pathogen-free final product resulting in volume reduction of 30 - 75 percent.
- (9) "Composting Pad" means a surface, whether soil or manufactured, where the process of composting takes place, and where raw and finished materials are stored.
- (10) "Curing" means the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.
- (11) "Demolition landfill" means a sanitary landfill that was limited to receiving stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth or other solid wastes approved by the Division, which either ceased operation or was converted to a Land Clearing and Inert Debris Landfill pursuant to Rule .0563.
- (12) "Division" means the Director of the Division of Waste Management or the Director's authorized representative.
- (13) "Erosion control measure, structure, or device" means physical devices constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.
- (14) "Explosive gas" means Methane (CH₄).
- (15) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended.
- (16) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the 100-year flood.
- (17) "Foreign Matter" means metals, glass, plastics, rubber, bones, and leather, but does not include sand, grit, rocks or other similar materials.
- (18) "Hazardous waste landfill facility" means any facility or any portion of a facility for disposal

- of hazardous waste on or in land in accordance with rules promulgated under this article.
- (19) "Incineration" means the process of burning solid, semi-solid or gaseous combustible wastes to an inoffensive gas and a residue containing little or no combustible material.
- (20) "Industrial Process Waste" means any solid, semi-solid, or liquid waste generated by a manufacturing or processing plant which is a result of the manufacturing or processing process. This definition does not include packaging materials associated with such activities.
- (21) "Industrial Solid Waste Landfill" means a facility for the land disposal of "industrial solid waste" as defined in Item (11) of Rule .1602 of this Subchapter, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257.
- (22) "Land clearing and inert debris landfill" means a facility for the land disposal of land clearing waste, concrete, brick, concrete block, uncontaminated soil, gravel and rock, untreated and unpainted wood, and yard trash.
- (23) "Land clearing waste" means solid waste which is generated solely from land clearing activities such as stumps, trees, limbs, brush, grass, and other naturally occurring vegetative material.
- (24) "Leachate" means any liquid, including any suspended components in liquid, that has percolated through or drained from solid waste.
- (25) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees Celsius and atmospheric pressure.
- (26) "Microbiological wastes" means and includes cultures and stocks of etiologic agents. The term includes cultures of specimens from medical, pathological, pharmaceutical, research, commercial, and industrial laboratories.
- (27) "Mulch" means a protective covering of various substances, especially organic, to which no plant food has been added and for which no plant food is claimed. Mulch is generally placed around plants to prevent erosion, compaction, evaporation of moisture, freezing of roots, and weed growth.
- (28) "One-hundred year flood" means a flood that has a one percent or less chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.
- (29) "Open burning" means any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar devices.
- (30) "Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.
- (31) "Pathological wastes" means and includes human tissues, organs, body parts, secretions and excretions, blood and body fluids that are removed during surgery and autopsies; and the carcasses and body parts of all animals that were exposed to pathogens in research, were used in the production of biologicals or in the in vivo testing of pharmaceuticals, or that died of known or suspected infectious disease.
- (32) "Putrescible" means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal and carcasses.
- (33) "Radioactive waste material" means any waste containing radioactive material as defined in G.S. 104E-5(14).
- (34) "Regulated Medical Waste" means blood and body fluids in individual containers in volumes greater than 20 ml, microbiological waste, and pathological waste that have not been treated pursuant to Rule .1207 of this Subchapter.
- (35) "Residues from Agricultural Products and Processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations that are non-toxic, non-hazardous, and contain no domestic wastewater.
- (36) "Respondent" means the person against whom an administrative penalty has been assessed.
- (37) "Runoff" means the portion of precipitation that drains from an area as surface flow.
- (38) "Sediment" means solid particulate matter both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- (39) "Sharps" means and includes needles, syringes, and scalpel blades.
- (40) "Siltation" means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures and which has been transported from its point of origin within the site land-disturbing activity and which has been deposited, or is in suspension in water.
- (41) "Silviculture Waste" means waste materials produced from the care and cultivation of forest trees, including bark and woodchips.
- (42) "Soil Group I" means soil group I as defined in 15A NCAC 13B .0807(a)(1)(A) of the Septage Management Rules.

- (43) "Soil Scientist" means an individual who is a North Carolina Licensed Soil Scientist, a Certified Professional Soil Scientist or Soil Specialist by American Registry of Certified Professional in Agronomy, Crops, and Soils (ARCPACS) or an individual that demonstrates equivalent experience or education.
- (44) "Solid waste collector" means any person who collects or transports solid waste by whatever means, including but not limited to, highway, rail, and navigable waterway.
- (45) "Solid waste generator" means any person who produces solid waste.
- (46) "Spoiled food" means any food which has been removed from sale by the United States Department of Agriculture, North Carolina Department of Agriculture, Food and Drug Administration, or any other regulatory agency having jurisdiction in determining that food is unfit for consumption.
- (47) "Steam sterilization" means treatment by steam at high temperatures for sufficient time to render infectious waste non-infectious.
- (48) "Transfer facility" means a permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.
- (49) "Treatment and processing facility" means a facility used in the treatment and processing of solid waste for final disposal or for utilization by reclaiming or recycling.
- (50) "Vector" means a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.
- (51) "Water supply watershed" means an area from which water drains to a point or impoundment, and the water is then used as a source for a public water supply.
- (52) "Water table" means the upper limit of the portion of the ground wholly saturated with water.
- (53) "Windrow" means an elongated compost pile (typically eight feet wide by ten feet high).
- (54) "Working face" means that portion of the land disposal site where solid wastes are discharged, spread, and compacted prior to the placement of cover material.
- (55) "Yard trash" means solid waste resulting from landscaping and yard maintenance such as brush, grass, tree limbs, and similar vegetative material.
- (56) "Yard Waste" means "Yard Trash" and "Land-clearing Debris" as defined in G.S. 130A-290, including stumps, limbs, leaves, grass, and untreated wood.

Eff. April 1, 1982;

Amended Eff. August 1, 2008; October 1, 1995; January 4, 1993; December 1, 1991; February 1, 1991.

15A NCAC 13B .0201 PERMIT REQUIRED

(a) No person shall treat, process, store, or dispose of solid waste or arrange for the treatment, processing, storage or disposal of solid waste except at a solid waste management facility permitted by the Division for such activity, except as provided in G.S. 130A-294(b).

(b) No person shall cause, suffer, allow, or permit the treatment, storage, or processing of solid waste upon any real or personal property owned, operated, leased, or in any way controlled by that person without first obtaining a permit for a solid waste management facility from the Division authorizing such activity, except as provided in G.S. 130A-294(b).

(c) No solid waste management facility shall be established, operated, maintained, constructed, expanded or modified without an appropriate and currently valid permit issued by the Division. It is the responsibility of every owner and operator of a proposed solid waste management facility to apply for a permit for the facility. The term "owner" shall include record owners of the land where the facility is located or proposed to be located and holders of any leasehold interest, however denominated, in any part of the land or structures where the facility is located or proposed to be located.

(d) The solid waste management facility permit, except for land clearing and inert debris permits, shall have two parts, as follows:

- (1) A permit to construct a solid waste management facility shall be issued by the Division after site and construction plans have been approved and it has been determined that the facility can be operated in accordance with Article 9 of Chapter 130A and the applicable rules set forth in this Subchapter, and other applicable state, federal and local laws. An applicant shall not clear or grade land or commence construction for a solid waste management facility until a construction permit has been issued.

- (2) A permit to operate a solid waste management facility may not be issued unless it has been determined that the facility has been constructed in accordance with the construction permit, that any pre-operative conditions of the construction permit have been met, and that the construction permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.

(e) Land clearing and inert debris facilities may be issued a combined permit to construct and operate the facility.

(f) Land clearing and inert debris facilities subject to Rule .0563 Item (1) may construct and operate after notification as provided for under Rule .0563 Item (2).

(g) Permits, including those issued prior to the effective date of this Rule, shall be reviewed every five years. Modifications, where necessary, shall be made in accordance with rules in effect at the time of review for those areas of a permitted

History Note: Authority G.S. 130A-294;

sanitary landfill site which have not previously received solid waste.

(h) All solid waste management facilities shall be operated in conformity with these Rules and in such a manner as to prevent the creation of a nuisance, unsanitary conditions, or potential public health hazard.

History Note: Authority G.S. 130A-294;

Eff. April 1, 1982;

Amended Eff. January 4, 1993; February 1, 1991; March 1, 1988;

Filed as a Temporary Amendment Eff. May 19, 1993 to expire on October 9, 1993 or until the permanent rule becomes effective, whichever is sooner;

Temporary Amendment Expired Eff. October 9, 1993;

Amended Eff. August 1, 2008.

15A NCAC 13B .0203 PERMIT APPROVAL OR DENIAL

(a) Upon receipt of a permit application, the Division shall review the request to assure that all provisions of these Rules, the Solid Waste Management Act, and the Federal Act, will be met. Based on its review, the Division shall either approve or deny the request in writing.

(b) When an application is approved, the applicant shall be provided a permit. If the approval is contingent upon certain conditions being met by the applicant, such conditions shall be noted on the permit.

(c) Before receiving solid waste at a newly permitted facility, an inspection shall be made by a representative of the Division to assure that the site is prepared in accordance with the permit, and the permit shall be recorded with the Register of Deeds in the county where the facility is located in accordance with the recordation requirements set out in 15A NCAC 13B .0204.

(d) By receiving solid waste at a permitted facility, the permittee(s) shall be considered to have accepted the conditions of the permit and shall comply with the conditions of the permit.

(e) When the Division denies a permit for a solid waste management facility, it shall state in writing the reason for such denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit. A denial shall be without prejudice to the submission of a future application for a permit after revisions are made to meet objections specified as reasons for denial. Reasons for denial include:

- (1) Submission of incomplete information;
- (2) Failure to meet applicable requirements of this Subchapter; or
- (3) Failure to meet any applicable requirement or standard set forth in Article 9 of Chapter 130A of the N.C. General Statutes; or
- (4) Any other reasons which would prevent the solid waste facility or site from being operated in accordance with Article 9, Chapter 130A of the General Statutes, these Rules, the Federal Act, or acceptable engineering or public health and environmental standards.

(f) Appeals of permit decisions shall be in accordance with Article 3 of N.C.G.S., Chapter 150B, and the Rules adopted thereunder.

History Note: Authority G.S. 130A-294;

Eff. April 1, 1982;

Amended Eff. August 1, 2008; February 1, 1991; August 1, 1988; February 1, 1988.

15A NCAC 13B .0502 OPEN DUMPS

Any owner or operator of an open dump, as defined by G.S. 130A-290(20), for disposal of solid waste or any person(s) who owns, leases or otherwise controls land on which such an open dump is or has been operating shall immediately close the site in accordance with the following requirements:

- (1) Implement effective vector control, including baiting for at least two weeks after closing, to prevent vector migration to adjacent properties;
- (2) If the site is deemed suitable by the Division, compact and cover existing solid waste in place with one foot or more of suitable compacted earth. Closing the site by this method is conditioned upon the further requirement that the waste disposal location and development and conveyance restrictions prohibiting the disturbance of the solid waste disposal site be recorded by the property owner with the Register of Deeds in the county where the site is located. The Division shall provide the property owner with the development and conveyance restrictions to be recorded for that site. Copies of the recordation procedure may be obtained from and inspected at the Division;
- (3) If the site is deemed unsuitable by the Division, remove and place solid waste in an approved disposal site or facility;
- (4) Implement erosion control measures by grading and seeding; and
- (5) Prevent unauthorized entry to the site by means of gates, chains, berms, fences, and other security measures approved by the Division and post signs indicating closure for a period designated by the Division not to exceed one year.

History Note: Authority G.S. 130A-294;

Eff. April 1, 1982;

Amended Eff. August 1, 2008; January 4, 1993; December 1, 1990; August 1, 1988; February 1, 1988.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0204 ELIGIBILITY

(a) Limited License. The applicant for a limited license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000.00);
- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant; and
- (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within seven years prior to the filing of the application. This requirement does not apply to shareholders of an applicant that is a publicly traded corporation.

(b) Intermediate License. The applicant for an intermediate license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000.00), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(c) Unlimited License. The applicant for an unlimited license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000.00), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;

- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule shall subject the applicant to additional disciplinary action by the Board.

(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of the rules in this Chapter to be eligible to be licensed in North Carolina as a general contractor.

(f) Accounting and reporting standards. Financial statements submitted by applicants to the Board shall conform to United States "generally accepted accounting principles" (GAAP). The Board shall accept non-GAAP financial statements from individual applicants wherein the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent." The Board shall accept non-GAAP financial statements from applicants wherein the only exception to GAAP is that the applicant is not combined with a related entity into one financial statement pursuant to FIN 46R. The terminologies, working capital, balance sheet with current and fixed assets, and current and long term liabilities, used herein shall be construed

in accordance with those standards referred to as "generally accepted accounting principles" (GAAP) as promulgated by the Financial Accounting Standards Board (FASB). The terminologies, audited financial statements and unqualified opinion, used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" (GAAS).

*History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
ARRC Objection March 19, 1987;
Amended Eff. May 1, 1989; August 1, 1987;
Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989;
Amended Eff. December 1, 1989;
Temporary Amendment Eff. May 31, 1996;
RRC Removed Objection Eff. October 17, 1996;
Amended Eff. August 1, 1998; April 1, 1997;
Temporary Amendment Eff. August 24, 1998;
Amended Eff. August 1, 2008; April 1, 2006; March 1, 2005;
August 1, 2002; April 1, 2001; August 1, 2000.*

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16G .0101 FUNCTIONS WHICH MAY BE DELEGATED

A dental hygienist may be delegated appropriate functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0201, functions which may be delegated to a dental hygienist include:

- (1) Taking impressions for study models and opposing casts which will not be used for construction of permanent dental appliances, but which may be used for the fabrication of adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) Applying sealants to teeth that do not require mechanical alteration prior to the application of such sealants, provided that a dentist has examined the patient and prescribed the procedure;
- (3) Inserting matrix bands and wedges;
- (4) Placing cavity bases and liners;
- (5) Placing and/or removing rubber dams;
- (6) Cementing temporary restorations using temporary cement;
- (7) Applying acid etch materials/rinses;
- (8) Applying bonding agents;
- (9) Removing periodontal dressings;
- (10) Removing sutures;
- (11) Placing gingival retraction cord;
- (12) Removing excess cement;

- (13) Flushing, drying and temporarily closing root canals;
- (14) Placing and removing temporary restorations;
- (15) Placing and tying in or untying and removing orthodontic arch wires;
- (16) Inserting interdental spacers;
- (17) Fitting (sizing) orthodontic bands or brackets;
- (18) Applying dentin desensitizing solutions;
- (19) Performing periodontal screening;
- (20) Performing periodontal probing;
- (21) Performing subgingival exploration for or removal of hard or soft deposits;
- (22) Performing sulcular irrigation;
- (23) Applying sulcular antimicrobial or antibiotic agents which are resorbable;
- (24) Performing extra-oral adjustments which affect function, fit, or occlusion of any temporary restoration or appliance; and
- (25) Initially forming and sizing orthodontic arch wires and place arch wires after final adjustment and approval by the dentist.

*History Note: Authority G.S. 90-221; 90-223(b);
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2008; August 1, 2000; May 1, 1989;
October 1, 1985; March 1, 1985.*

21 NCAC 16G .0103 PROCEDURES PROHIBITED

Those procedures which require the professional education and skill of a dentist and may not be delegated to a dental hygienist shall include, but shall not be limited to:

- (1) Comprehensive examination, diagnosis and treatment planning;
- (2) Surgical or cutting procedures on hard or soft tissues, including laser, air abrasion or micro-abrasion procedures;
- (3) Placement or removal of therapeutic sulcular nonresorbable agents;
- (4) The issuance of prescription drugs, medications or work authorizations;
- (5) Taking of impressions for final fixed or removable restorations or protheses, except as provided for in Rule .0101(1) of this Subchapter;
- (6) Final placement or intraoral adjustment of a fixed or removable appliance;
- (7) Intraoral occlusal adjustments which affect function, fit, or occlusion of any temporary or permanent restoration or appliance;
- (8) Extra-oral occlusal adjustments which affect function, fit, or occlusion of any permanent restoration or appliance;
- (9) Performance of direct pulp capping or pulpotomy;
- (10) Placement of sutures;
- (11) Final placement or cementation of orthodontic bands or brackets;
- (12) Placement or cementation of final restorations;

- (13) Administration of any anesthetic by any route except the administration of topically-applied agents intended to anesthetize only cutaneous tissue; and
- (14) Intraoral use of a high speed handpiece.

History Note: Authority G.S. 90-221(a); 90-223(b);
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2008; August 1, 2000; May 1, 1989;
March 1, 1985.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32B .0306 LETTERS OF RECOMMENDATION

An applicant for license by endorsement of credentials shall request that letters of recommendation be submitted to the Board by two physicians on his behalf. The letters shall be on Board forms, shall be addressed to the Board, shall contain the original signature of the author, and shall not be from relatives.

History Note: Authority G.S. 90-8.1; 90-9.1(c)
Eff. February 1, 1976;
Recodified from 21 NCAC 32B .0206 Eff. April 5, 1989;
Amended Eff. August 1, 2008; July 1, 2004; May 1, 1989.

CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

21 NCAC 57A .0202 FITNESS FOR REGISTRATION OR CERTIFICATION

(a) The Appraisal Board shall consider the fitness for registration or certification of each applicant who has passed the appropriate examination. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her competency or fitness for registration or certification at a hearing before the Board.

(c) The inquiry into fitness for registration or certification may include consideration of whether the applicant has had any disciplinary action taken against any professional license in North Carolina or any other state, or whether the applicant has committed or done any act which, if committed or done by any real estate trainee or appraiser, would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, licensure, or certification, whether the applicant has been convicted of or pleaded guilty to any criminal act, or whether any such actions or charges are pending.

(d) All applicants for registration or certification shall obtain a criminal records check from Carolina Investigative Research,

Inc., an agency designated by the Appraisal Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports.

(e) Notice to the applicant that his or her competency or fitness for registration or certification is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time constitutes a waiver of the applicant's right to a hearing on his or her application for registration or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration or certification.

History Note: Authority G.S. 93E-1-6(c); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. September 1, 2008; July 1, 2005; August 1, 2002;
April 1, 1999.

21 NCAC 57A .0211 APPLICANTS CERTIFIED IN ANOTHER STATE

(a) Applicants for registration, licensure or certification who are not residents of North Carolina must file an application as stated in Rule .0101 of this Subchapter. In addition, nonresident applicants must also consent to service of process in this state and file an affidavit of residency with the application. If the applicant is licensed by the appraiser licensing board of the applicant's resident state, the applicant must also file with the application a letter of good standing from the appraiser licensing board of the resident that other state, which was issued under seal by that licensing board no later than 30 days prior to within 30 days of the date application is made in this state.

(b) Applicants for registration or certification shall obtain a criminal records check from Carolina Investigative Research, Inc., an agency designated by the Appraisal Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports.

(c) An appraiser whose certification is suspended in North Carolina may not apply for certification in this state under this Rule while the certification is suspended. An appraiser whose certification was revoked in North Carolina may not apply for certification in this state under this Rule for five years after the date of revocation.

History Note: Authority G.S. 93E-1-9(a) and (b); 93E-1-10;
Title XI, Section 1122(a); 12 U.S.C. 3351(a);
Eff. March 1, 2007;
Amended Eff. September 1, 2008; January 1, 2008.

CHAPTER 58 – REAL ESTATE COMMISSION

**21 NCAC 58A .0109 BROKERAGE FEES AND
COMPENSATION**

(a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.

(b) A licensee shall not receive, either directly or indirectly, any commission, rebate, or other valuable consideration of more than nominal value for services which the licensee recommends, procures, or arranges relating to a real estate transaction for a party, without full and timely disclosure to such party.

(c) In a real estate sales transaction, a broker shall not receive any compensation, incentive, bonus, rebate, or other consideration of more than nominal value:

- (1) from his principal unless the compensation, incentive, bonus, rebate, or other consideration is provided for in a written agency contract prepared in conformity with the requirements of 21 NCAC 58A .0104.
- (2) from any other party or person unless the broker provides full and timely disclosure of the incentive, bonus, rebate, or other consideration, or the promise or expectation thereof to the broker's principal. The disclosure may be made orally, but must be confirmed in writing before the principal makes or accepts an offer to buy or sell.

(d) Full disclosure shall include a description of the compensation, incentive, bonus, rebate, or other consideration including its value and the identity of the person or party by whom it will or may be paid. A disclosure is timely when it is made in sufficient time to aid a reasonable person's decision-making.

(e) Nothing in this rule shall be construed to require a broker to disclose to a person not his principal the compensation the broker expects to receive from his principal or to disclose to his principal the compensation the broker expects to receive from the broker's employing broker. For the purpose of this Rule, nominal value means of insignificant, token, or merely symbolic worth.

(f) The Commission shall not act as a board of arbitration and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of brokers, and similar matters.

(g) Except as provided in (h) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.

(h) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;

- (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and
- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him or her to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

(i) Nothing in this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to said Act or to fail to make any disclosure required by said Act or rules.

History Note: Authority G.S. 93A-3(c); 93A-6(a)(1); 93A-6(a)(4);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. October 1, 2008; April 1, 2006; July 1, 2005; September 1, 2002; August 1, 2000; August 1, 1998; April 1, 1997; July 1, 1989; November 1, 1987.

**CHAPTER 64 - BOARD OF EXAMINERS FOR SPEECH
AND LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS**

21 NCAC 64 .0218 CONTINUING EDUCATION

Beginning January 1, 2009 each licensee must complete 30 hours of continuing professional education in their fields sponsored by the American Speech-Hearing-Language Association, the North Carolina Speech-Hearing-Language Association, or the North Carolina Department of Public Instruction; or other courses approved by the Board as similar to courses offered by any of these organizations.

History note: Authority G.S. 90-304(a)(3);

Eff. September 1, 2008.

TITLE 25 – STATE PERSONNEL

**25 NCAC 01H .0629 APPOINTMENT TO A
POSITION**

An appointment may be made only if a classified and budgeted vacancy exists in the position complement authorized for the agency.

History Note: *Authority G.S. 126-4;*

Eff. August 1, 2008.

This Section contains information for the meeting of the Rules Review Commission on Thursday August 21, 2008 and September 18, 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

| | |
|--------------------|-------------------|
| September 18, 2008 | October 16, 2008 |
| November 20, 2008 | December 18, 2008 |

AGENDA**RULES REVIEW COMMISSION**

Thursday, September 18, 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. Commission for Public Health – 10A NCAC 46 .0301 (Bryan)
 - B. Social Services Commission – 10A NCAC 70F .0102, .0201, .0202 (Bryan)
 - C. Social Services Commission – 10A NCAC 70G .0501, .0503, .0510, .0512 (Bryan)
 - D. Social Services Commission – 10A NCAC 70H .0401, .0406 (Bryan)
 - E. Social Services Commission – 10A NCAC 70I .0405, .0604, .0613, .0901 (Bryan)
 - F. Social Services Commission – 10A NCAC 70K .0101, .0103, .0201, .0204, .0301 (Bryan)
 - G. Marine Fisheries Commission – 15A NCAC 03I .0101 (DeLuca)
 - H. Marine Fisheries Commission – 15A NCAC 03O .0201 (DeLuca)
 - I. Board of Massage and Bodywork Therapy – 21 NCAC 30 .0201, .0516 (DeLuca)
 - J. NC Building Code – 2006 IPC with NC Amendments – IPC 302.1 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between July 22, 2008 and August 20, 2008 (attached)
- V. Review of Temporary Rules
- VI. Commission Business
 - Next meeting: October 16, 2008

**Commission Review
Log of Permanent Rule Filings
July 22, 2008 through August 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>Adoption by Reference</u> Adopt/* | 02 | NCAC | 52J | .0401 |
| <u>Authorized Persons</u> Adopt/* | 02 | NCAC | 52J | .0402 |
| <u>Definitions</u> Adopt/* | 02 | NCAC | 52J | .0403 |
| <u>Certification Requirements for Euthanasia Technicians</u> Adopt/* | 02 | NCAC | 52J | .0404 |
| <u>Certification Standards</u> Adopt/* | 02 | NCAC | 52J | .0405 |
| <u>Application Requirements</u> Adopt/* | 02 | NCAC | 52J | .0406 |
| <u>Training and Examinations</u> Adopt/* | 02 | NCAC | 52J | .0407 |
| <u>Trainers</u> Adopt/* | 02 | NCAC | 52J | .0408 |
| <u>Probationary Euthanasia Technicians</u> Adopt/* | 02 | NCAC | 52J | .0409 |
| <u>Exam Required</u> Adopt/* | 02 | NCAC | 52J | .0410 |
| <u>New Application</u> Adopt/* | 02 | NCAC | 52J | .0411 |
| <u>Issuance of Certification</u> Adopt/* | 02 | NCAC | 52J | .0412 |
| <u>Length of Certification</u> Adopt/* | 02 | NCAC | 52J | .0413 |
| <u>Termination of Employment</u> Adopt/* | 02 | NCAC | 52J | .0414 |
| <u>Notice of Termination</u> Adopt/* | 02 | NCAC | 52J | .0415 |
| <u>Recertification</u> Adopt/* | 02 | NCAC | 52J | .0416 |
| <u>Certification Renewal</u> Adopt/* | 02 | NCAC | 52J | .0417 |
| <u>Duties</u> Adopt/* | 02 | NCAC | 52J | .0418 |
| <u>Grounds for Discipline - Certified Euthanasia Technicians</u> Adopt/* | 02 | NCAC | 52J | .0419 |
| <u>Intracardiac Injection</u> Adopt/* | 02 | NCAC | 52J | .0501 |
| <u>Carbon Monoxide Equipment</u> Adopt/* | 02 | NCAC | 52J | .0601 |

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|---|----|------|-----|-------|
| <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/* | | | | |

MEDICAL CARE COMMISSION

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13D are rules from the licensing of nursing homes including general information (.2000); licensure (.2100); general standards of administration (.2200); patient and resident care and services (.2300); medical records (.2400); physician's services (.2500); pharmaceutical services (.2600); dietary services (.2700); activities, recreation and social services (.2800); special requirements (.2900); specially designated units (.3000); design and construction (.3100); functional requirements (.3200); fire and safety requirements (.3300); and mechanical electrical plumbing (.3400).

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|------------------------|-----|------|-----|-------|
| <u>Required Spaces</u> | 10A | NCAC | 13D | .3201 |
| Amend/* | | | | |

INSURANCE, DEPARTMENT OF

The rules in Chapter 16 are from the Actuarial Division and relate to fire and casualty statistical data (.0100); individual accident and health insurance (.0200); credit life, accident, and health rate deviation (.0400); credit unemployment minimum loss ratio standard (.0500); health maintenance organization filings and standards (.0600); health maintenance organization claim reserve data requirements (.0700); and small employer group health insurance actuarial certification (.0800).

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|---|----|------|----|-------|
| <u>Calculation Procedure and Data Requirements for Rate Devi...</u> | 11 | NCAC | 16 | .0403 |
| Amend/* | | | | |

The rules in Chapter 18 concern multiple employer welfare arrangements.

| | | | | |
|---------------------------------------|----|------|----|-------|
| <u>Maximum Net Retention Standard</u> | 11 | NCAC | 18 | .0118 |
| Amend/* | | | | |

LABOR, DEPARTMENT OF

The rules in Chapter 13 concern boiler and pressure vessel including definitions (.0100); administration (.0200); enforcement of standards (.0300); general requirements (.0400); non-standard boilers and pressure vessels (.0500); hot water vessels used for heating or for storage of hot water (.0600); nuclear energy systems (.0700); and forms (.0800).

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|---|----|------|----|-------|
| <u>Shop Inspections and National Board R Stamp Qualification...</u> | 13 | NCAC | 13 | .0210 |
| Amend/* | | | | |

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|------------------|----|------|----|-------|
| <u>Standards</u> | 13 | NCAC | 13 | .0701 |
| Amend/* | | | | |

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 1 deal with departmental rules.

The rules in Subchapter 1O concern environmental health and include delegation of authority to enforce the Commission for Health Services sanitation rules (.0100).

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|-------------------------------------|-----|------|-----|-------|
| <u>Scope of Delegated Authority</u> | 15A | NCAC | 01O | .0101 |
| Amend/* | | | | |

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|--|-----|------|-----|-------|
| <u>Eligibility for Delegation of Authority</u> | 15A | NCAC | 01O | .0102 |
| Amend/* | | | | |

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|--------------------------------|-----|------|-----|-------|
| <u>Delegation of Authority</u> | 15A | NCAC | 01O | .0103 |
| Amend/* | | | | |

MARINE FISHERIES COMMISSION

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

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|----------------------------|-----|------|-----|-------|
| <u>Application Process</u> | 15A | NCAC | 03O | .0402 |
| Amend/* | | | | |

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|-----------------------------|-----|------|-----|-------|
| <u>Eligibility Criteria</u> | 15A | NCAC | 03O | .0404 |
| Amend/* | | | | |

NURSING, BOARD OF

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

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|----------------|----|------|----|-------|
| <u>Faculty</u> | 21 | NCAC | 36 | .0318 |
| Amend/* | | | | |

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 1 are general provisions for the Office of Administrative Hearings including petition for rule-making and declaratory rulings.

Location 26 NCAC 01 .0101
Amend/*

The rules in Chapter 2 are from the rules division and cover publication of The North Carolina Administrative Code (NCAC) and the North Carolina Register (NCR).

The rules in Subchapter 2C are the submission procedures for rules and other documents to be published in the North Carolina Register and the North Carolina Administrative Code including general provisions (.0100); codification of rules (.0200); the Register (.0300); the Administrative Code (.0400); temporary rules (.0500); emergency rules (.0600); and publication on the OAH website (.0700).

Scope and Availability 26 NCAC 02C .0401
Amend/*

The rules in Chapter 4 are for the civil rights division including general provisions (.0100); and political discrimination (.0200).

Content and Filing Procedures 26 NCAC 04 .0202
Amend/*

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

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| 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> |
|--|------------------------|------------|-----------------------------|---|
| <u>ALCOHOL BEVERAGE CONTROL COMMISSION</u> | | | | |
| Partnership T/A C Js Lounge v. ABC Commission | 07 ABC 0201 | Overby | 03/11/08 | |
| ABC Commission v. Rainbow Enterprises, Inc T/A Club N Motion | 07 ABC 1532 | Gray | 06/20/08 | 23:05 NCR 489 |
| 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 | |
| AM Enterprises of Fayetteville, Inc., T/A Izzy's Sports Bar v. ABC Commission | 08 ABC 0371 | Lassiter | 06/13/08 | |
| Bhavesh Corporation, T/A K&B Foomart v. ABC Commission | 08 ABC 0508 | Overby | 05/19/08 | |
| <u>CRIME VICTIMS COMPENSATION</u> | | | | |
| Patricia Ginyard v. Crime Victim Compensation Commission | 06 CPS 1720 | Gray | 05/27/08 | |
| 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 | |

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

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|--|-------------|----------|----------|--|
| <u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u> | | | | |
| Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS | 06 DHR 0633 | Lassiter | 07/11/08 | |
| Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS | 06 DHR 1350 | Lassiter | 07/11/08 | |
| Character Builders, Inc., Clavon Leonard v. DMA, Developmental Disabilities and Substance Abuse Services | 07 DHR 0124 | Elkins | 08/07/08 | |
| Character Builders, Inc., Clavon Leonard v. DMA, Developmental Disabilities and Substance Abuse Services | 07 DHR 0125 | Elkins | 08/07/08 | |
| Arthur Burch and Margaret and Burch v. Department of Health and Human Services | 07 DHR 0242 | Brooks | 04/30/08 | |
| The "M" Company LLC, v. DHHS, DMA, Program Integrity | 07 DHR 0429 | Webster | 05/29/08 | |
| Judy E. Pettus v. Office of Chief Medical Examiner, Thomas B. Clark, Iii, Md, Pathologist | 07 DHR 0535 | Webster | 05/05/08 | |
| Alterra Clare Bridge of Asheville v. DHHS, DFS, Adult Care Licensure Section | 07 DHR 0914 | Gray | 06/06/08 | |
| 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 | |

CONTESTED CASE DECISIONS

| | | | |
|---|-------------|----------|----------|
| Midtown Food Mart III, Chenet Haileslassi and Fesseha Zeru v. DHHS | 07 DHR 1045 | Webster | 04/28/08 |
| Carolyn E. Reed v. DHHS, Division of Social Services Program Integrity | 07 DHR 1214 | Webster | 07/21/08 |
| AFDC/Work First | | | |
| 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 |
| Rufus Patrick Devers v. DHHS, Division of Health Service Regulation | 07 DHR 1442 | Joseph | 05/29/08 |
| Health Care Personnel Registry | | | |
| 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 |
| Donna Hicks Crocker v. DHHS/DMA | 07 DHR 1629 | Joseph | 08/01/08 |
| Rebecca Dehart v. DHHS, Division of Health Service Regulation | 07 DHR 1650 | Elkins | 05/21/08 |
| Health Care Personnel Registry Section | | | |
| 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 |
| Lashauna Reid v. CCMHC (PFCS-Service Provider) | 07 DHR 2039 | Elkins | 08/05/08 |
| 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 |
| Tianna Troy Legal guardian Mother Traci Lookadoo v. Value Option | 07 DHR 2087 | Elkins | 05/23/08 |
| Gary Carlton, Sr., v. DHHS | 07 DHR 2099 | Brooks | 07/10/08 |
| Alexis Ford/Linda M McLaughlin v. DHHS | 07 DHR 2111 | Elkins | 06/04/08 |
| Roger Houston v. DHHS, Div. of Health Service Regulation | 07 DHR 2176 | Gray | 07/08/08 |
| Dorothy L. Davis v. OAH | 07 DHR 2179 | May | 07/02/08 |
| 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 | Joseph | 06/02/08 |
| Larry Hopper v. DHHS | 07 DHR 2356 | May | 06/20/08 |
| | | | |
| Shelby Davis v. DHHS | 08 DHR 0014 | Lassiter | 05/09/08 |
| Hellon P. Johnson v. DHHS | 08 DHR 0020 | May | 07/03/08 |
| 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 |
| Murphy's Outreach Community Developmental Services, Inc, d/b/a Outreach Home Health | 08 DHR 0220 | Joseph | 07/22/08 |
| Lisa Helms v. DHHS | 08 DHR 0255 | Overby | 06/17/08 |
| Pearlene Johnson Ivery v. DMA, Third Party Recovery (Medicaid) | 08 DHR 0286 | Brooks | 07/07/08 |
| Mamaue Aytch v. DHHS | 08 DHR 0325 | Elkins | 05/23/08 |
| Brenda McGilvary v. DHHS, Division of Social Services | 08 DHR 0384 | Webster | 08/05/08 |
| Fannie M. Wilson v. OAH | 08 DHR 0393 | Webster | 06/17/08 |
| 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 |
| Frances Milligan v. DHHS | 08 DHR 0566 | May | 06/19/08 |
| 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 |
| Trena Ellis v. DHHS | 08 DHR 0730 | Lassiter | 07/03/08 |
| Faith Davis v. Pride in North Carolina Value Options | 08 DHR 0746 | Overby | 05/28/08 |
| Evonne Neal v. Medicaid | 08 DHR 0748 | May | 06/20/08 |
| Ray C. Price v. DHHS, Office of the Controller | 08 DHR 0767 | Brooks | 07/07/08 |
| Cheryl I Rice v. DHHS | 08 DHR 0793 | Overby | 07/10/08 |
| Lula Bowden v. OAH | 08 DHR 0852 | May | 06/20/08 |
| Donovan Harris v. Value Options | 08 DHR 0894 | May | 06/19/08 |
| Janice Chavis v. DHHS | 08 DHR 0923 | Lassiter | 05/19/08 |
| Frankie Nicole Carter v. DHHS, Division of Health Service Regulation | 08 DHR 0929 | Brooks | 06/19/08 |
| Evangeline Ingram v. Value Options | 08 DHR 0997 | Gray | 06/10/08 |
| Maureen Jordan parent of Destinne Jordan v. Value Options | 08 DHR 1005 | Gray | 06/19/08 |

CONTESTED CASE DECISIONS

| | | | |
|--|-------------|----------|----------|
| Mario Jackson v. DHHS | 08 DHR 1024 | Overby | 06/19/08 |
| Martha Washington Harper v. DSS | 08 DHR 1041 | Brooks | 06/23/08 |
| Mary K. Tulay v. DHHS | 08 DHR 1055 | Joseph | 07/09/08 |
| Haywood Miller, Bobby Jean Graves Miller v. DHHS, Mental Health Licensure Certification Section | 08 DHR 1181 | Overby | 07/01/08 |
| Jan Williams v. Value Options, DHHS | 08 DHR 1231 | Overby | 07/09/08 |
| Heather Peete v. OAH | 08 DHR 1281 | Lassiter | 07/02/08 |
| Alesia Alwahishi dba Brotherhood Market | 08 DHR 1356 | Gray | 07/22/08 |

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 |
| Michael Gerald Copeland v. Private Protective Services Board | 07 DOJ 2286 | Gray | 07/17/08 |
| 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 |
| Dustin Elvin Campbell v. Criminal Justice Education and Training Standards Commission | 08 DOJ 1078 | Lassiter | 07/14/08 |
| Cynthia Kay Saintsing v. Criminal Justice Education and Training Standards Commission | 08 DOJ 1079 | Lassiter | 07/14/08 |
| Timothy C. Darrh v. DHHS/Value Options | 07 DOJ 1239 | Overby | 07/07/08 |

DEPARTMENT OF LABOR

| | | | |
|---|-------------|-----|----------|
| Sandra Leroux, Leroux Entertainment Corporation d/b/a Spectacular Events! V. DOL | 08 DOL 0754 | May | 07/08/08 |
|---|-------------|-----|----------|

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 |
|---|-------------|---------|----------|

DEPARTMENT OF STATE TREASURER

| | | | |
|--|-------------|----------|----------|
| Patricia V. Leonard v. State Treasurer/Retirement Systems Division | 07 DST 1928 | Lassiter | 03/12/08 |
| William S. Greene v. DST, Retirement Systems Division | 08 DST 0235 | Gray | 07/16/08 |
| Jerry Alan Reese v. DST, State and Local Finance Division and the Local Government Commission | 08 DST 0256 | Morrison | 07/25/08 |

23:05 NCR 524

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

| | | | |
|---|-------------|----------|----------|
| Henry S. Cowell, III and Carolyn Dressler v. DENR, Div. of Coastal Management | 06 EHR 1185 | Brooks | 05/30/08 |
| 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 |
| Frank Myers Investments, LLC v. DENR | 07 EHR 2377 | May | 05/28/08 |
| W Russell Overman Martin County Water & Sewer District v. DENR Public Water Supply Section | 08 EHR 0345 | Gray | 06/10/08 |

23:05 NCR 501

CONTESTED CASE DECISIONS

| | | | |
|---|-------------|--------|----------|
| Ray Poole's Park, Jean Poole v. DENR, Public Water Supply Section | 08 EHR 0563 | Joseph | 05/16/08 |
| Donald Lindsay v. Cherokee County Health Dept. | 08 EHR 0764 | Brooks | 07/10/08 |
| Joel M. Walker v. Division of Water Quality Well Contractors Certification Commission | 08 EHR 0985 | Joseph | 06/11/08 |
| Research Triangle Institute v. Division of Waste Management, Hazardous Waste Section, DENR | 08 EHR 1100 | Overby | 07/11/08 |
| Tracie Locklear, Ammie Brewer-James, Native Designs Hair & Tanning Salon v. DENR, Health Radiation Protection | 08 EHR 1143 | Gray | 7/17/08 |

DEPARTMENT OF INSURANCE

| | | | |
|--|-------------|----------|----------|
| Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive Major Medical Plan | 07 INS 1130 | Overby | 03/12/08 |
| 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 | |
| Cassandra F. Barner v. Halifax County Department of Social Serv. | 07 OSP 1186 | Joseph | 05/16/08 | 23:05 NCR 528 |
| 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 Butner Public Safety | 07 OSP 2011 | Webster | 05/29/08 | |
| 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 Safety and The Dept. of Crime Control & Public Safety (NC Highway Patrol) | 07 OSP 2222 | Morrison | 06/05/08 | 23:01 NCR 147 |
| Norman K. Goering v. Crime Control and Public Safety, Highway Patrol | 07 OSP 2256 | Joseph | 07/29/08 | 23:05 NCR 547 |
| Kimberly James v. UNC-Charlotte | 08 OSP 0146 | Webster | 05/08/08 | |
| Nancy Hester v. Guilford County AOC Pretrial Services | 08 OSP 0224 | Overby | 06/19/08 | |
| Laura L. Holliman v. Caledonia Correctional Inst. | 08 OSP 0591 | Gray | 07/08/08 | |
| Ashley K. Severson v. Greene County | 08 OSP 0611 | Joseph | 07/29/08 | |
| Richard D. Lincoln v. DOT | 08 OSP 0801 | Gray | 05/27/08 | |
| Robert M. Hewitt v. Morrison Correctional Institute | 08 OSP 0971 | Gray | 06/26/08 | |
| Kenyatta Burrus v. Craven County Clerk of Superior Court | 08 OSP 1089 | Overby | 06/12/08 | |
| Dexter J. Hill v. Department of Agriculture and Consumer Services | 08 OSP 1167 | Overby | 07/08/08 | |
| Dianna Humphrey v. Caswell Center | 08 OSP 1327 | Lassiter | 07/02/08 | |

RESPIRATORY CARE BOARD

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|--|-------------|------|----------|---------------|
| Angelique Thompson v. Respiratory Care Board | 07 RCB 1176 | Gray | 03/13/08 | 23:01 NCR 153 |
|--|-------------|------|----------|---------------|

DEPARTMENT OF REVENUE

| | | | |
|---|-------------|--------|----------|
| Parker Bark Company Inc. v. Department of Revenue | 08 REV 1228 | Overby | 06/17/08 |
| Deandra A. Scott v. Department of Revenue | 08 REV 1180 | Overby | 07/01/08 |
| Goretty Williams v. Department of Revenue | 08 REV 1227 | Overby | 07/08/08 |
| Anthony Chad Bynum v. Department of Revenue | 08 REV 1268 | Overby | 07/09/08 |

OFFICE OF SECRETARY OF STATE

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|----------------------------|-------------|----------|----------|
| Wendy Branch Miller v. SOS | 08 SOS 1018 | Lassiter | 07/14/08 |
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UNC HOSPITALS

| | | | |
|---|-------------|------|----------|
| Charity Smith v. UNC Hospitals | 08 UNC 0533 | Gray | 07/28/08 |
| Jimmy L. Holder v. UNC Hospitals | 08 UNC 0589 | May | 07/29/08 |
| Barbara C. King v. UNC Hospitals | 08 UNC 0805 | May | 07/29/08 |
| Kaprina Wells v. UNC Hospitals | 08 UNC 0860 | Gray | 07/28/08 |
| Rolie Adrienne Webb "Andi" v. UNC Hospitals | 08 UNC 0881 | Gray | 06/11/08 |
| Marcus M. McCullers v. UNC Hospitals | 08 UNC 0928 | Gray | 07/30/08 |

WILDLIFE RESOURCES COMMISSION

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|---|-------------|--------|----------|
| Lisa Roddy v. Wildlife Resources Commission | 08 WRC 0970 | Brooks | 06/24/08 |
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STATE OF NORTH CAROLINA
COUNTY OF ROBESON

Filed
2008 JUN 20 AM 11: 53
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
07 ABC 1532

| | | |
|---|-----------|-----------------|
| N. C. Alcoholic Beverage Control Commission | Office of | |
| Petitioner |) | |
| vs. |) | DECISION |
| Rainbow Enterprises Inc |) | |
| T/A Club N Motion |) | |
| Respondent |) | |

THIS MATTER was heard before Beecher R. Gray, Administrative Law Judge, on 13 June 2008 in Robeson County, North Carolina.

APPEARANCES

For Petitioner: LoRita K. Pinnix, Esq., Assistant Counsel
N.C. Alcoholic Beverage Control Commission
Raleigh, North Carolina

For Respondent: Donald G. Hunt, Jr.
Kristen G. Atkins-Momot
Akins / Hunt, P.C.
134 N. Main Street, Suite 204
Post Office Box 266
Fuquay-Varina, North Carolina

ISSUES

Whether Respondent's on-premise permits for the sale of alcoholic beverages should be revoked because the location occupied by the permittee is no longer suitable to hold ABC permits or that the continued operation of the business with an ABC permit at that location is detrimental to the neighborhood under N.C. GEN. STAT. § 18B-904(e).

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent admissible evidence, the Court finds the following facts:

A. Procedural Background.

1. On 14 September 2007, the Chairman of the North Carolina Alcoholic Beverage Control Commission (*hereinafter* "Commission") entered an *ex parte* summary suspension of Respondent's alcoholic beverage permits.

2. On 18 September 2007, Petitioner filed a petition seeking "to impose a penalty of a revocation of Respondent's ABC permits" and requested an administrative hearing "to determine if the Respondent has violated the ABC laws."

3. On 6 November 2007, Respondent filed a motion to dissolve the summary suspension entered in this matter. Following a contested hearing on 15 November 2007, the undersigned entered an order allowing Respondent's motion and required Petitioner to immediately reinstate Respondent's alcoholic beverage permits.

4. An evidentiary hearing on the petition was set for 28 April 2008. On 18 April 2008, the undersigned entered an order continuing the evidentiary hearing until 13 June 2008.

5. On the afternoon of 4 June 2008, Petitioner filed a motion for entry a stay of this case until such time as a civil action pending between the City of Lumberton and Respondent was concluded. On 5 June 2008, Respondent filed its reply and opposition to this motion. On 6 June 2008, the undersigned entered an order denying Petitioner's motion for entry of a stay.

7. This matter was called for hearing on 13 June 2008, and the parties stipulated that the hearing was properly noticed.

8. After Petitioner rested its case in chief, Respondent moved in open court to involuntarily dismiss the petition as unfounded under N.C. GEN. STAT. § 1A-1, Rule 41(b).

B. Respondent's Business.

9. Since September 2005, Respondent has owned and operated a night club business under the trade name Club 'N Motion.

10. Respondent's business is located in a commercial strip-mall facility located at 3551 Lackey Street, Lumberton, North Carolina. Respondent leases its premises.

11. The property from which Respondent operates is zoned for commercial uses, and it is surrounded by (i) other strip-mall type buildings and (ii) dozens of other commercial establishments including approximately seven (7) other commercial businesses that are permitted to sell and do sell alcoholic beverages. These businesses include restaurants, motels, retail stores and other commercial businesses.

12. The front of Respondent's business is immediately adjacent to Lackey Street which is a service road that runs parallel to eight lanes of Interstate 95, and Respondent's business is readily accessible to vehicular traffic operating along Interstate 95.

13. The rear of Respondent's business is immediately adjacent to one or more large unimproved tracts of real property.

14. There are no residential properties adjacent to Respondent's business, and the closest such property is located approximately one (1) mile away from Respondent's business all the way across Interstate 95.

15. Other private night clubs have operated in close proximity to Respondent's business since at least the mid-1990's.

16. Respondent shares with others a common parking area that is open to vehicular traffic. Respondent does not have exclusive control of its parking area. Moreover, Respondent's common parking area joins or is otherwise connected to the parking areas of several other commercial properties, and, though these parking areas may be separated in sections discrete sections by standard height concrete curbing, these parking areas combined run for approximately one-mile along Lackey Street.

17. Respondent operates its business and is open to its members at nights from approximately 8:00 p.m. until approximately 2:00 a.m. on Thursdays, Fridays and Saturdays.

18. The members of Respondent's business are diverse, and the members patronizing Respondent's business vary from college age students to persons who are much older.

19. On the nights Respondent is open for business, Respondent employs security personnel. Respondent's security personnel are present at the entryways for Respondent's business and within Respondent's business. Respondent's security personnel check identifications and conduct pat-down searches of persons wishing to enter Respondent's business. Respondent's security personnel assist Respondent with keeping order within Respondent's business, and, on occasion, Respondent's security personnel have detained persons and turned them over to police custody. Respondent's security personnel also monitor and patrol the parking area that Respondent shares with others.

20. In 2005, Respondent submitted an application to the Commission seeking the issuance of permits to sell alcoholic beverages.

21. It is the custom and practice of the Commission to conduct an investigation of all applicants before it either approves or denies applications of this sort. Among other things, the Commission uses the results of this investigation to form an opinion as to whether the applicant's business is located on a site that is suitable for the sale of alcoholic beverages and whether the applicant's business will be detrimental to the neighborhood and community surrounding the applicant's business. If the Commission forms the opinion that the applicant's business is not located on a suitable site or that the applicant's business may pose a detriment to the surrounding neighborhood and community, the Commission denies the applicant's application and does not issue alcoholic beverage permits to the applicant.

22. There is no evidence in the record that the Commission followed any different protocol than the one outlined in the immediately preceding paragraph when it reviewed and ultimately approved Respondent's application, and, in 2005, the Commission issued permits to Respondent to sell alcoholic beverages.

23. Since receiving its permits in 2005, Respondent, with the exception of this action, has not been cited for any ABC violations, and Respondent has not been the subject of discipline by the Commission for any ABC violations.

B. Player's Club.

24. From the mid-1990's until approximately April 2007, a private night club establishment known as Player's Club operated in close proximity to Respondent's business. Like Respondent's business, Player's Club fronts Lackey Street and is located approximately two hundred (200) yards away from Respondent. The parking area utilized by the patrons of Player's Club is located within the large connected parking area previously described in this Decision.

25. For a period of time lasting approximately twelve years, Player's Club held permits to sell alcoholic beverages, and it operated during some periods of time that Respondent's business also was open.

26. The persons patronizing and visiting Player's Club frequently caused disorder and violated the criminal laws of this State. Among other things, the evidence presented at trial indicates these persons regularly (i) consumed alcoholic beverages in the parking area outside of Player's Club, (ii) illegally possessed and used controlled substances, (iii) engaged in fights that ranged from verbal arguments to homicide, and (iv) illegally possessed and discharged firearms.

27. The persons patronizing and visiting Player's Club did not limit their activities to areas immediately adjoining and adjacent to Player's Club. These persons regularly entered and loitered upon the commercial properties and parking areas in close proximity to Player's Club including the property from which Respondent operates its business.

28. The activities of persons patronizing and visiting Player's Club resulted in a large number of service calls being made to the City of Lumberton Police Department. Law enforcement officials were required to respond to calls involving the conduct of these persons on virtually every night that Player's Club was open for business. Law enforcement officials testified that, on most any night Player's Club was open, disorderly and illegal acts would occur at and around Player's Club.

29. In March 2007, a member of Player's Club's security personnel was shot and killed. Shortly thereafter, the ABC Commission suspended alcoholic beverage permits for Player's Club and it closed. Player's Club has not reopened for business since that time.

30. Later in September 2007, the City of Lumberton commenced a civil action against Player's Club seeking to have it declared a public nuisance. In connection with this civil action,

Lumberton Police Department officials described Player's Club as a place where (i) illegal possession and use of alcoholic beverages, (ii) illegal possession and sale of narcotic drugs, and (iii) repeated acts which create and constitute breaches of the peace including assaults inflicting serious injury and death, affrays, loud and profane language, discharging of fire arms and drunk and disruptive behavior took place on virtually any night Player's Club was open for business.

C. The Related Civil Action.

30. Because Petitioner's petition is largely predicated on a civil action commenced by the City of Lumberton, the undersigned briefly will address it.

31. On 12 September 2007, the City of Lumberton commenced a civil action against Respondent and others alleging that Respondent's business constitutes a public nuisance. Among other things, the complaint alleges that Respondent illegally possesses and sells alcoholic beverages, illegally possesses and sells controlled substances, and that Respondent's business is operated in a manner to promote or permit repetitive acts constituting a breach of the peace. *See generally State ex rel. City of Lumberton v. JohnLocke Enterprises, Inc., et al.*, Robeson County Civil Superior Court File No. 07 CVS 2829.

32. Petitioner attached copies of the complaint and affidavits filed in this civil action to its petition, and, for purposes of this action, Petitioner relies heavily upon the same general allegations the City of Lumberton has made in these documents.

33. Also on 12 September 2007, the court issued an *ex parte* temporary restraining order (TRO) precluding Respondent from selling alcoholic beverages and precluding Respondent from selling or transferring any of its assets. This TRO and the accompanying summary suspension issued by the Commission on 14 September 2007 resulted in Respondent temporarily closing its business.

34. On 29 October 2007, the City's TRO was, after a lengthy contested hearing, dissolved. In its order, the court specifically found the City had failed to show any likelihood of success on its claims that Respondent's business constitutes a public nuisance.

35. The civil action commenced by the City of Lumberton against Respondent remains pending. However, after the undersigned lifted the Commission's summary suspension of Respondent's permits in late November 2007, Respondent re-opened for business and has been operating on weekends since this time.

D. Suitability of Site and Surrounding Neighborhood Detriment

36. At the hearing, Petitioner called three (3) witnesses each of whom is employed by the Lumberton Police Department. They are: Detective Burnis Wilkins, Sgt. Talmadge Barnett, Jr., and Lt. Stephen Morton. Because Petitioner's evidence was limited to the testimony given by these individuals, the undersigned provides the following summary.

37. Detective Burnis Wilkins is employed by the Lumberton Police Department and has been so employed for over six (6) years. Detective Wilkins is the supervisor of the Department's Drug Enforcement Unit. As part of his job, Detective Wilkins oversees a number of subordinate detectives and investigates drug and alcohol related criminal offenses.

38. Prior to his employment with the City of Lumberton, Detective Wilkins spent approximately ten (10) years as an agent of the North Carolina ALE.

39. Detective Wilkins testified that he is familiar with Respondent's business and that he conducted surveillance and other observations of Respondent's business from September 2005 through 2008. Though Detective Wilkins reported seeing incidents of disorder at Respondent's business on the nights it was open for business, he could only provide a general statement and generic description as to these observations. Detective Wilkins could not remember and could not describe a specific occurrence of a fight, an affray or other incident of disorder taking place at Respondent's business. To the degree Detective Wilkins made these observations, he testified that each such incident occurred in the common parking area outside of Petitioner's business and that he had no knowledge of even a single act of violence or disorder taking place from within Respondent's business. Moreover, Detective Wilkins stated that he had spoken with Respondent's owner, that Respondent's owner did not condone or otherwise permit any acts of violence or disorder, and that Respondent and its security personnel engaged in efforts to prevent and deter acts of violence and disorder from taking place. Detective Wilkins did not and could not connect any alleged act of violence or disorder to any conduct of Respondent generally or to Respondent's sale of alcoholic beverages specifically. Finally, a list of convictions compiled by Detective Wilkins reflects that, with the exception of a conviction for second degree trespassing on 9 December 2005, not even one conviction has been secured against anyone for an act of violence or disorder occurring outside of or within Respondent's business.

40. Detective Wilkins reported that, from September 2005 through 2008, he observed and charged persons for illegal possession and consumption of alcoholic beverages and controlled substances and that each of these incidents occurred in the parking area outside of Respondent's business and that these substances were transported into this parking area from sources other than Respondent. Detective Wilkins indicated that he had no information of even a single incident where alcoholic beverages or controlled substances were illegally possessed or consumed from within Respondent's place of business. Detective Wilkins stated that he had spoken with Respondent's owner, that Respondent's owner did not condone or otherwise permit any acts of illegal possession or consumption of alcohol, and that Respondent and its security personnel engaged in efforts to prevent and deter acts of illegal possession and consumption from taking place. Detective Wilkins did not and could not connect any alleged act of illegal possession or consumption of alcoholic beverages or controlled substances to any conduct of Respondent generally or to Respondent's sale of alcoholic beverages specifically. Finally, a list of convictions compiled by Detective Wilkins reflects that, since September 2005, only ten (10) convictions have been secured against persons who had been charged with illegally possessing or consuming alcoholic beverages or controlled substances in the parking area shared by Respondent, and the last such conviction was secured on 17 March 2007.

41. Detective Wilkins reported that the City of Lumberton has received a number of calls for service that, according to Detective Wilkins, relate to conduct occurring around Respondent's business. Detective Wilkins compiled a report of these calls, and Detective Wilkins indicated the City typically receives over one thousand public safety calls each week. Detective Wilkins testified that the calls for service listed in his report are typically received from anonymous sources and sometimes these reports cannot be substantiated by law enforcement personnel who investigate these calls. During his testimony, Detective Wilkins conceded that he had no personal knowledge of the acts that may or may not have given rise to any specific call for service listed in his report and that he could not personally verify whether any of these calls specifically relate to any conduct of Respondent. Detective Wilkins stated that the City of Lumberton had not received even a single call for service at Respondent's place of business since April 2007 and, to the degree calls for service were received, these calls related to conduct occurring outside of Respondent's business. Detective Wilkins stated that he had spoken with Respondent's owner, that Respondent's owner did not condone or otherwise permit any acts described within his report of service calls and that Respondent and its security personnel engaged in efforts to prevent and deter the acts described within his report of service calls. Detective Wilkins did not and could not connect any alleged act described within his report of service calls to any conduct of Respondent generally or to Respondent's sale of alcoholic beverages specifically.

42. Detective Wilkins testified that the City of Lumberton employs approximately eighty (80) law enforcement personnel and that the calls for service that may relate to the place where Respondent's business is located place a burden on the resources of law enforcement. However, Detective Wilkins did not provide any specific information as to how the City's law enforcement resources are strained and did not provide a specific example of an occasion where law enforcement's resources were unduly burdened due to any conduct of Respondent. Detective Wilkins did not and could not connect any alleged occasions where law enforcement resources may have been burdened to any conduct of Respondent generally or to Respondent's sale of alcoholic beverages specifically.

43. Detective Wilkins indicated that, after Respondent's business re-opened in November 2007, he personally conducted more than one surveillance of Respondent's business on nights it was open to its members. Other than a handful of incidents where Detective Wilkins observed illegal possession or consumption of alcoholic beverages in the common parking area surrounding Respondent's business, Detective Wilkins did not observe any other illegal or disorderly conduct in or around Respondent's business. Though Detective Wilkins attributed the elimination of illegal and disorderly to different security protocols implemented by Respondent after it re-opened for business in November 2007, the undersigned finds that, in light of the absence of even a single call for police service related to Respondent's business being made since April 2007, Respondent's private security has been largely sufficient and adequate to deter and manage any conduct that may be illegal or otherwise disorderly.

44. Detective Wilkins testified that, as of 13 June 2008, Respondent's business is, in his professional opinion, located on a site that is appropriate for its operations and that neither the operations nor the location of Respondent's business pose any detriment to the surrounding neighborhood and community.

45. Sgt. Talmadge Barnett, Jr. is employed by the Lumberton Police Department and has been so employed since 1983. Sgt. Barnett is the supervisor of the Department's D Squad patrol unit. As part of his job, Sgt. Barnett oversees a number of subordinate officers and responds to calls for police service.

46. Sgt. Barnett testified that he is familiar with Respondent's business and that he has had opportunity and occasion to observe Respondent's business from September 2005 through 2008. Though Sgt. Barnett reported seeing incidents of disorder at Respondent's business on the nights it was open for business, he could only provide a general statement and generic description as to these observations. Sgt. Barnett could not remember and could not describe a specific occurrence of a fight, an affray or other incident of disorder taking place at Respondent's business, and, to the degree they did occur, these incidents did not involve weapons, injuries, calls for ambulance service and often did not escalate beyond people exchanging unkind words. To the degree Sgt. Barnett made these observations, he testified that each such incident occurred in the common parking area outside of Petitioner's business and that he had no knowledge of even a single act of violence or disorder taking place from within Respondent's business. Sgt. Barnett did not and could not connect any alleged act of violence or disorder to any conduct of Respondent generally or to Respondent's sale of alcoholic beverages specifically.

47. Sgt. Barnett stated that he was concerned for his safety and the safety of his subordinates when they respond to calls at Respondent's business. However, Sgt. Barnett also stated that, as a general rule, he is always concerned with the safety of his subordinates no matter where or when they respond to calls for police service (i.e., whether the call relates to a generic domestic disturbance or a call to a commercial business) and that his concerns regarding calls for service at Respondent's place of business were no different than his general concern for the safety of his subordinates. Sgt. Barnett testified that, in his experience, people who had consumed alcohol could react irrationally to police presence and that this was one of the primary sources of his concern with respect to police presence at Respondent's business.

48. Sgt. Barnett testified that he did not think private night club establishments were appropriate as a general proposition and that alcoholic beverages should, in his opinion, only be served at chain restaurants and the like. However, Sgt. Barnett's objection in this regard was purely a personal objection to alcohol at night clubs in general and was not a specific objection to Respondent's business, any act of Respondent or Respondent's general sale of alcohol.

49. Sgt. Barnett testified that he had no personal knowledge of even a single police call for service being made with respect to Respondent's business since April 2007 and, as far as he knew, there were no such calls made.

50. Lt. Stephen Morton is employed by the Lumberton Police Department and has been so employed for approximately twenty years. Lt. Morton has been assigned to the Department's Interstate Criminal Enforcement unit since 2006 and, since this time, he has not worked any nights or evenings. Prior to being assigned to his current position, Lt. Morton worked as a shift supervisor for the Department's uniform patrol.

51. Lt. Morton testified that he is familiar with Respondent's business and that he has had opportunity and occasion to observe Respondent's business from September 2005 through 2006. Though Lt. Morton reported seeing incidents of disorder at Respondent's business on the nights it was open for business during this time period, he could only provide a general statement and generic description as to these observations. Lt. Morton could not remember and could not describe a specific occurrence of a fight, an affray or other incident of disorder taking place at Respondent's business, and, to the degree they did occur, these incidents did not involve injuries or calls for ambulance service and often did not escalate beyond people exchanging unkind words. To the degree Lt. Morton made these observations, he testified that each such incident occurred in the common parking area outside of Respondent's business and that he had no knowledge of even a single act of violence or disorder taking place from within Respondent's business. Lt. Morton did not and could not connect any alleged act of violence or disorder to any conduct of Respondent generally or to Respondent's sale of alcoholic beverages specifically.

52. Lt. Morton has no knowledge of Respondent's business or the activities that have transpired at or around Respondent's business since 2006. Lt. Morton testified that he had no personal knowledge of even a single police call for service being made with respect to Respondent's business since 2006 and, as far as he knew, there were no such calls made. Furthermore, Lt. Morton stated that he has no knowledge of any illegal activity taking place at or around Respondent's business since 2006 and, as far as he knew, no such acts had taken place.

53. The undersigned finds that, to the degree illegal or disorderly conduct did occur in areas surrounding Respondent's business, these acts virtually ceased altogether shortly after Player's Club closed and that the disorderly acts described by Petitioner's witnesses were largely attributable to persons visiting the property as a result of the operations of Player's Club.

54. It appears to the undersigned that the neighborhood in which Respondent's business is located experienced problems with disorderly and illegal activity since at least the mid-1990's and that Respondent's business has not led to any appreciable increase of disorderly or illegal activity in this neighborhood.

55. Petitioner failed to produce any evidence of a single disorderly, violent or illegal act taking place within Respondent's business or any such act that was caused or condoned by Respondent. Moreover, to the degree Petitioner's witnesses described a general type of illegal or disorderly conduct, most of this conduct occurred before Respondent began operating its business in September 2007, all of this conduct occurred in a parking area that is not within the exclusive control of Respondent and Respondent should not be held responsible for acts that occurred before it opened for business or that occurred in a location that is not within Respondent's exclusive control. Further, to the degree any such acts occurred, Petitioner failed to present any evidence tending to show these acts were related to or caused by Respondent's sale of alcoholic beverages.

56. To the degree general acts of disorder or illegal were described by Petitioner's witnesses, the undersigned does not find them to be qualitatively or substantively different from the garden-variety types of problems attributable to the neighborhood in which Respondent is

located or from the same types of acts that typically occur in or near establishments that sell alcoholic beverages.

57. Respondent's business is located on a site that is suitable for the sale of alcoholic beverages and is suitable to hold permits to sell alcoholic beverages.

58. Respondent's business is not a detriment and does not pose a detriment to the neighborhood in which it is located and is suitable to hold permits to sell alcoholic beverages.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the subject matter and of the parties in this contested case.

2. In pertinent part, N.C. GEN. STAT. § 18B-904(e)(1) provides as follows:

Business or Location No Longer Suitable. --

The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood.

3. Once the Commission issues alcoholic beverage permits, the Commission bears the burden of proving by the greater weight of the evidence that the permittee's business is located on an inappropriate site and/or the permittee's business is detrimental to the neighborhood in which it is located.

4. In pertinent part, N.C. GEN. STAT. § 1A-1, Rule 41(b) provides as follows:

After the plaintiff, in an action tried by the court without a jury, has completed presentation of evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against plaintiff. . .

In addressing a Rule 41(b) motion to dismiss, the court is required to review the evidence in the light most favorable to the non-moving party and to draw all reasonable inferences in favor of the non-moving party. In deciding Respondent's motion, the undersigned operated under this standard of review.

5. After reviewing the facts presented by Petitioner in the light most favorable to Petitioner, the undersigned concludes as a matter of law that the location occupied by the Respondent is a suitable place to hold ABC permits.

6. After reviewing the facts presented by Petitioner in the light most favorable to Petitioner, the undersigned concludes as a matter of law that the operation of Respondent's business with ABC permits at that location is not detrimental to the surrounding neighborhood.

7. The undersigned concludes as a matter of law that Petitioner has failed to meet its burden of proof and that the petition should be dismissed.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge finds that the petition is not supported by a preponderance of competent and admissible evidence and that Respondent's motion to dismiss the petition should be, and hereby is, ALLOWED.

ORDER

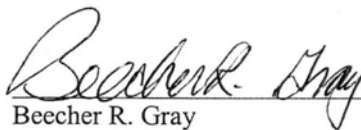
It hereby is ordered that the Commission serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. GEN. STAT. § 150B-36(a)

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in N.C. GEN. STAT. § 150B-36(b1) – (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision under N.C. GEN. STAT. § 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 20 day of June, 2008.



Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

LoRita K Pinnix
Assistant Counsel
NC ABC Commission
4307 Mail Service Center
Raleigh, NC 27699-4307
ATTORNEY FOR PETITIONER

Donald G Hunt Jr
Kristen Atkins-Momot
Akins/Hunt PC
PO Box 266
Fuquay Varina, NC 27526
ATTORNEYS FOR RESPONDENT

This the 30th day of June, 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 2008 MAY 30 AM 9:52 IN THE OFFICE OF
COUNTY OF PAMLICO ADMINISTRATIVE HEARINGS
06 EHR 1185

Henry S. Cowell, III and Carolyn E. Dressler,

Petitioners,

v.

North Carolina Department of
Environment and Natural
Resources, Division of Coastal Management,

Respondents,

and

Earl C. and Mary Jane Westphal,
Intervenor-Respondents.

DECISION

This contested case was heard on October 15-18, 2007 at the Craven County Courthouse in New Bern, North Carolina, and on November 26-27, 2007 and February 4-6, 2008 at the Lee House Hearing Room, Raleigh, North Carolina, before the Honorable Selina M. Brooks, Administrative Law Judge, on a petition for contested case hearing regarding the Division of Coastal Management's (DCM's) issuance of a general permit under the Coastal Area Management Act (CAMA) for development of a pier on Intervenor-Respondents's waterfront lot in Oriental, North Carolina in Pamlico County. At the request of the parties, a site visit was conducted by the Undersigned in the presence of the parties and their legal counsel on October 15, 2007.

APPEARANCES

For Petitioner: James L. Conner, II, Esq.
311 E. Main Street
Durham, NC 27701

For Respondent: Christine A. Goebel, Esq.
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

For Intervenor-Respondents:

Earl C. Westphal, Jr. and Mary Jane Westphal, Pro se
PO Box 336
Oriental, NC 28571

APPLICABLE LAW

1. The relevant Statute in this case is N.C.G.S. § 113A, Article 7, "Coastal Area Management Act" (CAMA). Also applicable are the associated administrative rules for coastal management, found at 15A N.C.A.C. 07 *et seq.* These are the rules of the Coastal Resources Commission (CRC) for the administration of CAMA. (Stipulation 6)
2. Under CAMA, "development" in an area of environmental concern ("AEC") requires a permit. N.C.G.S. § 113A-118. The proposed and permitted pier is "development" and is in an AEC, and requires a CAMA permit. (Stipulation 7)
3. N.C.G.S. § 113A-120 states that DCM "shall issue" a CAMA permit unless there is a finding that the proposed development will significantly impact specified resources listed in that statute. A permit must be issued for the proposed development unless the development does not meet one of the bases for denial found at N.C.G.S. § 113A-120.
4. Pursuant to N.C.G.S. § 113A-113(a) and (b)(6), the CRC has designated AECs and has adopted use standards or state guidelines for development within these areas. 15A N.C.A.C. 07H.0100 *et seq.*
5. Petitioners bear the burden of proof on the issues under N.C.G.S. § 150B-23 *et seq.* See also *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 328, 507 S.E. 2d 272, 281 (1998). In this case, Petitioners have the burden of demonstrating by a preponderance of the evidence that CAMA General Permit No. 45215 was improperly issued to the Intervenor-Respondents by the Respondent. Under N.C.G.S. § 150B-23(a), the administrative law judge in a contested case hearing is to determine whether petitioner has met its burden in showing that the agency substantially prejudiced petitioner's rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. *Britthaven, Inc. v. Dep't of Human Resources*, 118 N.C. App. 379, 382, 455 S.E.2d 455, 459, *rev. denied*, 341 N.C. 418, 461 S.E.2d 745 (1995).
6. The agency's conclusions of law should be upheld unless they are plainly erroneous or inconsistent with the regulations. *Simonel v. N.C. School of the Arts*, 119 N.C. App. 772, 775, 460 S.E.2d 194, 196 (1995).
7. N.C.G.S. § 150B-34(a) provides that "[t]he administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency."

PREHEARING MOTIONS

1. On September 11, 2006, the Permittees, Earl and Mary Jane Westphal, through counsel, filed a Motion to Intervene as Intervenor-Respondents in this case. On September 28, 2006, the presiding Administrative Law Judge (Judge Mann was the assigned ALJ at that time) issued an Order granting the motion to intervene.
2. On October 5, 2006, Respondent filed a Motion for Partial Dismissal for lack of subject matter jurisdiction pursuant to N.C. R. Civ. P. 12(b)(1). On or about October 11, 2006, Intervenor-Respondents filed a similar Motion for Partial Dismissal for the same reasons. On or about October 13, 2006, Petitioners filed a Response to the Motions. The parties' arguments were heard at an October 17, 2006 hearing on this matter held at the Craven County Courthouse in New Bern, North Carolina. Upon considering the briefs and oral arguments of the parties, Judge Mann denied Respondents's and Intervenor-Respondents's Motions to Partially Dismiss for lack of subject matter jurisdiction. This ruling was memorialized in an Order issued January 30, 2007.
3. On June 29, 2007, Respondent filed a Motion in Limine to exclude the testimony about whether the pier as-built meets DCM's pier rules as enforcement actions not related to whether the decision to issue the permit was correct or not. On or about August 1, 2007, Petitioners filed a Response to the Motion. On August 27, 2007, the Undersigned filed a written Order denying Respondent's Motion. At the October 15, 2007 hearing on this matter, Respondent raised the issue again based on a new court ruling and the Undersigned heard oral arguments by the parties. Upon considering the briefs and oral arguments of the parties, the Undersigned denied Respondent's Motion in Limine.

ISSUE

Whether CAMA General Permit No. 45215 was properly issued by the DCM to Intervenor-Respondents in light of the provisions of the CAMA and the administrative rules for coastal development promulgated by the Coastal Resources Commission (CRC).

TESTIFYING WITNESSES

For Petitioners:

Carolyn Elizabeth Dressler, Petitioner, testified on her own behalf, and is an adjacent riparian owner on the east side of the Intervenor-Respondents's lot. (T pp 58 *et seq.*)

James Anthony Spangler, President of Spangler Environmental Consultants, is a professional environmental consultant. Mr. Spangler was offered and accepted as an expert in "coastal and riparian environment and regulation of development in coastal and riparian areas" over the objection of Respondent. (T p 121)

Henry S. Cowell, III, Petitioner, testified on his own behalf, and is an adjacent riparian owner on the east side of the Intervenor-Respondents's lot. (T pp 595 *et seq.*)

Lawrence Carl Baldwin is the Lower Neuse Riverkeeper for the Neuse River Foundation, a non-profit organization that seeks to protect the Neuse River watershed. Mr. Baldwin was tendered and accepted as an expert in "general environmental conditions of the Lower Neuse watershed." (T p 636)

Adam Crawford Arrington, Professional Engineer (in the state of Alabama) and GPS consultant, was called to testify as a rebuttal witness by Petitioners. (T p 2038)

For Respondent:

Alton Ray Hodge, a Regional Supervisor for the Division of Water Quality's (DWQ) Surface Water Section, has held this position since 2004. (T pp 801-04)

Stephen Douglas Lane, DCM Field Representative for Pamlico County at the time of this permit issuance. (T pp 955-70)

Michael Ted Tyndall, Assistant Director of the Division of Coastal Management in charge of Permits and Enforcement. (T pp 1365-78)

For Intervenor-Respondents:

Thelma Flanagan is the adjacent riparian owner on the west side of the Intervenor-Respondents's lot and former owner of the Intervenor-Respondents's lot. (T pp 1502-03; 1515-16)

Peter Overgaard, President of IBX Contracting and a licensed marine contractor.

Leonard Alan Rollman is Vice President of IBX Contracting.

William Stephen Morrison, Co-founder of Land Management Group, was designated as an expert in "environmental consulting" over the objection of Petitioners. (T p 1775)

Earl C. Westphal, Jr., Intervenor-Respondent, testified on his own behalf. (T pp 1811 *et seq.*)

EXHIBITS RECEIVED INTO EVIDENCE

Stipulated Exhibits included with the Prehearing Order signed and filed on October 15, 2007:

- A. CAMA General Permit No. 45215
- B. DCM's Permit File
- C. Order of the Chairman of the CRC granting the Petitioners's Third Party Petition
- D. Relevant portions of the CAMA (N.C.G.S. § 113A-100 *et seq.*)
- E. Relevant portions of the CRC's Administrative Rules for Coastal Development (15A N.C.A.C. 07 *et seq.*)

Petitioners's Exhibits:

- 1. CAMA General Permit No. 45215 (T p 219)
- 2. Respondent's supplemental responses to Petitioners's first discovery request (T p 59)
- 3. Resume of Spangler (T p 110)
- 4. AutoCAD enlarged drawing by Spangler and photographs identified as Numbers 1-17 from visit (T p 174)
- 5. Water Quality Certification No. 3494 (T p 477)
- 6. Army Corps of Engineers Regional General Permit, effective 3/26/05-12/31/10 (T p 391)
- 7. 15A NCAC 02B .0200 series (T p 440)
- 8. Adjacent Riparian Property Owner Statement, signed by Cowell and Dressler (T p 663)
- 10. Adjacent Riparian Property Owner Statement, blank (T p 614)
- 13. 11/16/05 Letter from Cowell and Dressler to Lane (T p 620)
- 14. Certified mail receipt, cash register receipt, and signed receipt card (T p 621)
- 15. Cowell's log of telephone conversations with Lane on 5/2/06 and 6/16/06 (T p 671)
- 17. Photograph identified as Part 1, Number 1 (T p 72)
- 17. Photographs identified as Numbers 2-30 and 37-48 (T p 725)
- 19. Pier statistics summary (T p 1929)
- 23. Pamlico County GIS map (T p 732)
- 29. Slab of live oak tree (T p 735)
- 33. Enlargement of map with measurements (T p 1926)
- 35. Estimate prepared by IBX for Cowell (T p 1741)
- 36. Hydrographic map of Brite's Creek (offer of proof only)
- 39. Five-page document consisting of map, chart, diagram, Google map, and key (T p 2074-78, for the limited purpose of showing where Ms. Dressler took her depth measurements but not for depth contours or shorelines)

Respondent's Exhibits:

1. Lane's calendar notes and phone log (T p 1081)
- 2A. Photograph (T p 1081)
- 2B. Photograph (T p 1090)
- 2C. Photograph (T p 1090)
- 2D. Photograph (T p 1090)
- 2E. Photograph (T p 1090)
- 2F. Photograph (T p 1090)
- 2G. Photograph (T p 1090)
- 2H. Photograph (T p 1090)
- 2I. Photograph (T p 1090)
- 2J. Photograph (T p 1090)
- 2K. Photograph (T p 1090)
- 2L. Photograph (T p 1156)
- 2M. Photograph (T p 1156)
- 2N. Photograph (T p 1156)
- 2O. Photograph (T p 1156)
- 2P. Photograph (T p 1156)
4. Aerial photograph of the site (T p 1082)
5. Third party hearing request, minus staff's recommendation (T p 1084)
6. Resume of Tyndall (T p 1376)

Intervenor-Respondents's Exhibits:

- 20-2 Affidavit of Rollman (T p 1829)
- 20-4 Letter from Flanagan (T p 1831)
- 21A-C Resume of Morrison (T p 1830)
- 22A-B 11/21/07 notes by Morrison (T p 1830)

FINDINGS OF FACT

Based upon careful consideration of the applicable law, and evidence received during the contested case hearing, the entire record of this proceeding, and having weighed the credibility of the testimony of the witnesses, the Undersigned makes the following findings of fact:

The Parties

1. Petitioners Henry S. Cowell and Carolyn E. Dressler own the property located at 1148 Orchard Creek Rd. in Oriental, Pamlico County, North Carolina. They have owned this property since July 2003. This property is adjacent to the lot where the pier was permitted. (Stipulated Fact 1) Mr. Cowell enjoys nature and the environment, boating, and the view of

the marsh and wildlife from his property. He has been a member of Nature Conservancy and the Chesapeake Bay Foundation. (T pp 601-06) Ms. Dressler enjoys nature, gardening, fishing, environmental causes, birding, doing animal rescue, and enjoying the view and serenity of the marsh. She has been involved with the Audubon Society, the Chesapeake Bay Foundation and the Neuse River Foundation. (T pp 61-67)

2. The Respondent is the North Carolina Department of Environment and Natural Resources ("Agency" or "DENR"), Division of Coastal Management ("DCM"). (Stipulated Fact 3) The Respondent is the state agency authorized to issue permits and enforce regulations under the Coastal Area Management Act (CAMA), N.C.G.S. § 113A-100 *et seq.*
3. The Intervenor-Respondents/Permittees, Earl C. Westphal, Jr. and Mary Jane Westphal, own the property located at 309 Peninsula Dr., in Oriental, Pamlico County, North Carolina. Their lot is adjacent to Petitioners's lot. The Permittees have owned the lot since March 2005. (Stipulated Fact 2) Mr. Westphal purchased this property in order to build a house, retire, and use the property to boat, fish, cruise, and crab. He wanted a straight pier with a path straight from the future house-site to make it easier to haul things to and from the dock and boats, and for his elderly parents to access the dock and boats. (T pp 1814-21)

The Property

4. Both lots (Petitioners's lot and Intervenor-Respondents's lot) are adjacent to Brite's Creek, part of the Neuse River Basin, and subject to the North Carolina Department of Environment and Natural Resources, Division of Water Quality's (DWQ) Neuse River Basin Buffer Rules. (Stipulated Fact 4)
5. Portions of the site are within or adjacent to the Coastal Shorelines, Coastal Wetlands, Public Trust Area and Estuarine Waters, Areas of Environmental Concern (AEC), as defined by the administrative rules for coastal development by the Coastal Resources Commission (CRC). (Stipulated Fact 5)
6. The Westphal lot is less than an acre in size with a section of coastal wetlands and a narrow wooded strip along the Westphal-Flanagan property line on the west side. It also has a small amount of bulkhead that adjoins the Flanagan bulkhead. (T pp 979-80)
7. Based on personal observation at the site, the Undersigned notes that the Cowell-Dressler lot borders the Westphal lot on the east side and that there is no wooded strip on the Cowell-Dressler-Westphal property line.

CAMA General Permits, Generally

8. When a CAMA General Permit is being developed, there is interaction between DCM staff and other state and federal resource agencies, including DWQ. (T pp 814, 1423)
9. CAMA General Permits are a sub-set of the CAMA Major Permits. (T p 964) CAMA General Permits are developed for repetitive types of projects, such as piers. Applications for pier projects are common. (T p 964) If a project meets the bounds set by the general permit, the project can be permitted more quickly and inexpensively. (T p 965)
10. CAMA General Permit applicants are not required to submit a survey for most projects but a sketch is accepted instead. The general permit process is intended to be quicker and less expensive than regular major permits. (T p 987, 1434)
11. Other resource agencies participate in the development of CAMA General Permits, and so the impacts of projects that fit into a general permit have already been considered and approved by these other agencies. (T pp 965-66)
12. DCM is charged with finding a balance between minimizing impacts to resources and allowing reasonable development, specifically riparian development. (T p 1098) One of the ways DCM balances reasonable development and impacts to resources is to consider the concerns of other state resources agencies, such as DWQ, Marine Fisheries, Wildlife Resources, DOT Cultural Resources, and Archives and History, as well as federal agencies such as National Marine fisheries, Environmental Protection Agency, Army Corps of Engineers, and U.S. Fish and Wildlife Service. (T p 901-07, 1099, 1296, 1423)
13. DWQ has a general 401 water quality certification for the construction of piers, having found that such activities have minimal impacts to water quality. (T p 845) The federal government also has a general certification for 401 water quality impacts for pier projects permitted by DCM under a CAMA General Permit. (T p 846) Both DWQ and the Army Corps of Engineers do these general certifications instead of issuing the hundreds and thousands of pier permits individually, if the project can be permitted under the CAMA General Permit for piers, because such piers have a minimal impact on the resources. (T p 846) DWQ automatically issues the 401 general certification for projects which receive a CAMA General Permit for a pier. (T pp 847-49)
14. During the processing of a CAMA General Permit that involves the resource areas of other agencies, a DCM field representative may confer with someone from the respective agency so that the issues of other agencies can be factored into the permit decision. (T pp 971, 1296-98)
15. A CAMA General Permit does not have an individual application form but, instead, requires the submission of the adjacent riparian notice forms, and general information about the proposed project from the applicant. Once that information is obtained, DCM can write a

CAMA General Permit on-site. (T pp 972-78) An adjacent riparian property owner is someone who owns property abutting another property owner's riparian area. (T p 973)

16. The intent of DCM's notice requirements is to give the adjacent riparian owners notice about the proposed project and to provide the opportunity to express any objections to it. (T pp 988, 992-93) The substance of objections is more important to DCM when reviewing a general permit application, than the manner in which the objections are transmitted, e.g., telephone conversations, forms, or letters. (T p 988)
17. DCM has the authority to issue a permit even if adjacent riparian owners disagree with it. (T pp 1263, 1435-36)
18. DCM does not have the authority to consider proposed mitigation to offset impacts on the environment caused by private projects. DCM only has this authority for public projects pursuant to 15A NCAC 7M.0700 *et seq.* (T pp 1123, 1298-1300, 1440-42)
19. DCM staff issue approximately 2,000 general permits per year. (T p 1373)

CAMA General Permit #45215, Application Process and Permit Issuance

20. Mr. Lane was first contacted about the Westphals's proposed pier in 2005 by IBX, the agents for the Westphals. (T pp 981-82)
21. Mr. Lane was very familiar with the subject property and with Petitioners's lot, having been friends with the prior owner, and had visited that lot in the past. (T p 979)
22. As part of the permit process, notice of the proposed project is given to adjacent land owners. (Stipulated Fact 9; Stip Ex B)
23. IBX sent notice of the project to the adjacent riparian owners, Ms. Flanagan and Petitioners. (T p 79)
24. After receiving notice of the Westphals's proposed project, Ms. Flanagan replied on the "adjacent riparian owner statement" form dated October 29, 2005. She did not object to the project and agreed to waive the setback requirement for the project as shown on the "adjacent riparian owner statement" form. (Stipulated Fact 10; Stip Ex B; T pp 983-85)
25. A waiver of the 15-foot setback is specific to the project as proposed in the notice. (T pp 984-85) It is not a blanket waiver for any design or location changes. (T pp 1063, 1115-16, 1419, 1458, 1500)
26. After receiving notice of the Westphal proposed project, Petitioners submitted objections to the proposed development which were received by DCM. These objections were submitted

in the form of Petitioners's response on the "adjacent riparian owner statement" form dated November 5, 2005, a letter to DCM's Stephen Lane dated November 6, 2005, and objections made by telephone by Mr. Cowell to Mr. Lane. The objections specifically proposed an alternative location for the proposed walkway and pier that Petitioners claimed would have less negative impact on the coastal marshes and the environment in general. (Stipulated Fact 11; T pp 79-84, 615-24, 671-75, 981-82, 989-93; Stip Ex B) The proposed alternative was to locate the pier on the Flanagan side of the Westphal property. (T pp 478-81)

27. Mr. Lane, after passing on the Petitioners' objections to IBX, did not hear from IBX or the Westphals between November 2005 and April or May 2006. (T p 1005) Mr. Lane assumed that the neighbors were discussing and working out the disagreements between them. (T p 1005)
28. After IBX had a signed contract with the Westphals, Mr. Overgaard contacted Mr. Lane and met him on the site on April 26, 2006. (T p 1006; R's Ex 1) Mr. Overgaard placed poles in the water before their meeting to show Mr. Lane the proposed location of the center, far left and far right pilings of the proposed pier. (T pp 1642-43) Mr. Lane determined that the location complied with the permit and was the correct distance from the Flanagan riparian line. (T pp 1198-1201)
29. At the on-site meeting on April 26, 2006, Mr. Lane wrote up CAMA General Permit No. 45215, but did not issue it. (T p 1007)
30. DCM staff received the objections from Petitioners. Mr. Lane discussed the Petitioners' objection several times by telephone before permit issuance. (Stipulated Fact 12; T p 1213)
31. After reviewing Petitioners's objections and discussing them with his supervisor, Mr. Lane issued CAMA General Permit No. 45215 on May 10, 2006 on behalf of DCM. (Stipulated Fact 13)
32. CAMA General Permit No. 45215 was issued pursuant to the general permit for piers. (T p 1099; Stip Ex A) Some of the limitations that this general permit requires and which limit the impacts of the pier on the resources, include height and width limitations for piers, and square-foot limitations for platforms. (T pp 1099-1101)
33. The pier was proposed and approved to cross approximately 110 feet of coastal wetland which is subject to the Respondent's jurisdiction and protection under CAMA. DCM indicated on the permit that this is also a primary nursery area, as defined in the Marine Fisheries regulations. (Stipulated Fact 14; Stip Ex A)
34. The drawing of the project on CAMA General Permit No. 45215 was not drawn to scale. (T pp 1014, 1197) Mr. Lane also noted that the field depiction of the coastal wetlands on the face of the permit was not intended to show uniform lushness of the wetlands. (T pp 1014, 1133)

35. Mr. Lane marked the box on the front of CAMA General Permit No. 45215 which directed the applicant to review the information printed on the back of a CAMA general permit form about the DWQ buffer rules. (T p 1016; Stip Ex A)
36. Mr. Lane also filled in the line on the general permit form indicating that a building permit may be required from Pamlico County, the applicable jurisdiction for this property. (T p 1013)
37. The dimensions authorized by CAMA General Permit No. 45215 are the maximum dimensions for the pier project and a smaller pier with the same or lesser impacts could be built under this permit. (T p 1017)
38. On May 11, 2006, Mr. Lane visited the site to check for compliance by IBX with the permit and its conditions. (T p 1036; R's Ex. 1) Mr. Lane met with the contractors and confirmed that they were building the pier in the location and orientation that he had permitted in compliance with 15A NCAC 7H.1204(b). (T pp 1037-38, 1056-57) Mr. Lane indicated to IBX a point on the far shoreline that would show them the correct angle of the riparian line. (T p 1055)
39. While on-site on May 11, 2006, Mr. Lane attempted to reach Petitioners to make them aware of the permit issuance, but they were not home when he visited. (T p 1036)
40. Mr. Lane took photos of the site and construction on May 11, 2006. (T p 1036; R's Ex. 2A)
41. Mr. Lane made another site visit to check permit compliance and take site-photos on June 7, 2006. (T p 1087; R's Ex 2B-2K)

Third Party Appeal and Contested Case filing

42. DCM District Manager Tere Barrett sent a letter on May 12, 2006 notifying Petitioners that a permit had been issued and that they had a right to challenge the permit issuance. (Stipulated Fact 15; Stip Ex B) This is standard DCM procedure where there have been objections to a project. (T pp 1061-62)
43. Mr. Tyndall was first involved in this case when he was copied on Ms. Barrett's letter to Petitioners. He spoke with Ms. Barrett and Mr. Lane about the case. (T p 1377)
44. Petitioners timely filed a third party hearing request, pursuant to N.C.Gen.Stat. § 113A-121.1(b) which was received by DCM staff on May 26, 2006. (Stipulated Fact 16)
45. Third Party Hearing Requests offer neighbors or other objecting parties an opportunity to have their objections heard by the Chairman of the CRC who decides if the third party can

file a contested case. (T p 1086) The submission of a third party hearing request stays the permit. (T pp 1086-87)

46. When Petitioners filed their third party hearing request, the pier was already constructed. (T p 1087)
47. The Chairman of the CRC granted Petitioners's request to file a contested case hearing. This Order was signed on June 12, 2006. This contested case was initiated by a petition filed on June 27, 2006 in the Office of Administrative Hearings. (Stipulated Fact 17)
48. The Permittees, Earl C. Westphal, Jr. and Mary Jane Westphal, were granted the right to intervene on September 27, 2006. (Stipulated Fact 18)

The Inter-play between the CRC's Buffer Rules and the EMC's Buffer Rules

49. The Environmental Management Commission (EMC) has established that the Neuse and Tar-Pamlico River Basins are nutrient sensitive, and has developed several strategies to reduce the nutrient input into those basins, so that extra nutrients do not provide food for algae blooms. (T pp 803, 823) The EMC promulgated riparian buffer rules which were implemented by the DWQ in 2000. (T pp 811, 820)
50. The purpose of the riparian buffer rules is to minimize impacts to the buffer so that its function is maintained. (T pp 812-13) Ground disturbance and tree cutting is limited so that vegetation can reduce sediment and stormwater runoff, and the root systems of the vegetation can remove nutrients from the waters. (T pp 821-22)
51. The EMC's Neuse River Buffer Rules require a riparian buffer of 50 feet, measured landward of surface waters or the landward extent of Coastal Wetlands on the property. (T p 819) The 50-foot buffer is sub-divided into the first 30 feet (Zone 1) and the outer 20 feet (Zone 2). (T p 819) Within this buffer, activities are limited by rule, specifically as to impervious surfaces and ground disturbance. (T p 819)
52. There is some overlapping jurisdiction between DCM and DWQ, and so there is an interlinked relationship between the two divisions. (T pp 809, 904) One of the areas of common jurisdiction between DCM and DWQ are the buffers in the Neuse and Tar-Pamlico River Basins. (T p 811) The CRC's rules allow the EMC's buffer rules to supercede the CAMA 30-foot buffer in these two river basins because the EMC's rules are more strict. (T pp 812, 910-11)
53. When an applicant applies for and receives a CAMA General Permit to construct a pier that is within the Neuse or Tar-Pamlico River Basins, the applicant must also receive buffer authorization from the DWQ. (T pp 815-16) This authorization would certify that the

- proposed pier location has minimized and avoided the riparian buffer to the greatest extent practicable. (T p 817)
54. Mr. Hodge testified that at this time, DWQ is understaffed to issue buffer authorizations, but that he and his staff are working on fulfilling the mandate. (T pp 816, 864, 916)
55. DWQ relies on DCM staff to help educate the public about the need for buffer authorizations in the Neuse River basin, and have held joint training sessions to better train DCM staff about DWQ's rules. (T p 1395)
56. Mr. Tyndall testified that personnel moves between positions with DCM, DWQ and the Army Corps of Engineers are common, so that there are strong working relationships and easy communication between the agencies and good understanding of all of the resource areas. (T p 1379) Mr. Tyndall testified that one main reason for hiring Mr. Lane was because of his past work with DWQ and the buffer rules. (T p 1398)
57. Mr. Hodge testified that due to staffing issues, he did not issue a buffer authorization to the Westphals in this case. (T p 864) However, Mr. Hodge also testified that because of Mr. Lane's experience working for DWQ with the DWQ buffer rules and Mr. Lane's ability to apply the DWQ's criteria, the DWQ buffer criteria was considered in this case, albeit by Mr. Lane. (T p 888) Mr. Hodge also testified that having been on site since the pier was built, he would have issued a buffer authorization to the Westphals for the as-built pier if he had to make a decision today because the permitted route had the most minimal impact to the riparian buffer. (T p 913)
58. For the Westphal lot, the DWQ 50-foot buffer extends landward from the landward-most extent of the coastal wetlands. (T p 821)
59. Water-dependant structures, such as piers, are deemed "allowable" activities by the EMC under the Neuse River Buffer Rules to allow property usage and the reasonable use of a riparian owner's property. (T pp 827, 867, 909)
60. Mr. Hodge made a site visit in late September or October 2007 to inspect the constructed pier and the proposed alternative location. (T pp 832-36) He confirmed that the Neuse River Buffer Rules apply to the site and require that the pier structure minimize impacts to the riparian buffer. (T pp 832-33)
61. Construction of a pier always has some impact to the buffer. (T p 1804)
62. One of the easiest ways to minimize impacts to the buffer is for a pier structure and its access to proceed as close to perpendicular through the buffer as possible, not parallel to the buffer. (T pp 833, 914)

63. The upland path or boardwalk access to the pier is part of a pier structure, which is also considered and allowed under the Neuse River Buffer Rules. (T pp 833-38, 881, 944-46)
64. It is not reasonable to build a pier and not provide access to it. (T p 1349)
65. A bare pathway across the buffer will have negative impacts on the vegetation in the buffer due to the repeated walking. (T pp 932-34) Enough foot traffic on a pathway would wear the ground down to the point where sedimentation and erosion issues may arise. (T p 1779)
66. Mr. Hodge could not tell from photographs whether the tree cut down at the landward end of the pier was within the buffer or not. (T p 878-79) If the tree was in the buffer, the cutting of the tree at the base of the existing pier is an allowable use under the Neuse River Buffer Rules because it accommodates the water-dependant pier structure and access in a location that minimizes overall impacts to the buffer. (T pp 841-42, 876) The cut tree did not meet the definition of a "high value tree" as that term is used in the buffer rules at 15A NCAC 2B.0233(2)(f). (T p 901)
67. The tree trimming on this site (or pruning) as shown in Petitioners' Exhibit 17-2 and 17-28, was allowed under the Neuse River Buffer Rules in Mr. Hodge's opinion. (T pp 824-25)
68. If IBX moved the pier to avoid the tree and kept the pier straight, it might have placed the pilings further into Ms. Flanagan's riparian setback. (T pp 1654-55)
69. DCM considered the provisions of the DWQ Neuse River Buffer Rules before issuing CAMA General Permit No. 45215. (T pp 1066, 1107)
70. The proposed pier project did not require a CAMA major permit because the project would not trigger the usual concerns of other agencies such as the Army Corps of Engineers or DWQ that would require further permitting by them. (T p 1778)

Pier and Platform Measurements

71. The CAMA General Permit rules place length, width and height restrictions on pier structures. 15A NCAC 7H .1205(b)
72. CAMA General Permit rules limit the length of a pier to 100 feet or less. 15A NCAC 7H.1205(b). (T p 994; Stip Ex B) The purpose of this regulation is to avoid unreasonable interference with navigation. (T pp 994-95)
73. The length of the Westphal pier is 41 feet, as measured from the waterward extent of the coastal wetlands. (T pp 995-96) This pier, as proposed and built, does not exceed the established pier length in the area and is in compliance with the pier-length provision of 15A NCAC 7H.1205(b). (T p 996; 1459-60)

74. CAMA General Permit rules limit the width of a pier to 6 feet. The width of the Westphal pier is six feet and in compliance with 15A NCAC 7H.0208(b)(6)(A). (T pp 1130-31, 1443).
75. The platform area of the Westphal pier is 9 feet by 31 feet in size and within the size limitations for platforms as set forth in 15A NCAC 7H.0208(b)(6)(C).
76. If a violation is found with a permitted structure after it has been built, DCM has the authority to issue a Notice of Violation and require the project be brought into compliance with the permit conditions. If the owners do not comply, further steps can be taken to ensure compliance. (T pp 967-69)
77. The Westphal pier is not in compliance with the permit condition that the decking boards be at least 3-feet above the marsh substrate. (T p 1091-92) This is a minor violation. (T p 1094)
78. Heavy equipment will be needed to correct the decking height violation. DCM deferred issuing a Notice of Violation (NOV) for the height violation pending the outcome of this case in order to limit impacts to the marsh if the pier were ultimately required to be removed. (T pp 1096-98) Mr. Tyndall testified that in hindsight, DCM should have issued the NOV, but then extended the time to correct the violation until after the conclusion of this contested case. (T p 1430)
79. DCM does not regulate the height of the pier structure (including platforms, etc.) over open water so that no indication of the drop-down portion of the platform needed to be shown on CAMA General Permit No. 45215. (T p 1018)

Impacts to Coastal Wetlands

80. Protection of coastal wetlands is one of the missions of the CAMA. DCM is required to balance those impacts with other concerns, such as riparian property rights and impacts to the DWQ buffer. (T p 1001) The CAMA and the Dredge and Fill law attempt to balance the protection of the coastal wetlands while still allowing traditional uses such as water-dependant development. The CRC's rules put restrictions on water-dependant development, such as piers, to limit the impacts. (T pp 1386-91) The general permit limitations of three-foot high, six-foot wide, and length restrictions help to reduce impacts as well. (T p 1392)
81. The requirements to minimize impacts to coastal wetlands do not result in a prohibition of piers. (T pp 1101, 1391)
82. Mr. Lane has issued between 800-1000 CAMA general permits during his tenure with DCM, with the vast majority of these being for piers. (T p 966) He testified that more than fifty percent of the piers he has permitted by general permits have piers which cross marshlands. (T p 1263)

83. The impacts to the coastal wetland from the construction of this pier were typical of pier installation in this area. (T pp 1001, 1172, 1282)
84. The Westphal pier does have some impact to coastal wetlands that are minor and typical of piers.
85. Piers are permissible under the CRC's rules and include some shading. (T p 1001, 1137, 1468) Shade from a pier can negatively impact a coastal wetland. (T pp 1102-03)
86. The marsh along the as-built pier was naturally shaded due to the wooded area between the Westphal and Flanagan lots. The marsh was sparse on this side before the pier was built. (T p 1657)
87. Concrete decking can often cause less shading compared to wooden decking boards placed closely together. The Westphal pier is made of concrete pieces with permanent slits which allow some sunlight to penetrate to the coastal wetlands below. (T p 1033)
88. The permitted pier alignment helped reduce shading impacts because the pier was angled in relation to the sun to allow some sunlight to penetrate under the pier and help regrowth. (T pp 1787-88)
89. The Neuse River Buffer Rules allow trees to be trimmed in order to build a pier or for access to a pier. (T pp 1170, 1233, 1403) The live oak tree that was cut down was in the coastal wetland AEC and did not require permission for its removal. (T p 1282)
90. The CRC's rules do not require a particular method of construction for the placement of pilings. Both driving in pilings and "blowing" or "jetting" pilings with a water hose are allowed. The possible impacts from both methods are similar and could be worse or better on any particular site, depending on other factors. (T pp 1157-60, 1466) A jet pump is a common tool used by marine contractors, and "jetting" pilings is a standard method of construction. (T p 1686)
91. There were some minimal impacts to the coastal wetlands from the construction of this pier, but there is evidence of new coastal wetlands growth, vegetation regrowth, the leveling of siltation, the presence of hundreds of crabs, and of animal, fish and birds using the marsh. (T pp 1136-37, 1151-52, 1791-96)
92. Before issuing a general permit, the CRC must find that construction will not measurably increase siltation. 15A NCAC 7H.0208(a)(2)(E). This finding is evidenced by the issuance of the permit. (T pp 1120-21, 1238-39, 1426) The CAMA general permit for piers anticipates some siltation from the installation of a pier, but that the siltation is typically minor and temporary in nature. (T p 1122) Since construction, the sediment in the disturbed area is leveling out. (T pp 1122-23)

93. The placement of the pier along the sparser, shaded marsh edge on the Flanagan side of the property reduced impacts to the marsh. (T p 1392) If the pier had been placed in the middle of the Westphal property, bisecting the marsh, then the impact on the coastal wetland would have been greater.
94. The Westphal pier minimized any impacts to the coastal wetlands by the location of the pier, the use of concrete decking, and alignment with the sun in order to reduce shading.
95. The construction and installation of the Westphal pier had minor and temporary impacts on the coastal wetlands.

Proposed Alternative Route for the Pier

96. When Mr. Westphal first purchased the lot, he spoke on-site with Mr. Cowell, who inquired what they intended to build on the lot. (T pp 1824, 608)
97. At that time, Mr. Cowell suggested and showed Mr. Westphal where he thought the Westphal pier should be built. (T pp 76-77, 608, 1824) He suggested that the pier begin at the existing bulkhead near the Flanagan property and extend waterward from there. (T pp 76-78) Access to the pier would be by foot through the wooded strip along the Westphal-Flanagan property line.
98. Mr. Westphal listened to Mr. Cowell's suggestion, but was surprised that he was suggesting how Mr. Westphal should use his own property. (T p 1824)
99. Mr. Westphal testified that he thought the straight route down the center of his lot was the best place for the pier, in part because it was not too close to either neighbor's property and because of the smaller impact to the trees in the buffer. (T p 1825)
100. Mr. Cowell testified that his alternative location could include upland improvements, but he did not believe them to be necessary and because he believes that his alternative did not require Ms. Flanagan to waive her 15-foot riparian setback. He conceded that this alternate route could result in the need to cut trees or clear brush. (T pp 769-73)
101. In their initial objections, Petitioners' suggested their alternative route for the pier, and this alternative was further described to Mr. Lane by Mr. Cowell, specifically in a telephone call. (T pp 1002, 1210, 1315) Mr. Lane testified that he had a good indication from Petitioners where their alternative location was proposed. (T p 1221)
102. Mr. Lane did not take Mr. Cowell onto the Westphal property in order to be shown Petitioners's alternative location in detail, mainly because Mr. Lane felt he did not have the authority to take a third-party onto someone else's lot. (T p 1210, 1316)

103. Mr. Lane testified that it was very unusual for a neighbor to propose an alternative pier location. (T p 1002)
104. Mr. Lane testified that it was not his job to resolve a dispute between the Petitioners and the Westphals but, instead, to determine if the design proposed by the Westphals met the standards and requirements for a general permit. (T p 1313)
105. Although Mr. Lane did not think Petitioners's alternative route was feasible, he did tell IBX about the route in case it was something their client wanted to consider. (T pp 1002, 1009-10, 1162-63) Mr. Overgaard discussed the Petitioners's alternative with Mr. Lane, and then with Mr. Westphal. (T pp 1644-45) Mr. Lane spoke with Mr. Overgaard on May 4, 2006 who indicated that the Westphals did not wish to move the location of their pier. (T pp 1009-10, 1163; R's Ex 1)
106. Mr. Lane noted that the alternative location proposed by Petitioners may very well require part of the pier to be within Ms. Flanagan's 15-foot setback or even within her actual riparian area. (T pp 1064-66) The closeness of the proposed alternative location to the Flanagan property line was part of his consideration. (T p 1318) The riparian area for the Flanagan lot projects east of the Westphal-Flanagan property line over the water. (T p 1047) The riparian lines for the Westphal property are a bit skewed and do not simply extend from the property lines over the water. (T pp 1038, 1144)
107. The waiver of the 15-foot setback by Ms. Flanagan was not a blanket waiver, and she would have to sign a new waiver for the alternative location proposed by Petitioners which would have the pier extending off the Westphal bulkhead very near the Westphal-Flanagan property line. (T pp 1063, 1115, 1119, 1419)
108. Mr. Lane illustrated on Respondent's Exhibit 4 the approximate location of the channel of Brite's Creek and the resulting riparian line angle for the riparian line between the Westphal lot and the Flanagan lot. (T pp 1051-53) Mr. Lane also testified that he was familiar with this water body, having navigated it himself in the past, as well as having examined aerial photographs. (T pp 1068-72) The riparian line on the permit was not drawn to scale and was intended only to identify the distance from the pier to the Flanagan riparian line for the purpose of placement of the pilings. (T p 1053-55, 1197)
109. A riparian area is the open water that is waterward of the normal water level. A riparian line runs at a ninety-degree angle to the channel or deep water to the property corner at the normal water level. (T pp 973, 983, 1040-48) The determination of the location of the "channel" or "deep water" used to delineate riparian lines is somewhat subjective. (T p 1068-72, 1414-19, 1524-32) 15A NCAC 7H .1205(o) provides the method to delineate riparian lines based on the location of the channel. (T pp 1037-38, 1144, 1300-08, 1404-14) The riparian setbacks are measured 15-feet from the riparian line, not the property line, and are only over water, not over land. (T pp 1047-48) A waiver of the 15-foot setback authorizes construction within the setback but not within the riparian area. (T p 1065)

110. In Respondent's case-in-chief, testimony was elicited concerning the method for determining riparian lines and, specifically, for identifying the riparian area for the Flanagan property. The purpose of this testimony was to show that Petitioners's proposed alternative location was not feasible because it would place the Westphal pier within the Flanagan riparian area. (Argument of Counsel, T pp 1986-95)
111. In their rebuttal case, Petitioners's also offered testimony concerning the method for determining riparian lines that would show errors in DCM's calculations. (Argument of Counsel, T pp 1986-95) Most of Petitioners's witnesses focused on the definition of the terms "channel" and "deep water" in the regulation concerning riparian lines. 15A NCAC 7H .1205(o) Mr. Baldwin testified that Brite's Creek does not have a channel or deep water line, but rather is wide and flat-bottomed. (T p 1857) Mr. Cowell testified that he interpreted the regulation language "deep water" to mean "deep water line." He made his own measurements concerning the water depth and bottom of Brite's Creek, and then he determined what he called the "controlling depth" in order to conclude that there is no channel or deep water in Brite's Creek within the meaning of the regulation. (T pp 1896-1913) Adam Arrington remotely assisted Ms. Dressler's use of a GPS device with which Petitioners located the points of some depth measurements in Brite's Creek, near the site of the Westphal pier, and then Mr. Arrington helped them to create a map of the depths. (T pp 2039-42) Mr. Spangler testified that the riparian line may be straight out from the property line or skewed. (T p 2099) Petitioners's witnesses did not demonstrate an expertise or knowledge concerning the determination of riparian lines nor provide evidence that contradicted the method as described by Respondent's witnesses.
112. Petitioners's alternative location would impact some wetlands as seen along the bulkhead in Petitioners's Exhibit 4, photos 9-11. (T pp 1160-62)
113. Mr. Lane testified that he believed the as-built pier location had less adverse impacts on the resources than the Petitioners's alternative. (T p 1322)
114. In Mr. Hodge's opinion, the alternative location for the pier would likely impact more woody vegetation and impact the resources than the permitted/existing location. (T p 838) The total impact of the alternative location would be more than the permitted location because the alternative is less perpendicular to the upland than the permitted location, and so would impact a much greater area of the buffer. (T pp 839-41) Also, in the existing location, most of the pier itself is not within the buffer because it is waterward of the Coastal Wetlands. The pier access proceeds through the buffer and is more perpendicular to the buffer. (T pp 841-43)
115. Mr. Morrison testified that Petitioners's alternative would have to include a wooded path for pier access which would wind about 100-feet through the Neuse Buffer area, and the walking would get rid of vegetation to make it walkable with chairs, coolers and other materials to use on the pier or boats. (T pp 1779, 1782, 1786)

116. Mr. Lane agreed that if the Westphals were to propose a walkway to the Petitioners' proposed alternative, it would be development within the Coastal Shorelines AEC, requiring a CAMA permit. (T p 1267) Based on his experience, Petitioners's proposed alternative would likely require the removal of multiple trees or vegetation for any placement of a walkway, although none was proposed by Petitioners. (T pp 1113-15, 1226) In comparing the two pier locations, he felt the as-built location would result in the removal of less trees, being only the one, compared to the Petitioners's alternative. (T pp 1169-70)
117. Mr. Lane testified that he felt the as-built location reduced the overall impacts to resources, both coastal wetlands and DWQ's buffer, than the Petitioners' alternative route. This was due in part to the alternative running through a larger area of the DWQ buffer, the limited waiver by Ms. Flanagan, and the existing shading in the as-built location due to the tall trees along the upland near the Flanagan property that shaded the marsh. (T pp 1102-03)
118. Ms. Flanagan has seen the as-built pier and is also familiar with the Petitioners's proposed alternative route. (T pp 1503-09) Ms. Flanagan testified that if the Westphals had proposed the pier route to follow the Petitioners' alternative route she would not have waived the 15-foot riparian setback. (T p 1509) Ms. Flanagan's concerns about the Petitioners' alternative route included the closeness to her own property and feeling cramped when the Westphals walked down the narrow wooded strip of their property to access the alternative pier. (T pp 1514-20) Ms. Flanagan also had concerns that if she were to erect a fence to mark the Westphal-Flanagan property line that the fence construction and the Westphals's access path foot traffic could cause erosion into the marshland. (T p 1521)
119. Mr. Tyndall testified that to him, the crux of this case comes down to whether the location of the permitted pier was the location which minimized impacts to the resources. He strongly believed that the permitted location struck the best balance between impacts to the marsh, impacts from cutting trees, and riparian rights. (T p 1383)

Improper delegation of DCM duties to IBX

120. There is no evidence that DCM delegated its decisionmaking authority to IBX or any other person or entity. (T pp 1162-64, 1685)

Petitioners's reasons for bringing this case

121. Petitioners testified that their reason for contesting this permit is out of concern for the environment and not about the change in view from their property. (T pp 87-88, 618-25, 665-67, 736, 753, 774) Mr. Cowell testified that since construction of the pier, he has not seen any birds in the marsh. (T p 607) Ms. Dressler testified that since construction of the Westphal pier, none of the herons or egrets have visited the marsh, and that her view now

includes the pier. (T pp 75-76) Ms. Dressler testified that she and Mr. Cowell brought this case because they are very environmentally concerned individuals and are concerned about the marsh. (T p 87-88)

122. In the third party hearing request, petitioners's list view as one of their concerns. (T pp 776-77; R's Ex 5) Mr. Cowell testified that he did not bring this case because of issues with his view and that his statements about view were made while he was "still very angry." (T pp 777-78) He confirmed that they were true at the time he wrote them and submitted them to the CRC. (T p 778)
123. Testimony was elicited in Respondent's case-in-chief (T pp 1724-32, 1739-41) and in Petitioners's rebuttal case (T pp 2018-21) concerning Petitioners's personal commitment to and interest in environmental causes.
124. Upon consideration of the demeanor of the witnesses at the hearing and a review of the transcripts, the Undersigned is of the opinion that a misunderstanding occurred between IBX and Petitioners, and that Petitioners, in fact, have a longstanding interest in the environment and its preservation and conservation.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to hear this case pursuant to N.C.Gen.Stat. § 113A-121.1 and N.C.Gen.Stat. § 150B-23.
2. All parties have been correctly designated and are properly before the Office of Administrative Hearings, and there is no question of misjoinder or nonjoinder of parties. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter.
3. Petitioners have standing to bring this contested case related to environmental concerns resulting from the construction of the pier.
4. Petitioners have not demonstrated by a preponderance of the evidence that the permitted pier has substantially prejudiced their rights.
5. By issuing the permit, Respondent did not act outside its authority, act erroneously, act arbitrarily or capriciously, use improper procedure, or fail to act as required by law or rule. N.C.G.S. § 150B-23(a).
6. Respondents are required to act in order to correct the height violation of the as-built Westphal pier.
7. Greater weight is given to the testimony of Respondent's witnesses and Intervenor-Respondents's witness, Mr. Morrison, whose extensive experience with and knowledge of

CAMA general permits and applicable regulations was apparent. Lesser weight was given to the testimony of Petitioners' witnesses, generally, whose experience and knowledge concerning applicable regulations was less, and to Mr. Spangler, specifically, whose credibility was weakened by his antagonistic posture in direct testimony as well as in cross-examination upon recall.

Upon careful consideration of the applicable law, testimony and evidence received during the contested case hearing as well as the entire record of this proceeding, and based upon the preponderance of the evidence, giving regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency pursuant to N.C.G.S. § 150B-34(a), and based on the preceding findings of fact and conclusion of law howsoever named, the Undersigned makes the following:

DECISION

Based on the foregoing findings of fact and conclusions of law, Petitioners have not demonstrated by a preponderance of the evidence that CAMA General Permit No. 45215 issued to Intervenor-Respondents on May 10, 2006 was improperly issued. The preponderance of the evidence supports Respondent's issuance of CAMA General Permit No. 45215.

ORDER

It is hereby ordered that the agency serve a copy of its final agency decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C.G.S. § 150B-36(b)(3).

NOTICE

The agency making the final decision in this contested case is the North Carolina Coastal Resources Commission. That Commission 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. N.C.G.S. § 150B-36(a).

The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

This the 30th day of May, 2008.



Selina M. Brooks
Administrative Law Judge

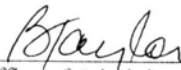
A copy of the foregoing was sent by certified mail, return receipt requested to:

James L. Conner, II, Esq.
311 E. Main Street
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ATTORNEY FOR PETITIONERS

Christine A. Goebel
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Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

Earl C. & Mary Jane Westphal
P.O. Box 336
Oriental, NC 28571
RESPONDENT-INTERVENORS

This the 30th day of May, 2008.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, N.C. 27699-6714
Phone: 919-733-2698
Fax: 919-733-3407

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Filed

2008 JUL 16 PM 3: 01

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

08 DST 0235

William S Greene
Petitioner

vs.

Dept of State Treasurer
Retirement Systems Division
Respondent

Office of
Administrative Hearings

**DECISION GRANTING
SUMMARY JUDGMENT FOR
RESPONDENT**

Upon consideration of Respondent's Motion for Summary Judgment, Petitioner's Response thereto, and Respondent's Reply, and having heard the oral arguments of both parties, for good cause shown, the undersigned hereby GRANTS Respondent's Motion for Summary Judgment. The undersigned, for the sake of clarity before reviewing tribunals, hereby recites

UNDISPUTED FACTS SET FORTH IN THE MOTION, RESPONSE, AND AFFIDAVITS

1. Petitioner retired effective October 1, 2005 as a member of the Teachers' and State Employees' Retirement System ("TSERS"). Petitioner completed and signed an Election of Benefits, TSERS Form 6E, on or about September 13, 2005, on which he wrote his sister's name, Patricia Smith, under the Monthly Survivorship Benefit Designation of Beneficiary section and provided her relationship, date of birth, address and social security number on the form.

2. Petitioner contends that he "designated his wife, Nancy Greene, as his survivorship beneficiary" on his July 15, 2005 Application for Retirement. In fact, on his July 15, 2005 application, Petitioner named his wife, Nancy Greene, as a proposed beneficiary solely for the purpose of estimating benefits. The disclaimer on the retirement application states:

Completion of this section is for the sole purpose of obtaining an estimate of the amounts payable under the various optional payment plans. **IT DOES NOT NAME A BENEFICIARY TO RECEIVE MONTHLY RETIREMENT BENEFITS NOR DOES IT CHANGE YOUR BENEFICIARY DESIGNATION FOR THE RETURN OF CONTRIBUTIONS OR THE DEATH BENEFIT.**"

(Emphasis in original.) Petitioner acknowledged this statement by signing the retirement application.

3. Petitioner alleges that when he signed his Election of Benefits form, "he mistakenly thought that his sister was being named as default beneficiary under Option 6-2 rather than his primary survivorship beneficiary." In support, Petitioner has submitted the affidavit of Gail Harvey, the Employee Relations Specialist from John Umstead Hospital who assisted Petitioner in

- 2 -

his application for retirement. Ms. Harvey states that Petitioner always intended to designate his wife as his survivor beneficiary. Whatever Petitioner's subjective intent, the Election of Benefits form was completed and signed by Petitioner and filed with the Retirement System. In Section I, ELECTION OF RETIREMENT PLAN, Petitioner placed his initials next to Option 6-2. In Section II, GUARANTEED REFUND DESIGNATION OF BENEFICIARY(IES), Petitioner left the section blank. In Section III, MONTHLY SURVIVORSHIP BENEFIT DESIGNATION OF BENEFICIARY, the member is advised to "complete this section only if you elected Option 2, 3, 6-2, or 6-3." Petitioner designated Patricia Smith, sister, as his beneficiary for the monthly survivorship benefit. Nowhere on the Form 6E is Nancy Greene listed as a beneficiary for either the monthly survivorship benefit or the guaranteed refund. At the end of the form, Petitioner certified the following:

I understand that I cannot change the elected retirement plan nor can I change the beneficiary for a *monthly survivorship benefit* after I cash a retirement check or after the 25th of the month following the month my first check is mailed, whichever is earlier. . . . Furthermore, in order to change the elected retirement plan, I understand that my first check must be returned.

(Emphasis in original) Petitioner then signed the form below the certification and had his signature notarized.

4. Petitioner's first monthly retirement check was mailed to him on October 25, 2005, and cashed shortly thereafter. In the ensuing months, more than half a dozen retirement benefit payments were made before Petitioner expressed to Respondent that he wished to change his survivorship beneficiary.

CONCLUSIONS OF LAW

1. Under N.C.G.S. § 1A-1, Rule 56, § 150B-36 and 26 N.C.A.C. 3.0115, the undersigned has authority to grant summary judgment.

2. The statutes governing TSERS provide that, upon retirement, a member is entitled to a benefit, referred to as the "maximum benefit," computed pursuant to the terms of N.C.G.S. § 135-5(b19),

[w]ith the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below.

N.C.G.S. § 135-5(g). "Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed." *Id.* While the

- 3 -

General Assembly has provided for limited instances in which a benefit option or beneficiary designation may be changed, no such provision applies to Petitioner's situation.

3. Petitioner's contention that he did not have notice that he had designated his sister, rather than his wife, as survivor beneficiary is unsupported both in the undisputed facts and in law. "[A] person signing a written instrument is under a duty to read it for his own protection, and ordinarily is charged with knowledge of its contents." *Raper v. Oliver House, LLC*, 180 N.C. App. 414, 420, 637 S.E.2d 551, 555 (2006), quoting *Biesecker v. Biesecker*, 62 N.C. App. 282, 285, 302 S.E.2d 826, 828-29 (1983). "Long ago, our Supreme Court stated, 'the law will not relieve one who can read and write from liability upon a written contract, upon the ground that he did not understand the purport of the writing, or that he has made an improvident contract, when he could inform himself and has not done so.'" *Id.* at 421 (citation omitted).

4. Respondent properly determined that Petitioner is prohibited from changing his beneficiary for the monthly survivorship benefit after having cashed his first retirement check, based on the provisions of N.C.G.S. § 135-5(g).

5. As there are no genuine issues of material fact, Respondent is entitled to judgment as a matter of law.

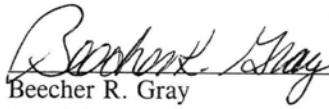
DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby GRANTS Summary Judgment for the Respondent.

ORDER AND NOTICE

The agency making the final decision in this contested case 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.G.S. § 150B-36(a). The agency is required by N.C.G.S. § 150B-36(b3) 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 Board of Trustees of the Teachers' and State Employees' Retirement System.

This the 16 day of July, 2008.


Beecher R. Gray
Administrative Law Judge

- 4 -

A copy of the foregoing was mailed to:

Brian C. Shaw
Schwartz & Shaw, PLLC
PO Box 2350
Raleigh, NC 27602
ATTORNEY FOR PETITIONER

Robert M Curran
Assistant Attorney General
N. C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 17th day of July, 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

IN THE OFFICE OF

2008 MAY 16 PM 12:36

ADMINISTRATIVE HEARINGS

COUNTY OF HALIFAX

07 OSP 1186

Office of

Administrative Hearings

CASSANDRA F. BARNER

Petitioner,

v.

HALIFAX COUNTY DEPARTMENT

OF SOCIAL SERVICES,

Respondent.

DECISION

THIS MATTER was heard by the undersigned on 23 January 2008 in Halifax, North Carolina, and on 26 February 2008 in Wilson, North Carolina. Petitioner alleges that she was discriminated against on the basis of her race when she was not selected for promotion to Income Maintenance Administrator I in July 2007.

At the close of the evidence on 25 February 2008, counsel for the parties requested that a transcript be prepared of the proceedings, and the Record was held open to allow for submission of proposed findings of fact and conclusions of law from both parties. Respondent submitted its proposed findings of fact and conclusions of law on 21 April 2008; Petitioner submitted her proposed findings of fact and conclusions of law on 8 May 2008.

APPEARANCES

For Petitioner:

Curtis L. Bentz
Battle, Winslow, Scott & Wiley, P.A.
P.O. Box 7100
Rocky Mount, North Carolina 27804

For Respondent:

Jeffrey L. Jenkins
Halifax County Department of Social Services
P.O. Box 767
Halifax, North Carolina 27839

EXHIBITS ADMITTED INTO EVIDENCE

Respondent: Exhibits 1, 3-13, 16-17.

Petitioner: Exhibits 1-7, 9-19 (including 18A and 18B).

ISSUE

Whether Respondent unlawfully discriminated against Petitioner on the basis of race when it did not select her for promotion to the position of Income Maintenance Administrator I.

STIPULATIONS

1. All parties are properly before the Office of Administrative Hearing, and the Office of Administrative Hearings has jurisdiction over the parties and subject matter. All parties have been properly designated, and there is no question of misjoinder or nonjoinder of parties.

2. In June 2007, seventeen (17) written applications for the vacant position of Department of Social Services ("DSS") Income Maintenance ("IM") Administrator I were prescreened by Tracy Eason, Human Resource Analyst of the Halifax County Department of Human Resources. Ms. Eason found five (5) of the applicants to meet the minimum requirements for the position of Income Maintenance Administrator I.

3. Petitioner Cassandra Barner was the only African-American among the five (5) applicants interviewed for the position.

4. Following interviews of the five (5) prequalified applicants, the position was given to Marsha Brown, who is white.

5. Petitioner has established a *prima facie* case of unlawful racial discrimination in that she is a member of a protected group, she was qualified for the position, she was rejected for

the promotion to the position, and the employee selected for the position was not a member of the protected group. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Because Petitioner established a *prima facie* case, the initial burden at the hearing was on Respondent to show a legitimate non-discriminatory reason for the selection of Marsha Brown as the new Administrator, and Respondent was therefore the first party to present evidence.

FINDINGS OF FACT

BASED ON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact.

In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

BASED ON the preponderance of evidence in the whole record, the Undersigned FINDS AS FACT:

1. The IM Administrator I at the Halifax County Department of Social Services ("HCDSS" or "Respondent") is an upper level manager who is responsible for the Food Assistance and Medicaid programs. There are between 75 and 100 employees working in those programs, and the Administrator I supervises and evaluates the six or seven supervisors who oversee the work of those employees. The Administrator reports directly to the HCDSS Director and is a member of the Director's "Administrative Team" or "Management Team," which

includes all of the Director's seven direct reports, and which meets with the Director weekly. The position was vacated by the retirement of Peggy Barnes, an African-American woman, at the end of May 2007.

2. The duties and qualifications of the IM Administrator I are described in several different documents which were received into evidence. (*See* Petitioner's Exhibits 3, 5, & 10; Respondent's Exhibits 3-4) Most relevant to the issues in this case are the requirements expressed in the "County Posting" describing the position (Petitioner's Exhibit 5 & Respondent's Exhibit 3) and the Form NC09921 "Classification Description" (Petitioner's Exhibit 3 & Respondent's Exhibit 4) that the candidate for the position have two years of "supervisory experience . . . ," both of which also included wording allowing some type of "equivalent" combination of training, experience and education as an alternative to the preferred supervisory experience. Another description of the position was set forth in Petitioner's Exhibit 10, which is specifically identified in its title as a supplement to a Form PD-102 required for compliance with the Americans with Disabilities Act. As such, Petitioner's Exhibit 10 focuses on the physical requirements of the job and is not determinative of the minimum requirements or qualifications for holding the position.

3. After the prequalification process was completed by Ms. Eason at Halifax County Human Resources ("HR"), the five (5) prequalified applications were forwarded to Respondent with a cover document stating that the applicants met the minimum requirements for the IM Administrator I position.

4. Michael G. Felt, Director of HCDSS, led the hiring process for the IM Administrator I position. Before he became in January 2002, Mr. Felt gained extensive experience in hiring supervisory personnel in his previous position at Gaston County DSS, as

well as during his first career in banking. From his DSS work and his work in banking, he was familiar with the common wording of job descriptions allowing “equivalent training and experience.” When he received the five (5) applications for the IM Administrator I position, Mr. Felt understood that the five (5) applicants met the minimum requirements for the position, and that he was free to choose the one which was, in his opinion, the best person for the job at that time. In this regard, after Ms. Eason’s prescreening, no one examined the applications to evaluate whether they in fact satisfied the minimum requirements for the position.

5. Mr. Felt assembled an interviewing team for the purpose of assisting him with the interviews of the five (5) applicants and helping him to identify the most qualified candidate for the IM Administrator I position. The people on the team were Patricia Fellows (HCDSS Business Officer), Carolyn Poythress (Program Manager for Children’s Services), and Sandra Mitchell (a supervisor in the HCDSS Administration Unit). All members of the team, including Mr. Felt, are white, except Ms. Mitchell, who is African-American.

6. The interviewing team conducted interviews with each of the five (5) applicants between 28 June and 5 July 2007. During their interviews, each of the five (5) applicants were asked identical questions, which had been provided to them in writing prior to the interview. During the interviews, each interviewer took individual notes on the interviewees’ answers and the interviewers’ impressions. These notes were taken on pages which contained the interview questions (*see, e.g.*, Petitioner’s Exhibit 15 & Respondent’s Exhibits 9-17), and were taken for the purpose of refreshing the interviewers’ memories about the respective applicants when the final selection was to be made, and were not intended to be complete or permanent records of the interviews. After the interview, each candidate was asked to answer two questions in writing on a computer. After the interviewee was excused, each interviewer completed a one-page

Interview Comparison Guide in which he or she ranked the interviewee in certain areas, and wrote comments. (*See, e.g.*, Petitioner's Exhibit 14 & Respondent's Exhibits 9-17) This Interview Comparison Guide was for the purpose of future reference and was not intended to be a complete record. After the contested case was filed, Ms. Fellows, the HCDSS Business Officer compiled the Interview Comparison Guides into a 1-page document entitled "Interview Comparisons." (Respondent's Exhibit 11)

7. Each interviewer formed his or her own conclusion about how the five (5) applicants performed during the interviews and which applicant had the qualities that best suited the position. The interviewers did not consult with each other about the interviews or the applicants until 5 July 2007 when they met together to discuss the final selection. During that meeting, without expressing his opinion, Mr. Felt asked each of the other interviewers to name their first choice for the applicant to fill the position. Each of the four interviewers, including Mr. Felt, had independently given Marsha Brown a "Number 1" overall ranking among the five (5) applicants. Ms. Fellows and Ms. Mitchell ranked Petitioner as "tied for second place," Ms. Poythress ranked Petitioner fourth of five, and Mr. Felt ranked her fifth of five. In light of the clear consensus of the four interviewers that Ms. Brown was the best applicant for the position, Mr. Felt decided to offer Ms. Brown the promotion.

8. In July 2007, Petitioner and the other unsuccessful candidates were informed that, although qualified for the position, they had not been selected. Ms. Brown assumed the position of Income Maintenance Administrator I on 1 August 2008.

9. After learning that she had not been selected and that Ms. Brown had been offered the position, Petitioner telephoned the Halifax County HR office to inquire about "the grievance procedure." Petitioner testified during the hearing that she was "upset" and "disappointed" with

Mr. Felt, but denied being “angry.” Petitioner sent a letter to the Office of Administrative Hearings (OAH) on 15 July 2007 in which she described her own qualifications for the position and mentioned “race” or “race discrimination” twice. After OAH advised Petitioner that she would need to file a petition to begin her contested case, Petitioner filed a petition in the proper form on 21 July 2007. In her Petition, she did not check any of the boxes for possible discrimination claims, one of which was “race.” Nor did the 2-page letter attached to the Petition mention race discrimination. Petitioner later retained counsel who filed an Amended Petition clearly stating race discrimination as the ground for the contested case.

Meeting Minimum Requirements for the IM Administrator I Position

10. Petitioner asserts that Ms. Brown did not meet the minimum qualifications for the IM Administrator I position and that Respondent hired her for the position under such circumstances is evidence that Respondent favored Ms. Brown, and disfavored Petitioner, for race-based reasons.

11. The one-page “Posting” of the vacant IM Administrator I position (Petitioner’s Exhibit 5 & Respondent’s Exhibit 3), described the position’s minimum requirements, in full, as follows:

Any combination of education and experience equivalent to two years of supervisory experience – at least one of which must have been in an income maintenance or services program, and preferably one year of experience in an income maintenance program.

This description differs from the comparable paragraph of the two-page description of the position in the Form NC 09921 Classification Description” (Petitioner’s Exhibit 3 & Respondent’s Exhibit 4). The Form NC09921 Classification Description was created in 1988 and has not since been amended. The final paragraph of the Classification Description, which is entitled “Minimum Training and Experience Requirements” requires, in full:

Two years of supervisory experience at least one of which must have been in an income maintenance or services program; or an equivalent combination of training and experience.

12. Ms. Eason, Human Resource Analyst of the Halifax County Department of Human Resources, testified that all of Halifax County's postings begin with the wording "Any combination of education and experience equivalent to . . .," and that she prepared the IM Administrator I posting by inserting appropriate language about this particular position into a form the county uses for all of its postings. She also testified that the county's posting was intended to be consistent with the Form NC09921 Classification Description.

13. Mr. Felt testified that he understood from the Posting description that supervisory experience could mean *either* "the formal title of supervisor" or "that someone had been delegated supervisory responsibilities without having a formal title."

14. There is no dispute that Petitioner met the minimum requirements for the position of IM Administrator I under any reading of the two descriptions. When she applied for the IM Administrator I position in June 2007, Petitioner had worked at HCDSS for 25 years and for 14 years had held the position of Income Maintenance Supervisor II in both Food Assistance and Work First Family Assistance, both of which are income maintenance programs. She also had supervisory experience before she joined HCDSS in 1982.

15. Whether Ms. Brown also met the minimum requirements for the disputed position is not readily apparent from the job titles summarized in her application. At the time she applied for the IM Administrator I position in June 2007, Ms. Brown had worked at HCDSS for almost 21 years in Food Assistance and later in Medicaid, both of which are income maintenance programs. She never held a position at HCDSS with the word "supervisor" in the title, but she did have extensive supervisory experience, including her work at HCDSS. Between 2002 and

2007, the previous IM Administrator I, who was Ms. Brown's direct superior, assigned Ms. Brown some duties within the Food Assistance and Medicaid Programs which were supervisory in nature. Specifically, in 2002, when the supervisor of the Low Income Energy Assistance Program (LIEAP) was not replaced, Ms. Brown was assigned to oversee, "supervise and coordinate" the program. From 2002 through 2006, Ms. Brown supervised and coordinated the LIEAP program, which is staffed for several months each year by temporary assignment of HCDSS eligibility workers from the ongoing income maintenance programs. Ms. Brown developed a LIEAP training packet for eligibility workers each year, and she reported to the "regular" supervisors on the performance of the workers who staffed LIEAP. In February 2007, Ms. Brown was assigned to "supervise" the Medicaid transportation unit, which consisted of two or three clerical or eligibility personnel. Ms. Brown also had supervisory experience before her work with HCDSS: In the eight (8) years before she joined HCDSS in 1986, Ms. Brown held the title of "supervisor" with two separate employers.

16. The undersigned specifically finds that Respondent did not err when it determined that Ms. Brown met the minimum requirements for the position of IM Administrator I. Assigning ordinary meaning to both of the position descriptions (the Form NC09921 Classification Description and the county Job Posting), there is no clear requirement that an applicant for the position have held a previous job at HCDSS with "supervisor" in the job title. Rather, the plain language of both descriptions of the position allows the hiring authority some latitude in determining the type of supervisory experience which will be accepted as relevant. Also, the HR training materials provided by the Office of State Personnel (OSP) (Petitioner's Exhibit 9 & Respondent's Exhibits 5-6), and familiar to Ms. Eason at the time of her prequalifying of both Petitioner and Ms. Brown as meeting the minimum requirements, define

“Supervisory Experience” as “[w]ork that involves directing the activities of a group of employees and being held accountable for the work of those employees.” The HR training materials also state, under the definition of “Equivalent combination of education and experience,” that “[t]he overriding factor in determining equivalence is whether or not the applicant would have gained the knowledge, skills and abilities necessary to do the job.” Ms. Brown’s “pre-DSS” supervisory experience was therefore properly considered by Ms. Eason in prequalifying Ms. Brown, and by Mr. Felt in considering her for the final selection.

17. The testimony of Petitioner’s expert witness, Sylvia Johnson, that the only supervisory experience which would satisfy the Form NC09921 Classification Description would be “supervision and evaluation of income maintenance personnel” is so narrow as to be inconsistent with the two printed descriptions, and with the State’s own HR training materials. Although Ms. Johnson participated in the drafting of the Classification Description and may have insight into that process, her testimony that the portion of the Form NC09921 allowing equivalent training and experience should be effectively ignored is inconsistent with the plain language of the written descriptions and the HR training materials. Even Ms. Johnson acknowledged during her testimony that supervisory experience which is not reflected directly in the job application could be considered by the hiring authority; and she would not go so far as to say that supervisory experience gained outside DSS was irrelevant. Moreover, here, in addition to the formally-titled supervisory positions she held before 1986, Ms. Brown’s specifically-assigned supervisory duties in the LIEAP program and the Medicaid transportation unit could have constituted the required two years of supervisory experience “within an income maintenance or services program.”

The Determination That Ms. Brown Was The Preferred Applicant

18. Respondent did not assert that the written applications of Ms. Brown and Petitioner alone demonstrate that Ms. Brown was better qualified for the position than Petitioner. As a supervisor with 14 years experience and extensive special training, Ms. Barner's written application, taken alone, gives her a clear advantage. Respondent has shown, however, that Ms. Brown was the more desirable applicant in light of the following factors and qualities considered to be important by the interviewing team.

a. On each of her two most recent performance evaluations, Ms. Brown received a rating of "5," for "outstanding" or "consistently exceeds expectations." Petitioner received a slightly lower rating of "4," for "excellent," or "exceeds expectations."

b. Because of his concern with issues such as overdue performance evaluations, high case loads, vacant positions, and other problems in the Food Assistance and Medicaid programs, Mr. Felt was looking for an IM Administrator I who was "forward thinking, energetic, passionate," a "cheerleader," someone capable of "strategic thinking," and "somebody that could hit the ground running." Ms. Brown's answers to her interview questions indicated motivation and passion, with clearly-stated ideas about how to address specific deficits within the program areas. From her interview, and from his personal knowledge about her leadership ability and past performance at HCDSS, Mr. Felt found Ms. Brown to be a "problem solver" and a "trouble shooter."

c. Ms. Brown was also ranked very high on "communication" by all four interviewers. In contrast, Petitioner, who gave tentative, general answers to her interview questions and spoke "in a monotone," was ranked low on "communication."

Mr. Felt was therefore concerned “that she would not be appropriate for this particular job.”

d. For many years, Ms. Brown had been involved as a coordinator for the county’s emergency shelters, which were run by HCDSS in partnership with the Red Cross. Ms. Brown was responsible for obtaining supplies and food for the shelters, and for monitoring the time spent by other HCDSS personnel in manning the shelters. Mr. Felt did not contend that these duties constituted “supervisory experience,” but, having seen her perform her duties during a hurricane shortly after he became Director, he felt that her effectiveness in that role was another example of her talent for “supervision and coordination,” and leadership. Although Petitioner also had the necessary Red Cross training to work at the shelters, she had never been a coordinator for a shelter.

e. Because of Ms. Brown’s broad experience in the various DSS income maintenance programs, the previous IM Administrator I often referred Mr. Felt to Ms. Brown for assistance with policy and practice issues and with special projects. This further reinforced Mr. Felt’s perception of Ms. Brown as a “trouble shooter” and “problem solver” who could “get things done.”

19. In addition to the evidence that there were legitimate reasons for Respondent to offer the position to Ms. Brown, there was no evidence of any racial motivation for Respondent’s decision to promote Ms. Brown. Mr. Felt credibly testified that race had nothing to do with the selection of Ms. Brown: his testimony was entirely devoid of any hostility or ill will toward Petitioner; he did not complain about the way Petitioner performed her current job duties; and he readily acknowledged his congratulatory notes on her previous “excellent” performance evaluations. Petitioner’s explanation that she believed that discrimination had been the reason

for Ms. Brown's selection was that "there was no other comparison except for race." This view fails to account for the factors and qualities noted by the interview team in unanimously ranking Ms. Brown as the preferred candidate.

20. In an effort to demonstrate discrimination in her case, Petitioner attempted to show a general policy or practice of discrimination by Respondent against its African-American employees. Petitioner proffered a copy of the internal DSS telephone Directory bearing handwritten notes as to the races of the employees inserted by both Petitioner and her counsel. Petitioner's attorney also made calculations as to percentages of African-American employees and percentages of African-American "supervisors" and attached those calculations to the phone directory. This evidence was of limited probative value and was not persuasive. Petitioner's attorney's calculations included white employees as "supervisors" who do not hold the title of "supervisor," and credible questions were raised about the accuracy of the designations. Petitioner's calculations did not count as minorities Native American employees. Also, there was no evidence that there were minority applicants for any supervisory positions currently held by whites. Further, there is no information as to what part, if any, Mr. Felt had in bringing about the current racial distribution of employees or supervisor over the five years he has been HCDSS Director. Petitioner did not demonstrate a generally policy or practice of discrimination.

CONCLUSIONS OF LAW

1. All parties are properly before the Office of Administrative Hearing, and the Office of Administrative hearings has jurisdiction over the parties and subject matter. All parties have been properly designated, and there is no question of misjoinder or nonjoinder of parties.

2. Initially, Petitioner bears the burden of establishing a *prima facie* case by demonstrating that: (1) she is a member of a protected class; (2) she applied for the position in

question; (3) she was qualified for the position; and (4) she was rejected in favor of someone not a member of a protected class. *Enoch v. Alamance County Dep't of Social Services*, 164 N.C. App. 233, 242, 595 S.E.2d 744, 752 (2004). Here, the parties stipulated that Petitioner had established this *prima facie* case.

3. “To rebut the presumption of discrimination, the employer must clearly explain by admissible evidence, the nondiscriminatory reasons for the employee’s rejection or discharge.” *N.C. Dept. of Corrections v. Gibson*, 308 N.C. 131, 139, 301 S.E.2d 78, 84 (1983). “The explanation must be legally sufficient to support a judgment for the employer.” *Id.* Thus, through stipulation of the *prima facie* case, the burden shifted to Respondent to show a legitimate non-discriminatory reason for the selection of Marsha Brown, rather than Petitioner, as the new IM Administrator I.

4. In evaluating the proffered nondiscriminatory reasons, “the Court is ‘not at liberty to review the soundness or reasonableness of an employer’s business judgment when it considers whether alleged disparate treatment is a pretext for discrimination.’” *Enoch*, 164 N.C. App. at 242, 595 S.E.2d at 752 (quoted case omitted). “The sole question is what is the motivation behind the employer’s decision. [cite omitted]” *Id.* With respect to considering candidates’ experience levels once minimum qualifications are satisfied, “an employer is relatively free to value experience among the applicants as it sees fit in light of the skills required by the position to be filled. This freedom is of intrinsic to the hiring process and business judgment of decision makers.” *Id.* at 248, 595 S.E.2d at 755.

5. The “ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” *N.C.*

Dept. of Corrections v. Gibson, 308 N.C. 131, 138, 301 S.E.2d 78, 83 (1983) (quoted case omitted).

6. In making Ms. Brown his final choice of the five (5) prequalified applicants for the position, Mr. Felt considered clearly articulated skills, attributes and factors which, in his own management and business judgment, were important to the position of IM Administrator I at HCDSS at that time. Inasmuch as Mr. Felt and the other three interviewers independently concluded that Ms. Brown possessed these attributes to a greater extent than did Petitioner, and there is no evidence of any racially-motivated action by Mr. Felt or the other interviewees, Respondent has shown, by the preponderance of the evidence, that it had sufficient non-discriminatory reasons for promoting Marsha Brown instead of Petitioner.

7. Because Respondent successfully demonstrated a legitimate, nondiscriminatory reason for its action, “the burden then shifts back to [Petitioner] to prove that this reason was a pretext for discrimination.” *N.C. Dep’t of Crime Control & Safety v. Greene*, 172 N.C. App. 530, 539, 616 S.E.2d 593, 601 (2005). “[T]o prove that a reason for an employer’s action is a pretext for discrimination, an employee must prove ‘both that the reason was false, and that discrimination was the real reason.’” *Id.* (quoting *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515, 113 S. Ct. 2742, 2752 (1993)).

8. Relevant evidence to show pretext includes evidence that the employer disparately treated the employee during his or her term of employment and evidence of the “employer’s general policy and practice with respect to minority employees.” *Gibson*, 308 N.C. at 139-40, 301 S.E.2d at 84. Here, however, there is no evidence that Petitioner was disparately treated during her employment. Further, as discussed in Finding of Fact No. 20, Petitioner’s attempt to

demonstrate a racially-motivated general policy and practice lacked substance and persuasive value.

9. In attempting to establish pretext, Petitioner also relies heavily on a comparison of her written application with Ms. Brown's application which, taken alone, would show her to be better qualified for the position than Ms. Brown because of her greater experience in the formal supervision and evaluation of DSS personnel. From this documentary evidence, Petitioner asks that intentional race discrimination be inferred. To infer that race discrimination was the actual cause of the Respondent's promotion decision in this case, however, would require ignoring the substantial evidence of other qualifications deemed crucial by the HCDSS Director. Our courts have specifically rejected such a limited approach to considering the qualifications of applicants. *See, e.g. Enoch*, 164 N.C. App. at 247, 595 S.E.2d at 755 ("to find that [the petitioner's] superior experience over the other applicants is determinative and absolute would have the effect of subverting otherwise genuine and thorough application processes seeking the best applicant for a particular position. Fairness to both applicants for promotion and employers requires more than a comparison of objective factors.").

10. The selection process used by Respondent, while naturally starting with a comparison of the "objective qualifications" reflected in the written job applications, also took into account a set of skills and attributes which Respondent's Director had determined would be required of the IM Administrator I. Our courts have determined that the hiring authority may consider subjective qualifications such as the qualities considered important in this case. *See, e.g., Enoch*, 164 N.C. App. at 244, 595 S.E.2d at 753 (finding that employer properly considered "desirable qualities of a program manager to be that of a visionary who is progressive and flexible"). As described by Mr. Felt in his testimony, he was looking for someone who was

“forward thinking, energetic, passionate,” a “cheerleader,” someone capable of “strategic thinking,” and “somebody that could hit the ground running.” Mr. Felt was entitled to determine the importance of these qualities in relation to the more objective factors in the exercise of his own management style and business judgment. “An employer is relatively free to value experience among applicants as it sees fit in light of the skills required by the position to be filled. This freedom is of intrinsic value to the hiring process.” *Id.* at 247-248, 595 S.E.2d at 755. Mr. Felt also appropriately determined the presence or absence of these attributes in Petitioner and Ms. Brown from multiple sources such as the interviews, the written answers to the questions, the past performance evaluations, the input of the other interviewers, and his own personal observations and impressions of both applicants’ work.

11. Petitioner has not demonstrated that Respondent’s explanation was either false or pretext for intentional race discrimination.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following Decision and Order:

DECISION

Respondent’s decision to deny the Petitioner’s application for promotion to Income Maintenance Administrator I is **AFFIRMED**.

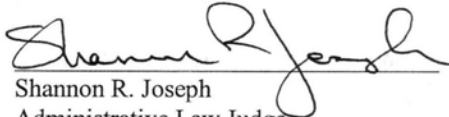
NOTICE

The State Personnel Commission will issue an advisory opinion to the Director of the Halifax County Department of Social Services. G.S. 150B-23(a). The Director of the Halifax County Department of Social Services will make the final decision in this contested case.

The agency making the final decision in this contested case 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. G.S. 150B-36(a).

The agency is required by G.S. 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.

This the 16th day of May, 2008.

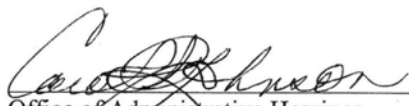

Shannon R. Joseph
Administrative Law Judge

A copy of the foregoing was mailed to:

Curtis L. Bentz
Battle Winslow Scott & Wiley PA
PO Box 7100
Rocky Mount, NC 27804-0100
ATTORNEY FOR PETITIONER

Jeffery L. Jenkins
Halifax County Department of Social Services
PO Box 767
Halifax, NC 27839
ATTORNEY FOR RESPONDENT

This the 16th day of May, 2008.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698
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ISSUE

Whether the Respondent had just cause to suspend the Petitioner for five (5) days.

FINDINGS OF FACT

Petitioner Captain Norman Goering has been employed with the North Carolina State Highway Patrol since August 1981 and currently is assigned as the Unit Commander of Research and Planning. He has a twenty-six year exemplary history with the Highway Patrol. Captain Goering earned rank from Trooper, to Sergeant, to First Sergeant, to Lieutenant and then Captain. Until the incident on 19 July 2007, which underlies the disciplinary action at issue in this case, there is no evidence of Captain Goering being the subject of any disciplinary action.

The Incident For Which Discipline Was Imposed

On 19 July 2007, at approximately 9:45 a.m., members of the Professional Standards Division of the North Carolina Highway Patrol had gathered at the State Capitol grounds for a group picture. The Professional Standards Division is comprised of approximately twenty (20) members who work with Research and Planning or the Internal Affairs Division.

Petitioner was attempting to assist the photographer line up the members of the Professional Standards Division by arranging the tall members in the back of the photograph. While attempting to say repeatedly the phrase "tall back, back tall," Petitioner jumbled his words and said "blacks in back," or very similar words. Notably, there is no contest that this single utterance was not what Petitioner intended to say. (See, e.g., Respondent's Proposed Decision, 6/23/08, ¶ 8 (Petitioner "accidentally jumbled his words") & ¶ 11 ("Petitioner made the comment inadvertently")).

Lt. William Hicks (now retired), an African American employee with the Internal Affairs Division of the Highway Patrol, was standing near Petitioner and heard the phrase. Hicks had worked with Petitioner closely since 2005 and sporadically over the past twenty (20) years. Petitioner had become a trusted colleague to Lt. Hicks. Lt. Hicks affirmed that Petitioner had absolutely treated Lt. Hicks with dignity and respect, and they had mutual respect for each other. Lt. Hicks said to Petitioner words to the effect of, "tell me you didn't say what I just heard you say?" Petitioner responded to the effect of, "I didn't mean to say that. I got tongue tied. I meant to say 'tall in the back.'" Lt. Hicks testified that, although he remembers Petitioner was red-faced, Lt. Hicks does not remember what Petitioner said in response. Other witnesses reported seeing Petitioner repeatedly apologize or explain to Lt. Hicks. Lt. Hicks told Petitioner that he accepted the explanation if Petitioner was satisfied with it, which response ended the conversation and the effort to take the photograph continued.

Lt. Hicks later testified that he was annoyed by the incident, but he did not acknowledge to Petitioner that he was annoyed. From Hicks's written statement given the day of the incident, it appears that Hicks did not believe that Petitioner made a tongue-tied utterance, but that Petitioner was making "an excuse for saying what he did." The incident changed how Lt. Hicks viewed Petitioner. Nevertheless, Lt. Hicks continued to work with Petitioner without incident until Lt. Hicks retired in January 2008.

The Investigation of the Incident and Decision to Impose Discipline

After the photo shoot, Petitioner and Lt. Hicks separately reported the incident. Petitioner approached Major Carden, the Major over the Professional Standards Division, immediately after the photo shoot to tell him what he had said and that Lt. Hicks had heard the statement. Also after the photo shoot, Lt. Hicks approached his supervisor, Capt. Ken Castelloe, then Director of the Internal Affairs Division of the Highway Patrol. Lt. Hicks told Capt. Castelloe about Petitioner's comment at the photo shoot. He also told Capt. Castelloe that the comment upset him. Before Capt. Castelloe had an opportunity to follow-up on Lt. Hicks's complaint, he was called into Major Carden's office to discuss the incident.

Major Carden thereafter completed a Personnel Complaint HP-307 concerning Petitioner's statement at the photo shoot. Major Carden then turned over the Personnel Complaint to Internal Affairs for classification and investigation. Capt. Castelloe classified the complaint as a Serious Personal Conduct violation of Directive H.1, Section V (Unbecoming Conduct).

As part of the investigation of the Personnel Complaint, Capt. Castelloe interviewed Petitioner on 30 July 2007. During this interview, Petitioner admitted that he said "blacks in back" or "black in the back," or words to that effect. Petitioner told Capt. Castelloe that he was thinking "back tall, tall back" and got his words jumbled. Petitioner told Captain Castelloe that he had no intention to hurt anyone's feelings or say anything disrespectful or inappropriate. Capt. Castelloe testified that he believed that Petitioner did not intend to say "blacks in back."

Capt. Castelloe completed his report of investigation on or about 7 August 2007. Capt. Castelloe recommended to the commander that Petitioner be demoted one rank, from Captain to Lieutenant. Although Major Carden would ordinarily review the recommendation, because he filed the Personnel Complaint, the review responsibility fell to the Deputy Commander of the Highway Patrol, Lt. Col. Lockley. On 10 August 2007, Lt. Col. Lockley concurred with Capt. Castelloe's recommendation, but directed him to interview a few others, including (then) First Sergeant M.T. Faison and Sgt. G.R. Mouzon, before the recommendation to demote moved forward.

Both Lt. Faison and Sgt. Mouzon are African American. Neither heard Petitioner's comments. After being informed of the comment, Sgt. Faison "admit[ted] that after hearing what [Petitioner] said, it changes the way he feels about him" . . . and he "views [Petitioner] in a different light and it has changed his respect" for Petitioner. In contrast, Sgt. Mouzon stated that the comment was "inappropriate" but did "not change his working relationship with" Petitioner, and that Petitioner had "always been professional." There is no evidence, however, that either Faison or Mouzon was told during the investigation of Petitioner's explanation for the incident. Further, it is not clear that either would have learned of the comment had it not been disclosed to them during the investigation. Additionally, the photographer standing near Petitioner at the time of the incident did not hear the comment: she reported seeing Petitioner explaining or apologizing to Lt. Hicks, but did not know what had transpired.

After the additional investigation, the recommendation to demote was reviewed by Col. Fletcher Clay, Commander of the North Carolina Highway Patrol. Col. Clay has been a member of the Highway Patrol since 1979 and has been the Commander of the

Highway Patrol since July 2004. Colonel Clay directed Capt. Castelloe to conduct a Pre-Disciplinary conference with Petitioner.

On 20 September 2007, Capt. Castelloe met with Petitioner and conducted a Pre-Disciplinary conference. During this meeting Petitioner was permitted to explain his position and submit any information he wanted Col. Clay to consider. Capt. Castelloe then prepared a memorandum to Col. Clay about the Pre-Disciplinary Conference, and attached a summary of Petitioner's comments at the Pre-Disciplinary Conference. Col. Clay met with Petitioner before making his final recommendation. During this meeting Petitioner explained his position to Col. Clay in the same manner he had during his Pre-Disciplinary Conference. Col. Clay demoted Petitioner one rank, from Captain to Lieutenant.

At the hearing, Col. Clay agreed that he believed that Petitioner's comment was not intentional. Col. Clay explained that he demoted Petitioner because Petitioner is a commissioned officer on the Highway Patrol who represents the Patrol and is responsible for supervision of a large number of individuals. Col. Clay also believed that Petitioner's comment was one that had a very negative connotation to African-Americans, in that the phrase is a sensitive type of phrase that is associated with an unpleasant time in history. Col. Clay acknowledged, however, that Petitioner and Lt. Hicks were able to get along and continue to work together. Also, the evidence showed Petitioner continued to well serve the Patrol after the incident.

Petitioner was notified that he was being demoted for violating State Highway Patrol Directive H.1, Section V (Unbecoming Conduct), as follows:

[W]hile attempting to organize a photograph for staff members of the Office of Professional Standards on the grounds of the State

Capitol, [Petitioner] made the offending statement, "Blacks in the back." The statement was made in the presence of African American staff members and others that are assigned to the Office of Professional Standards.

On this occasion, [Petitioner] Captain Goering failed to conduct himself in a manner that reflects most favorably upon the Highway Patrol and in keeping with the high standards of professional law enforcement. Furthermore, his conduct reflected discredit upon himself.

Petitioner's Internal Appeal

Petitioner appealed his demotion within the Highway Patrol. The charge of Unbecoming Conduct against Petitioner was initially heard by the Respondent's Employee Advisory Committee (hereafter the "Committee"), an impartial Board. The Committee included an African American Highway Patrol Captain and other minorities. The Committee heard the evidence and ruled unanimously in Captain Goering's favor.

Respondent's Departmental Secretary, Secretary Bryan Beatty, did not agree with the Committee's decision. Secretary Beatty found that demotion was inappropriate but imposed a five (5) day suspension. As grounds for the five (5) day suspension, Secretary Beatty observed:

Goering's comment is reminiscent of the period in our nation's history when Blacks were legally segregated from whites and were excluded from many aspects of society. If Blacks were allowed to ride public buses, they were required to ride in the back.

In addition, Secretary Beatty noted that it is "particularly important for supervisors to be careful in their comments." Secretary Beatty found that Petitioner "appeared to have no malice or intent to offend in making the comment and clearly regretted the comment immediately upon making it." In connection with the obligation of members of the Patrol to "conduct themselves in a manner that reflects favorably upon the Patrol at all times

and maintain the high standards of professional law enforcement,” Secretary Beatty concluded that Petitioner “failed to meet that standard and his conduct was unacceptable.”

Captain Goering filed a contested case petition with the Office of Administrative Hearings challenging the discipline imposed as being without just cause under North Carolina law.

Petitioner’s Reputation Within the Highway Patrol and In The Community

Multiple individuals who have worked with Petitioner in the Highway Patrol testified that Petitioner has an excellent reputation within the Highway Patrol and that they have never observed any sort of racist or discriminatory behavior on his part. Indeed, every witness (including those called by Respondent) affirmed Petitioner’s exemplary conduct, work performance and character. Col. Clay agreed that Petitioner is one of the most highly regarded captains in the Highway Patrol. Indeed, because Col. Clay knew Petitioner to behave consistently in an exemplary manner, Col. Clay did not even review Petitioner’s conduct history before making his decision about discipline. Similarly, the evidence demonstrated that Petitioner maintains an excellent reputation in the community.

Testimony of Petitioner’s Expert Witness

Petitioner offered expert testimony from James B. Merritt. Mr. Merritt has worked in or around the law enforcement profession since 1950. He currently serves as a professor of criminal justice and sociology at Mount Olive College. He has authored over 100 articles and three books on topics relating to law enforcement issues. He has testified as an expert witness on various aspects of law enforcement on numerous

occasions. Mr. Merritt was tendered and accepted as an expert in the field of officer conduct, which includes discipline. Mr. Merritt testified about his opinions that: an objective standard should be used in analyzing police discipline; whether the offending statement was made by accident or intentionally is a factor to consider when imposing discipline; and that Petitioner's accidental statement did not reflect negatively on the professional image of the Patrol or any of its members.

Mr. Merritt's opinion about the impact of Petitioner's conduct, although in some ways consistent with the conclusions reached herein, was not persuasive and has not been given weight. Mr. Merritt has never been employed by the North Carolina Highway Patrol, nor has he ever served as a supervising officer or commander of the Highway Patrol. He is not a sworn law enforcement officer in North Carolina. Moreover, in this case, his testimony regarding the setting and context of the incident was contradictory, for example testifying both that everyone was nervous and that it was fun time. Additionally, Mr. Merritt's failure to directly respond to the questions posed negatively impacted the persuasive value of his testimony.

CONCLUSIONS OF LAW

All parties are properly before this Administrative Law Judge and jurisdiction and venue are proper. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

I. PETITIONER IS A CAREER STATE EMPLOYEE UNDER THE NORTH CAROLINA STATE PERSONNEL ACT.

Petitioner is and has been continuously employed in the Highway Patrol for approximately twenty-six (26) years. At the time of his suspension, he was a Career State Employee entitled to the protections of the North Carolina State Personnel Act, N.C. Gen. Stat. § 126-1 *et seq.*, and specifically the just cause provision of N.C. Gen. Stat. §126-35. Section 126-35(a) provides, in part, that “[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.”

The North Carolina Supreme Court has held that “[d]etermining whether a public employer had just cause to discipline its employee requires two separate inquiries: First, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes just cause for the disciplinary action taken.” *North Carolina Dept. of Environment & Natural Resources v. Carroll*, 358 N.C. 649, 665, 599 S.E.2d 888, 898 (2004). Respondent bears the burden of demonstrating “just cause” for suspending Petitioner for five (5) days. N.C. Gen. Stat. § 126-35(d).

A. Petitioner Engaged in The Alleged Conduct.

In this case, Petitioner not only does not dispute that he uttered the phrase “blacks in the back,” or words to that effect, he self-reported the incident on the day that it happened.

B. Petitioner's Accidental Utterance Does Not Constitute Just Cause For Five (5) Day Suspension.

According to Respondent, that Petitioner said words that have serious racial and social implications loud enough for two (2) members of the Patrol to hear constitutes just cause for a five (5) day suspension even if the words at issue were inadvertently said. As discussed below, in this case, Respondent has not supported this contention sufficiently to withstand the scrutiny required under applicable legal principles.

“By statute, ‘just cause’ for the dismissal, suspension, or demotion of a career state employee may be established only on the basis of ‘unsatisfactory job performance or ‘unacceptable personal conduct.’” *North Carolina Dept. of Environment & Natural Resources v. Carroll*, 358 N.C. 649, 666, 599 S.E.2d 888, 899 (2004). In this case, Petitioner was suspended for “unacceptable personal conduct.” Respondent concluded that Petitioner violated North Carolina Highway Patrol Directive H.1 Section V, Unbecoming Conduct, which states that:

Members shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably upon the Highway Patrol and in keeping with the high standards of professional law enforcement. Unbecoming conduct shall include any conduct which tends to bring the Patrol into disrepute, or which reflects discredit upon any member(s) of the Patrol, or which tends to impair the operation and efficiency of the Patrol or of a member, or which violates Patrol policy.

See also 25 NCAC 1J .0614(i)(5) (specifying that “unacceptable personal conduct” includes “conduct unbecoming a state employee that is detrimental to state service”).

The determination of whether conduct amounts to unbecoming conduct, as *Carroll* instructs, requires examination of circumstances beyond the mere fact of the conduct itself. *See Carroll*, 358 N.C. at 669, 599 S.E.2d at 900 (rejecting empirical

question of whether Ranger violated the law as the dispositive inquiry); *see id.* (just cause is a “flexible concept, embodying notions of equity and fairness,’ that can only be determined upon an examination of the facts and circumstances of each individual case”) (quoted case omitted). Even inappropriate or distasteful conduct that is without legal justification or excuse, or is otherwise unsafe to the public or unwise, can be insufficient to support a finding of “unbecoming conduct.” *See id.* at 670 n.4, 599 S.E.2d at 901 n.4 (noting disapproval of conduct but finding no just cause). Other cases in which “unacceptable personal conduct” and “just cause” for discipline has been found provide guidance in the determination. *See id.* at 675, 599 S.E.2d at 904.

Respondent has not identified any cases in which employees have been similarly disciplined in analogous circumstances. Rather, Respondent argues that the racially-charged nature of Petitioner’s utterance, however inadvertently said, is effectively dispositive of the “unbecoming conduct” standard. In particular, Respondent argued at the hearing that Petitioner’s conduct would be similar to a hypothetical “trooper . . . standing and speaking to a group of citizens or a group of school children or something like that and giving a lecture, and if he were to accidentally blurt out a profanity or obscenity and had no intention whatsoever to do it. He still did it, he was still in uniform, and it still is potentially offensive to people.” This example, however, not only is meaningfully distinguishable from Petitioner’s comment—which was heard only by two (2) colleagues—it is only hypothetical and does not demonstrate an actual instance in which discipline was imposed for “unbecoming conduct.”

Moreover, in *Carroll*, which both sides identified as applicable precedent, the North Carolina Supreme Court found that use of profanity or other “lashing out” at two

fellow law enforcement officers was not unbecoming conduct when it examined the totality of the circumstances. *Id.* at 675-76, 599 S.E.2d at 904. Indeed, there, the employee intentionally used offensive or profane words while in uniform, but still survived the “unbecoming conduct” analysis. Here, Petitioner’s conduct is more similar to the conduct in *Carroll* than to Respondent’s hypothetical example. Like the offending language and conduct in *Carroll*, Petitioner’s utterance was heard only by colleagues. Less “unbecoming” than the conduct in *Carroll*, Petitioner’s conduct was not prolonged but was fleeting and unintentional: analogous to physically stumbling while walking and falling onto someone. Additionally, examining the state of mind that produced Petitioner’s language, as was done in *Carroll*, produces no inference of an offensive or unbecoming intent and provides necessary context to the incident. Further, of the other cases involving decisions about whether offensive or threatening language has amounted to “unbecoming conduct,” which Petitioner has cited in this matter, none has found that those offensive comments has constituted just cause for serious discipline.

Respondent agrees that the incident did not affect Petitioner’s ability to supervise; had it done so, Respondent affirmatively stated that it would have removed Petitioner from supervisory capacity. Although Lt. Hicks was offended by the incident, Respondent did not move Lt. Hicks or Petitioner so that their offices would not be near each other, and the two continued to work without incident. There has been no suggestion that Petitioner has ever acted in a disrespectful or racist manner; in fact, the evidence was strongly to the contrary. Even Lt. Hicks acknowledged that Petitioner has been absolutely professional and respectful in his dealings with Lt. Hicks. Indeed, Respondent does not dispute that Petitioner’s utterance was aberrant and unintended, and not

evidence of an underlying and troubling character trait. Not only did Petitioner not intend to offend, Petitioner did not even intend to say the phrase that forms the basis of this incident. Indeed, if Petitioner had meant to say the words but had not meant to offend or otherwise had failed to understand the offensive propensity of the words, the result in this case would unquestionably be different.

As Secretary Beatty observed, it is “particularly important for supervisors to be careful in their comments.” It is also true that the phrase that Petitioner uttered is manifestly offensive for historical reasons. *Carroll*, however, requires that the incident and the actor be viewed in their totality, including the reasons for the conduct at issue and the performance history of the employee.

Under applicable legal principles, Respondent has not demonstrated that, under the totality of circumstances, this isolated instance of a stumbled phrase heard only by two (2) colleagues in an otherwise exemplary twenty-six (26) year career tends to bring the Patrol into disrepute or reflects discredit upon any member of the Patrol, including Petitioner. Likewise, Respondent has not demonstrated that the incident impaired the operation and efficiency of the Patrol or of a member or that the incident violated a particular Patrol policy.

A warning or reminder to any supervisor, including Petitioner, who trips up words, and in so doing, offends colleagues would not be misplaced. Respondent’s correct assertion of the need to be mindful of language and that the nature of the comment was racially inflammatory would support such a reminder or warning. Under governing legal principles, however, Respondent has not satisfied its burden of

demonstrating that it had just cause to suspend Petitioner for five (5) days for the conduct at issue.

II. PETITIONER'S REMAINING CLAIMS ARE DISMISSED.

All procedural requirements for terminating Petitioner were followed pursuant to the North Carolina General Statutes, *North Carolina State Personnel Manual*, and the rules and policies of the North Carolina Department of Crime Control and Public Safety.

The Office of Administrative Hearings does not have subject matter jurisdiction to hear Petitioner's claim that Respondent retaliated against him. Petitioner's claim does not fit any category for retaliation set out in Chapter 126 of the North Carolina General Statutes. Further, no evidence supports Petitioner's contention that he was subject to retaliation.

Similarly, the Office of Administrative Hearings does not have subject matter jurisdiction to hear Petitioner's claim of disparate treatment, to the extent such a separate claim is alleged. Further, Respondent's action does not constitute disparate treatment.

Petitioner did not complete the necessary requirements under N.C. Gen. Stat. § 126-34.1 and § 126-25 to give the Office of Administrative Hearings subject matter jurisdiction over his claim that Respondent has failed to remove inaccurate or misleading information from his personnel file.

The claims described in this section are therefore dismissed.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, there was not just cause for a five (5) day suspension of Petitioner's employment. Consequently, Petitioner's suspension should be reversed and Petitioner should receive any pay or benefits that were lost as a result of the suspension. It is recommended that reasonable counsel fees and costs be awarded to Petitioner.

ORDER

The North Carolina State Personnel Commission will make the final decision in this contested personnel case. N.C.G.S. 150B-36 enumerates the standard of review and procedures that the agency must follow in making its final decision, and adopting or not adopting the findings, conclusions or decision of the Administrative Law Judge.


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, NC 27699-6714, in accordance with North Carolina General Statutes Section 150B-36(b).

NOTICE

Before the agency makes the final decision, it is required by N.C.G.S. Section 150B-36(a) 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.

The agency is required by N.C.G.S. Section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the parties' attorneys of record.

This 29th day of July, 2008.

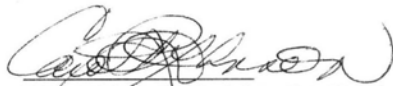

Shannon Joseph
Administrative Law Judge

A copy of the foregoing was mailed to:

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This 29th day of July, 2008.



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