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Contact List for Rulemaking Questions or Concerns

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

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

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Fiscal Notes & Economic Analysis

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116 West Jones Street — (919) 807-4700
Raleigh, North Carolina 27603-8005 — (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst — osbmruleanalysis@osbm.nc.gov — (919)807-4740

NC Association of County Commissioners
215 North Dawson Street — (919) 715-2893
Raleigh, North Carolina 27603
contact: Jim Blackburn — jim.blackburn@ncacc.org
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Raleigh, North Carolina 27603
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Governor's Review

Edwin M. Speas, Jr. — edwin.speas@nc.gov
General Counsel to the Governor — (919) 733-5811
116 West Jones Street
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street — (919) 733-2578
Raleigh, North Carolina 27611 — (919) 715-5460 FAX

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NORTH CAROLINA REGISTER
Publication Schedule for January 2010 – December 2010

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:	270th day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26109
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
24:20	04/15/10	03/24/10	04/30/10	06/14/10	06/21/10	08/01/10	01/26/11	01/10/11
24:21	05/03/10	04/12/10	05/18/10	07/02/10	07/20/10	09/01/10	01/26/11	01/28/11
24:22	05/17/10	04/26/10	06/01/10	07/16/10	07/20/10	09/01/10	01/26/11	02/11/11
24:23	06/01/10	05/10/10	06/16/10	08/02/10	08/20/10	10/01/10	01/26/11	02/26/11
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25:01	07/01/10	06/10/10	07/16/10	08/30/10	09/20/10	11/01/10	01/26/11	03/28/11
25:02	07/15/10	06/23/10	07/30/10	09/13/10	09/20/10	11/01/10	01/26/11	04/11/11
25:03	08/02/10	07/12/10	08/17/10	10/01/10	10/20/10	12/01/10	01/26/11	04/29/11
25:04	08/16/10	07/26/10	08/31/10	10/15/10	10/20/10	12/01/10	01/26/11	05/13/11
25:05	09/01/10	08/11/10	09/16/10	11/01/10	11/22/10	01/01/11	01/26/11	05/29/11
25:06	09/15/10	08/24/10	09/30/10	11/15/10	11/22/10	01/01/11	01/26/11	06/12/11
25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
25:11	12/01/10	11/05/10	12/16/10	01/31/11	02/21/11	04/01/11	05/2012	08/28/11
25:12	12/15/10	11/22/10	12/30/10	02/14/11	02/21/11	04/01/11	05/2012	09/11/11

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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.

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Note from the Codifier: *The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.*
Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rule cited as 10A NCAC 13B .3302.*

Proposed Effective Date: *January 1, 2011*

Public Hearing:
Date: *October 8, 2010*
Time: *11:00 a.m.*
Location: *NC Division of Health Service Regulation, Dorothea Dix Campus, Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603*

Reason for Proposed Action: *The proposed amendment will amend existing language in the Minimum Provisions of Patient's Bill of Rights to ensure that all persons, regardless of sexual orientation or gender identity, have the right to medical and nursing treatment.*

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

Comments may be submitted to: *Erin Glendening, Division of Health Service Regulation, 2714 Mail Service Center, Raleigh, NC 27699-2714; fax (919) 715-4413; email DHSR.RulesCoordinator@dhhs.nc.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:
☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☒ **None**

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B - LICENSING OF HOSPITALS

SECTION .3300 – PATIENT'S BILL OF RIGHTS

10A NCAC 13B .3302 MINIMUM PROVISIONS OF PATIENT'S BILL OF RIGHTS

(a) A patient has the right to respectful care given by competent personnel.
(b) A patient has the right, upon request, to be given the name of his attending physician, the names of all other physicians directly participating in his care, and the names and functions of other health care persons having direct contact with the patient.
(c) A patient has the right to privacy concerning his own medical care program. Case discussion, consultation, examination, and treatment are considered confidential and shall be conducted discreetly.
(d) A patient has the right to have all records pertaining to his medical care treated as confidential except as otherwise provided by law or third party contractual arrangements.
(e) A patient has the right to know what facility rules and regulations apply to his conduct as a patient.
(f) A patient has the right to expect emergency procedures to be implemented without unnecessary delay.
(g) A patient has the right to good quality care and high professional standards that are continually maintained and reviewed.
(h) A patient has the right to full information in laymen's terms, concerning his diagnosis, treatment and prognosis, including information about alternative treatments and possible complications. When it is not possible or medically advisable to give such information to the patient, the information shall be given on his behalf to the patient's designee.
(i) Except for emergencies, a physician must obtain necessary informed consent prior to the start of any procedure or treatment, or both.
(j) A patient has the right to be advised when a physician is considering the patient as a part of a medical care research program or donor program. Informed consent must be obtained prior to actual participation in such a program and the patient or

legally responsible party, may, at any time, refuse to continue in any such program to which he has previously given informed consent. An Institutional Review Board (IRB) may waive or alter the informed consent requirement if it reviews and approves a research study in accord with federal regulations for the protection of human research subjects including U.S. Department of Health and Human Services (HHS) regulations under 45 CFR Part 46 and U.S. Food and Drug Administration (FDA) regulations under 21 CFR Parts 50 and 56. For any research study proposed for conduct under an FDA "Exception from Informed Consent Requirements for Emergency Research" or an HHS "Emergency Research Consent Waiver" in which informed consent is waived but community consultation and public disclosure about the research are required, any facility proposing to be engaged in the research study also must verify that the proposed research study has been registered with the North Carolina Medical Care Commission. When the IRB reviewing the research study has authorized the start of the community consultation process required by the federal regulations for emergency research, but before the beginning of that process, notice of the proposed research study by the facility shall be provided to the North Carolina Medical Care Commission. The notice shall include:

(1) the title of the research study;
(2) a description of the research study, including a description of the population to be enrolled;
(3) a description of the planned community consultation process, including currently proposed meeting dates and times;
(4) an explanation of the way that people choosing not to participate in the research study may opt out; and
(5) contact information including mailing address and phone number for the IRB and the principal investigator.

The Medical Care Commission may publish all or part of the above information in the North Carolina Register, and may require the institution proposing to conduct the research study to attend a public meeting convened by a Medical Care Commission member in the community where the proposed research study is to take place to present and discuss the study or the community consultation process proposed.

(k) A patient has the right to refuse any drugs, treatment or procedure offered by the facility, to the extent permitted by law, and a physician shall inform the patient of his right to refuse any drugs, treatment or procedures and of the medical consequences of the patient's refusal of any drugs, treatment or procedure.
(l) A patient has the right to assistance in obtaining consultation with another physician at the patient's request and expense.
(m) A patient has the right to medical and nursing services without discrimination based upon race, color, religion, sex, sexual ~~preference,~~ orientation, gender identity, national origin or source of payment.
(n) A patient who does not speak English shall have access, when possible, to an interpreter.
(o) A facility shall provide a patient, or patient designee, upon request, access to all information contained in the patient's medical records. A patient's access to medical records may be restricted by the patient's attending physician. If the physician restricts the patient's access to information in the patient's medical record, the physician shall record the reasons on the patient's medical record. Access shall be restricted only for sound medical reason. A patient's designee may have access to the information in the patient's medical records even if the attending physician restricts the patient's access to those records.
(p) A patient has the right not to be awakened by hospital staff unless it is medically necessary.
(q) The patient has the right to be free from duplication of medical and nursing procedures as determined by the attending physician.
(r) The patient has the right to medical and nursing treatment that avoids unnecessary physical and mental discomfort.
(s) When medically permissible, a patient may be transferred to another facility only after he or his next of kin or other legally responsible representative has received complete information and an explanation concerning the needs for and alternatives to such a transfer. The facility to which the patient is to be transferred must first have accepted the patient for transfer.
(t) The patient has the right to examine and receive a detailed explanation of his bill.
(u) The patient has a right to full information and counseling on the availability of known financial resources for his health care.
(v) A patient has the right to be informed upon discharge of his continuing health care requirements following discharge and the means for meeting them.
(w) A patient shall not be denied the right of access to an individual or agency who is authorized to act on his behalf to assert or protect the rights set out in this Section.
(x) A patient has the right to be informed of his rights at the earliest possible time in the course of his hospitalization.
(y) A patient has the right to designate visitors who shall receive the same visitation privileges as the patient's immediate family members, regardless of whether the visitors are legally related to the patient.

Authority G.S. 131E-75; 131E-79; 131E-117; 143B-165.

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 rule cited as 13 NCAC 07A .0301 and repeal the rule cited as 13 NCAC 07A .0302.*

Proposed Effective Date: *December 1, 2010*

Public Hearing:
Date: *September 1, 2010*
Time: *10:00 a.m.*
Location: *4 West Edenton Street, Room 205, Raleigh, NC 27601*

Reason for Proposed Action:
13 NCAC 07A .0301 *– Incorporation by Reference, incorporates by reference certain federal standards for the NC Department of Labor's Occupational Safety and Health Division.*
13 NCAC 07A .0302 *– Copies Available, was first enacted in 1993, and includes the costs for materials that are incorporated by reference in Title 13, Chapter 07 of the NC Administrative Code. For purposes of clarity, the Department is proposing to repeal 13 NCAC 07A .0302, and to incorporate the information contained therein into 13 NCAC 07A .0301, and make certain corresponding changes. In addition, during the 2009 Session of the NC General Assembly, the Department's budget was reduced by $1,663,966. Pursuant to the Money Report to Senate Bill 202, a portion of that cut was to be accomplished by having the Department's Occupational Safety and Health Division raise the costs it charges for publications and to take a corresponding General Fund reduction. The publication costs were last increased in 2002, and since that time the costs incurred by the Department in publishing and shipping these standard books have continued to increase. As a result in the overall reduction in the Department's operational budget, and the increase in the associated costs, this increase is necessary to allow us to continue to purchase and print all of our publications.*

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. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on October 15, 2010.*

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@labor.nc.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:
☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☒ **None**

CHAPTER 07 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 07A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0300 - PROCEDURES

13 NCAC 07A .0301 INCORPORATION BY REFERENCE

~~(a) The provisions for Occupational Safety and Health Act Operational Procedures - Inspections, Citations and Proposed Penalties - contained in 29 CFR 1903; Recording and Reporting Occupational Injuries and Illnesses - contained in 29 CFR 1904; Consultative Agreements - contained in 29 CFR 1908, have been incorporated by reference in accordance with G.S. 150B-21.6 except that where applicable:~~

~~(1) All references to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq) shall mean the Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;~~

~~(2) All references to the Occupational Safety and Health Review Commission shall mean the Safety and Health Review Board as established in G.S. 95-135;~~

~~(3) All references to Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, shall mean the North Carolina Department of Labor, Division of Occupational Safety and Health (or OSHA), the name used to denote the office of occupational safety and health;~~

~~(4) All references to the Secretary or Assistant Secretary shall mean the Commissioner of the North Carolina Department of Labor or his authorized representative;~~

~~(5) All references to Area Director, Regional Administrator, or Assistant Regional Director shall mean the Director of the Division of Occupational Safety and Health (North Carolina Department of Labor) or his authorized representative;~~

~~(6) All references to Regional Solicitor or Solicitor of Labor shall mean the Attorney General, Labor Division, North Carolina Department of Justice;~~

~~(7) All references to Compliance Officers shall mean State compliance safety and health officers;~~

~~(8) All references to the Federal Rules of Civil Procedure shall mean the North Carolina Rules of Civil Procedure;~~

~~(9) Within 29 CFR 1903.14, "Citations; notices of de minimis violations", any reference to a notice of de minimis violations is deleted as North Carolina does not have a procedure for issuance of a notice with respect to de minimis violations that have no direct or immediate relationship to safety or health;~~

~~(10) 29 CFR 1903.14a(c)(1) that requires the posting of a petition for modification for a period of 10 working days shall be for a period of 15 working days, and 29 CFR 1903.14a(c)(2) that refers to the failure to file an objection within 10 working days of the date of posting shall be 15 working days of the posting;~~

~~(11) 29 CFR 1903.22, "Definitions", is not incorporated;~~

~~(12) 29 CFR 1908 shall be applicable to private sector consultations, and shall be used as guidance for consultations to state and local governments in North Carolina under the State Plan.~~

~~(b) The Code of Federal Regulations incorporated by reference in this Subchapter shall automatically include any subsequent amendments thereto as allowed by G.S. 150B-21.6.~~

(a) Subject to the exceptions provided in Paragraph (h) of this Rule, the provisions of Title 29 of the Code of Federal Regulations referenced below are incorporated by reference throughout this Chapter, including subsequent amendments and editions thereof. Copies of these standards are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Printing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at http://bookstore.gpo.gov. The cost is sixty-four dollars ($64.00) for Title 29, Parts 1900-1910:

(1) 29 CFR 1903 – Inspections, Citations, and Proposed Penalties; and

(2) 29 CFR 1904 – Recording and Reporting Occupational Injuries and Illnesses;

(3) 29 CFR 1905.10(b) – Variances and Other Relief under Section 6(b)(6)(A);

(4) 29 CFR 1905.11(b) – Variances and Other Relief under Section 6(b)(6)(A); and

(5) 29 CFR 1908 – Consultation Agreements.

(b) The provisions of 29 CFR 1910 are incorporated by reference in accordance with 13 NCAC 07F .0101. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the North Carolina Department of Labor, via U.S. Mail at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, via telephone at (919) 807-2875, or via the internet at www.nclabor.com/pubs.htm. The cost is thirty-seven dollars ($37.00), plus postage and mailing costs.

(c) The provisions of 29 CFR 1915 are incorporated by reference in accordance with 13 NCAC 07F .0501. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Printing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at http://bookstore.gpo.gov. The cost is thirty-three dollars ($33.00) for Title 29, Parts 1911-1925.

(d) The provisions of 29 CFR 1917 are incorporated by reference in accordance with 13 NCAC 07F .0502. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Printing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at http://bookstore.gpo.gov. The cost is thirty-three dollars ($33.00) for Title 29, Parts 1911-1925.

(e) The provisions of 29 CFR 1926 are incorporated by reference in accordance with 13 NCAC 07F .0201. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the North Carolina Department of Labor, via U.S. Mail at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, via telephone at (919) 807-2875, or via the internet at www.nclabor.com/pubs.htm. The cost is thirty-two dollars ($32.00), plus postage and mailing costs.

(f) The provisions of 29 CFR 1928 are incorporated by reference in accordance with 13 NCAC 07F .0301. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Printing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at http://bookstore.gpo.gov. The cost is sixty-five dollars ($65.00) for Title 29, Parts 1927-END.

(g) The following Safety Library Publications (hereinafter referenced as SLP) are incorporated by reference and include subsequent amendments and editions of the standards. The rules of this Chapter shall control when any conflict between these Rules and the following standards exists. Copies of the following applicable SLP publications are available for inspection at the North Carolina Department of Labor or may be obtained from The Institute of Makers of Explosives, via U.S. Mail at 1120 Nineteenth Street N.W., Suite 310, Washington, D.C., 20036, via telephone at (202) 429-9280, or via the internet at www.ime.org.

(1) SLP 17 - Safety in the Transportation, Storage, Handling & Use of Commercial Explosive Materials – fifteen dollars ($15.00).

(2) SLP 20 – Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps) – fifteen dollars ($15.00).

(3) SLP 22 – Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials – fifteen dollars ($15.00).

(h) The provisions of Title 29 of the Code of Federal Regulations referenced in Paragraph (a) of this Rule are subject to the following exceptions:

(1) All references to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) shall mean the Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;

(2) All references to the Occupational Safety and Health Review Commission shall mean the North Carolina Occupational Safety and Health Review Commission as established in G.S. 95-135;

(3) All references to Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, shall mean the North Carolina Department of Labor, Occupational Safety and Health Division (or OSH Division);

(4) All references to the Secretary or Assistant Secretary shall mean the Commissioner of the North Carolina Department of Labor or his authorized representative;

(5) All references to Area Director, Regional Administrator, or Assistant Regional Director shall mean the Director of the Occupational Safety and Health Division (North Carolina Department of Labor) or his authorized representative;

(6) All references to Regional Solicitor or Solicitor of Labor shall mean the Attorney General, Labor Division, North Carolina Department of Justice;

(7) All references to Compliance Officers shall mean State compliance safety and health officers;

(8) All references to the Federal Rules of Civil Procedure shall mean the North Carolina Rules of Civil Procedure;

(9) Within 29 CFR 1903.14, "Citations; notices of de minimis violations", any reference to a notice of de minimis violations is deleted as North Carolina does not have a procedure for issuance of a notice with respect to de minimis violations that have no direct or immediate relationship to safety or health;

(10) 29 CFR 1903.14a(c)(1) that requires the posting of a petition for modification for a period of 10 working days shall be for a period of 15 working days, and 29 CFR 1903.14a(c)(2) that refers to the failure to file an objection within 10 working days of the date of posting shall be 15 working days of the posting;

(11) 29 CFR 1903.22, "Definitions", is not incorporated;

(12) 29 CFR 1908 shall be applicable to private sector consultations, and shall be used as guidance for consultations to state and local governments in North Carolina under the State Plan.

Authority G.S. 95-133; 150B-21.6.

13 NCAC 07A .0302 COPIES AVAILABLE

~~Copies of the applicable Code of Federal Regulations (CFR) Parts or sections and industry standards referred to in this Chapter are available for public inspection by contacting the North Carolina Department of Labor (NCDOL), Division of Occupational Safety and Health or the NCDOL Library. The following table provides acquisition locations and the costs of the applicable materials on the date this Rule was adopted:~~

~~**Referenced Materials**~~	~~**Available for Purchase From**~~	~~**Cost**~~
~~29 CFR 1903; 29 CFR 1904; 29 CFR 1905; 29 CFR 1908; 29 CFR 1913.10~~	~~Division of Occupational Safety & Health http://www.dol.state.nc.us/~~	~~$1/page requested~~
~~29 CFR 1910~~	~~Division of Occupational Safety & Health http://www.dol.state.nc.us/~~	~~$27.00 each~~
~~29 CFR 1915; 29 CFR 1917~~	~~Division of Occupational Safety & Health http://www.dol.state.nc.us/~~	~~$2.50 each~~
~~29 CFR 1926~~	~~Division of Occupational Safety & Health http://www.dol.state.nc.us/~~	~~$22.00 each~~
~~29 CFR 1928~~	~~Division of Occupational Safety & Health http://www.dol.state.nc.us/~~	~~$2.50 each~~
~~The above CFR Parts and other CFR Parts~~	~~U.S. Government Printing Office Washington, D.C. 20402 (202) 512-1800 http://www.gpo.gov/~~	~~$34.00/Part~~
~~ANSI/NFPA 101-1991~~	~~National Fire Protection Association 1 Battery Arch Park Quincy, Massachusetts 02269 (617) 770-3000 http://www.nfpa.org/~~	~~$53.50 Non-members; $48.25 members~~

ANSI standards	American National Standards Institute 11 West 42nd Street New York, New York 10036 (212) 642-4900 http://www.ansi.org/	Z88.2: $54.00
ANSI standards	Global Engineering Documents 15 Inverness Way East Englewood, CO 80112 http://global.his.com/	B30.9: $105 with additional $20.00 update service, optional; Z9.2: $ 60 Z41.1: $ 20 Z87.1: $ 94 Z89.2: $ 40 Z229.1: $ 25
Federal Specification QQ-P-416	Federal Supply Services Specification Section 470 East L'Enfant Plaza SW, Suite 8100 Washington, DC 20407 (202) 619-8925 http://www.gsa.gov/fssintro.htm	$ 7.00 each
Schedule 30 Bureau of Mines	24 FR 245 pages 10210-10204, December 17, 1959 or Division of Occupational Safety & Health http://www.msha.gov/	$1.00/page requested
Institute of Makers of Explosives (IME) Publications	1120 Nineteenth St. NW, Suite 310 Washington, DC 20036 (202) 429-9280 http://www.ime.org	No. 17 $15.00 No. 20 $10.00 No. 20 $ 15.00 No. 22 $15.00

Authority G.S. 95-133; 150B-21.6.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to repeal the rules cited as 13 NCAC 07F .0401-.0426.*

Proposed Effective Date: *December 1, 2010*

Public Hearing:
Date: *September 1, 2010*
Time: *11:00 a.m.*
Location: *4 West Edenton Street, Room 205, Raleigh, NC 27601*

Reason for Proposed Action: *The rules contained in 13 NCAC 07F .0400, contain state-specific safety requirements for handling, storing, preparing, fitting, fastening, and shipping structural and plate steel at fabricated structural steel fabricating shops or firms primarily engaged in fabricating structural steel and steel plate. These standards were adopted in 1976, and were based upon a then-existing national consensus standard – ANSI Z229.1-1973. At the time these rules were adopted, there were not comparable standards promulgated by Federal OSHA. However, a recent comparison of the rules contained in Section .0400 and those contained in the current general industry standards in 29 CFR Part 1910 revealed that the vast majority of the hazards addressed in these rules are covered by those current general industry standards. As a result, the rules contained in Section .0400 are no longer necessary. In fact, repealing these rules would allow some items to be addressed more thoroughly and accurately with current standards, thereby enhancing occupational safety and health in the industry.*

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. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on October 15, 2010.*

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@labor.nc.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:
☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☒ **None**

CHAPTER 07 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 07F - STANDARDS

SECTION .0400 - SHOPS FABRICATING STRUCTURALSTEEL AND STEEL PLATE

13 NCAC 07F .0401 GENERAL REQUIREMENTS

~~Application. The Shops Fabricating Structural Steel and Steel Plate standard establishes safety requirements for handling, storing, preparing, fitting, fastening, and shipping structural and plate steel at fabricated structural steel fabricating shops of firms primarily engaged in fabricating structural steel and steel plate. This standard does not apply to businesses where fabrication of structural steel and steel plate is incidental to the principal business, or to the final in-place field erection site.~~

Authority G.S. 95-131.

13 NCAC 07F .0402 DEFINITIONS APPLICABLE TO THIS STANDARD

~~The following definitions apply to this Section:~~

~~(1) Administrative or Regulatory Authority. Governmental agency or, in the absence of governmental jurisdiction, the employer;~~

~~(2) Airless Spray Gun. A device that disperses liquid by the use of high pressure exerted on the liquid for atomization (1200 to 3500 p.s.i.);~~

~~(3) Arc Radiation. The rays emanating from a welding arc by emission and transmission; These include infrared and ultraviolet rays;~~

~~(4) Approved. Acceptable to the authority having jurisdiction;~~

~~(5) Authorized. Approved by the authority having jurisdiction;~~

~~(6) Bars. Round or square rods up to and including six inch cross section;~~

~~(7) Blocking. Wood blocks, timbers, or other material of various dimensions used to support and separate piles of material;~~

~~(8) Buggy. A small cart or truck, usually on rails, for transportation of material;~~

~~(9) Buggy Rails. The rails upon which the buggy operates;~~

~~(10) Burning Goggles. Personal protective equipment that protects the eyes from harmful light, sparks, molten metal globules, and impacts associated with oxygen-fuel cutting operations;~~

~~(11) Cantilever. A projecting beam or member extending beyond the supports; Example: material which overhangs beyond its supports;~~

~~(12) Carbon Arc. An electric arc produced with a carbon electrode; commonly used, in conjunction with compressed air for metal removal;~~

~~(13) Chocked Wheels. Wheels blocked to prevent movement of the railroad car or other wheels;~~

~~(14) Competent Person. A person who has the requisite ability and knowledge of the process or procedure to ensure the safety of the operation;~~

~~(15) Crib Blocking. Multiple layers of blocking arranged so that each layer is at right angles to the preceding layer;~~

~~(16) Crop Ends. Leftover or unused pieces resulting from the processing of the original structural shapes;~~

~~(17) Electrodes. The terminals of a source of electricity used to establish an arc; used in both metal depositing and metal removal processes;~~

~~(18) Employee. A person employed by the employer;~~

~~(19) Fillet. The radius provided between adjacent steel surfaces to reduce stress concentrations; a triangular shaped weld between two surfaces at an angle to each other;~~

~~(20) Fillet Weld. A weld of approximately triangular cross section joining two surfaces approximately at right angles to each other in a lap joint, tee joint, or corner joint;~~

~~(21) Flame arrested Lids. Covers with flame arrester screens or baffles, used on safety cans, plunger cans, drum vents, etc., to prevent flashback of flame into the container from outside;~~

~~(22) Flange Toes. The ends of the parallel components of the I beam or webbed flange rolled sections;~~

~~(23) Flat Gage Material. Flat material usually under one eighth inch thickness;~~

~~(24) Flat Material. Material 3/16 inch or less in thickness; either in strips one inch to eight inches or in sheets over eight inches wide;~~

(25) Galvanizing. Applying a zinc coating to iron or steel by immersing in a molten bath or by electroplating;

(26) Good Housekeeping. Clean, orderly, uncluttered, and neatly arranged car of material and tools;

(27) Harmful Exposure. The state or condition of being exposed to a hazard or unsafe conditions;

(28) Harmful Irritants. Any element or compound that may adversely affect human physical conditions;

(29) Hazardous. Involving risk; depending on chance;

(30) Hazardous Materials. Any elements or compounds which possess properties that have the potential of causing physical harm to employees;

(31) Head Ends. The ends of structural shapes from which the original measurements are made;

(32) Hook. A device of curved shape used on chains, blocks of cranes, wire rope slings, etc., to secure, hold, or sustain a lift;

(33) Interlocking. Piling angles or beams so that the leg of one angle or flange of one beam is set inside the leg or flange of the adjoining piece;

(34) Inverted Courses. The practice of turning rows of angles in piles upside down to lock the pile for stability;

(35) Lanyard Ropes. Ropes used with safety belts to limit the distance of fall;

(36) Leg Thickness. Thickness of the angle leg of structural profile;

(37) Lift. To elevate, raise, or hoist a load;

(38) Multiple Piles. Material stacked in piles, one above the other, separated by blocking;

(39) Nominal Depth Range. The permissible depth range on rolled sections as they are purchased from the mill; Example: 24 inch beams 84 pounds per foot will range from 23-7/8 inches to 24 3/16 inches;

(40) Pants Guards. Devices worn to prevent trousers from hanging loosely around the legs in order to prohibit their becoming entangled in revolving machinery;

(41) Periodic Check. The act of testing or verifying for safety at regular predetermined intervals of one to 12 months;

(42) Permanent Deformation. Change in physical configuration that will not be restored when the external forces which caused the deformation are removed;

(43) Pickling Operations. Processes of removing mill scale and foreign material from steel surfaces by treating with a dilute acid solution;

(44) Plant Employees. Employees whose regular duties require them to work in the plant;

(45) Plates. Flat material having dimensions of over 3/16 inch thickness and eight inches or more in width;

(46) Pockets Between Stacks. The area between the upright supports used for storing material;

(47) Pyramiding. The practice of tapering piles from bottom to top for stability;

(48) Reamer Bit. A rotating tool normally driven by a motor powered spindle used to enlarge holes already present in various materials; The diameters of bits vary in size;

(49) Receiving Yard. An area provided for storage such as rolled shapes, bar stock, plate, coiled wire, sheet steel, and other materials awaiting movement into the shop;

(50) Restricted Area. An area designated as being limited in availability to employees and to others;

(51) Revolving Drill. A rotating tool normally driven by a motor powered spindle used to put holes in various materials; The diameter of drills varies;

(52) Rivet Stock. Round stock usually ranging from three-fourths inch to one and one-fourth inches, used in the manufacture of rivets;

(53) Safety Belt. A safety device worn to restrict the length of an accidental fall; Basically, a waistband with lanyards attached to fasteners for tying off;

(54) Safety Line. A line used to control, retrieve, or otherwise secure a person or object;

(55) Secure Loads. To band, chain, or otherwise fasten a load of material to prevent its movement;

(56) Shall. The word "shall" is to be understood as mandatory;

(57) Shop Buggies. Unpowered vehicles used to move material in the shop;

(58) Should. The word "should" is to be understood as advisory;

(59) Sign. A surface on which letters or other markings appear for the warning of, or safety instructions for, employees or members of the public;

(60) Single Pile. A pile of material not separated by blocking;

(61) Small Flats. Material such as bars and strips;

(62) Soft-headed Hammers. Lead, copper, nylon, polyetrafloroethylene or rawhide headed hammers of the type used for inserting tool steel drills, etc;

(63) Sound Lumber. Lumber that is reasonably free from defects and decay;

(64) Spring clip Die Holder. Clip used to hold a die in a rivet hammer;

(65) Squares. Material having a cross section of equal height and width dimensions;

(66) Stanchion. An upright bar, brace, or support which is used to contain or restrain material;

(67) Tier. A row or layer, one or two or more, one above the other, such as angles, plates, etc., in receiving yard piles;

(68) Upright Girders. Girders positioned with the web in a vertical position;

(69) Washing Facilities. Facilities that can be used by employees to cleanse by a solution or by dipping, rubbing, or scrubbing with a cleaning agent such as water, waterless soap, etc;

(70) Webs. The plate connecting the flanges of I-beam of webbed flange rolled sections or girders;

(71) Weep Holes (Galvanizing Area). Drain holes located in the material being galvanized, to eliminate trappings of molten zinc and air.

Authority G.S. 95-131.

13 NCAC 07F .0403 COLOR CODING AND WARNING SIGNS FOR PHYSICAL HAZARDS

(a) Color coding for physical hazards shall be in accordance with requirements of 29 CFR 1910.144.

(b) Accident prevention signs and tags shall be constructed and used in accordance with the requirements of 29 CFR 1910.145.

Authority G.S. 95-131.

13 NCAC 07F .0404 PERSONAL PROTECTIVE EQUIPMENT

(a) Clothing

(1) When burning, welding, grinding, or performing other types of work where sparks or hot metal are present, long-sleeve shirts shall be worn with cuffs fastened. Loose, ragged, or torn clothing shall not be worn.

(2) Clothing contaminated or smeared with flammable liquids, grease, corrosive substances, irritants, or oxidizing agents shall not be worn.

(3) Employees engaged in pickling operations shall wear acid resistant aprons, gloves, protective footwear, and face shields.

(4) Pants guards shall be worn when performing operation where the pants leg could be caught by revolving tools or other revolving equipment.

(b) Gloves

(1) Gloves shall be worn by employees handling steel and other rough surfaces to prevent injury to hands or fingers from sharp objects, rough edges and friction burns.

(2) Gloves to protect against heat, spatter, and arc radiation shall be worn when burning or welding.

(c) Foot Protection

(1) Safety toe shoes shall be required to protect employees who either handle solid objects weighing 15 pounds or greater, routinely more than once per eight hours or are exposed in areas where such handling occurs, where objects can fall on the exposed employee's toes from a height exceeding one foot.

(2) Safety shoes shall meet the design requirements specified in American National Standard for Men's Safety-Toe Footwear 1967, Z41.1-1972 (R-1967).

(d) Eye and Face Protection

(1) Approved eye protection shall be worn in all areas of the plant when there is danger from flying particles or injurious chemicals. Suitable face protection in addition to eye protection shall be worn by chippers and grinders exposed to the hazard of flying particles. Welders shall wear approved eye protection.

(2) Burning goggles which will protect the burner's eyes from sparks, glare, dust, cinders, etc., shall be worn when burning.

(3) Where the eyes or body of any person may be exposed to irritants or injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use. They shall be periodically inspected and tested for operability.

(4) Eyeglass cleaning materials shall be provided.

(5) Eye and face protection equipment shall meet the design requirements specified in American National Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1-1968.

(e) Safety Belts

(1) Safety belts shall be worn by employees when they are exposed to platforms that do not meet the requirements of 29 CFR 1910.23. The line shall be secured so that it limits the free fall of the employee to a maximum of six feet. It shall remain secured except that when the employee moves or changes work location when the wearing of this protective equipment is impossible, equivalent protection shall be provided and used. This shall be in the form of safety nets or similar equivalent protection.

(2) Safety belt safety lines shall be a minimum of one half inch nylon, or the equivalent. The rope shall have a nominal breaking strength of 5400 pounds. A safety belt and lanyard hardware shall be drop forged or pressed steel, cadmium plated in accordance with Type 1, Class B plating specified in Federal Specifications QQ-P-416. The surface shall be smooth and free of sharp edges.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4000 pounds without cracking, breaking, or taking a permanent deformation.

(4) Belts shall be visually inspected before each use, and worn and damaged equipment shall be taken out of service.

(f) Respiratory protection shall be provided and used in accordance with the requirements of 29 CFR 1910.134.

(g) Hearing Protection. An effective hearing conservation program shall be administered when employees are exposed to noise levels exceeding the values given in 29 CFR 1910.95. The hearing conservation plan shall meet the requirements of the North Carolina Noise Compliance Plan which is contained in the Industrial Extension Service, North Carolina State University, Bulletin Number SAH-1.

(h) Head Protection

(1) Workers, in areas where there is a danger of falling or flying objects or exposure to high voltage electrical shock and burns, shall be protected by approved head protection designed to resist the impact of falling or flying objects or high voltage electrical shock and burns.

(2) Head protection for the protection of the employees against impact or penetration of falling and flying objects shall meet the specifications contained in American National Standard Safety Requirements for Industrial Head Protection, Z89.2-1971.

(3) Head protection of employees exposed to high voltage electrical shock and burns shall meet the specification contained in American National Standard Safety Requirements for Industrial Protective Helmets for Electrical Workers, Class B, Z89.2-1971.

Authority G.S. 95-131.

13 NCAC 07F .0405 LIGHTING

Where daylight does not provide sufficient illumination, artificial illumination shall be provided in all work areas and other parts of the building to which employees have access so that reasonable illumination will be provided to prevent accidents. For adequate safety levels, minimum illumination levels in foot-candles at the type of work area shall be provided in accordance with the table in this Rule. These provide minimum illumination for safety of personnel and are absolute minimums at any time and any location:

MINIMUM ILLUMINATION LEVELS AT TYPE OF WORK AREA

Type of Work Area	Footcandles*
Maintenance shops	
Rough bench, rough machine work, and rough grinding	5
Medium bench and medium machine work	5
Assembly	
Rough assembly and rough inspection	5
Medium assembly and medium inspection	5
Stairways, passageways (at floor levels)	1
Sanitary building	
Washrooms, restrooms, etc.	5
Yard lighting	
Plant entrance	1
Internal roadways	0.5
General yard storage	0.5
Shipping yards and receiving yards	1
Designated parking lots	1
Storage areas	
Dead storage	0.5
Live storage	2

*Designates footcandles at the point of hazard.

Authority G.S. 95-131.

13 NCAC 07F .0406 VENTILATION

(a) Whenever harmful dusts, fumes, mists, vapors, or gases exist that exceed the requirements of 29 CFR 1910.93, they shall be controlled by the use of general ventilation, or other effective mechanical means.

(b) Local exhaust ventilation when used as described in (a) of this Rule, shall be designed to prevent dispersion into the air of

dusts, fumes, mists, vapors, and gases in concentrations causing harmful exposures. Such exhaust system shall be so designed that dusts, fumes, mists, vapors, or gases are not drawn through the breathing zone of employees.

(c) Design and Operation. Exhaust fans, jets, ducts, hoods, separators, and all necessary appurtenances, including dust receptacles, shall be designed, constructed, maintained, and operated as to ensure protection by maintaining a volume and velocity of exhaust air sufficient to gather dusts, fumes, vapors, or gases from said equipment of process, and to convey them to suitable points of safe disposal, thereby preventing their dispersion in harmful quantities into the atmosphere where employees work. Exhaust systems shall be designed and operated in accordance with American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2 1972.

(d) Duration of Operations

(1) The exhaust system shall be in operation during all operations which it is designed to serve. If the employee remains in the protected zone, the system shall continue to operate after cessation of said operations.

(2) Since dust capable of causing disability is of microscopic size, tending to remain for hours in still air, it is essential that the exhaust system be continued in operation for a time after the work process or equipment served by the same shall have ceased in order to ensure the removal of the harmful elements to the required extent.

(3) Collecting systems which return air to work area may be used if concentrations which accumulate in the work area do not result in harmful exposure to employees. Discharges from an exhaust system shall be disposed of in a manner that will not result in harmful exposure to employees.

Authority G.S. 95-131.

13 NCAC 07F .0407 CLEANERS AND SOLVENTS

Because cleaners and solvents may be caustic, flammable, poisonous, or explosive, they shall be selected, handled, stored, and applied with considerable care. All persons handling them shall be carefully instructed in their selection, handling and application.

Authority G.S. 95-131.

13 NCAC 07F .0408 IONIZING RADIATION

Radiography shall be performed in accordance with the requirements of 29 CFR 1910.96 and 29 CFR 1910.97.

Authority G.S. 95-131.

13 NCAC 07F .0409 GENERAL REQUIREMENTS FOR ALL MACHINES AND EQUIPMENT

(a) General Requirements

(1) Equipment Operation. Only employees authorized by the employer shall be permitted to operate machines and equipment.

(2) Employment of Minors. The employer shall permit no one under 18 years of age to operate or assist in the operation of machinery, except that 16 and 17 year olds may be employed when consistent with federal and state training provisions.

(3) Instruction to Operators. The employer shall train and instruct the operator in the safe method of work before starting work on any operation. The employer shall insure that correct operating procedures are being followed.

(4) Work Area. The employer shall provide clearance between machines so that movement of one operator will not interfere with the work of another. Space for cleaning machines, handling material, work pieces and scrap shall also be provided. All surrounding floors shall be kept in good condition and free from obstructions. Discharges or spillages of grease, oil, and water shall be eliminated by the employer's housekeeping practices.

(5) Mechanical Power Transmission Apparatus. Belts, gears, shafts, pulleys, sprockets, spindles, drums, flywheels, chains, and other mechanical power transmission apparatus shall be guarded in accordance with the requirements of 29 CFR 1910.219.

(6) Visual Inspection. Machines and equipment shall be visually checked for unsafe conditions prior to the start of each workshift and unsafe machines and equipment shall be taken out of service and tagged until repairs are made.

(7) Unattended Machines. All electric switches normally used to start and stop the machine shall be in the "off" position when a machine is to be unattended.

(8) Lockouts. Power sources (for example: electric, pneumatic, hydraulic) shall be locked in the "off" position when making repairs, performing maintenance, or in any way exposing an employee to the danger of mechanical operation of the machinery.

(b) Safeguarding Machines and Equipment

(1) Safeguards. Safeguards, point of operation guards or devices shall be installed and used when the application or manufacturing process requires the operator or any other employee to be in the danger area of the point of operation of the machine.

(2) General Requirements for Machine Guards. Guards shall be affixed to the machine where possible and secured elsewhere, if for any reason attachment to the machine is not possible. The guard shall be such that it does not offer an injury hazard in itself. Guards

shall be constructed in accordance with 29 CFR 1910.219(m) and (o).

(3) Point of Operation Guarding. Point of operation guarding shall be so designed and constructed as to prevent the operator from having any part of his body in the danger zone during the operating cycle.

(4) Material Handling. Special handtools for placing and removing material shall be such as to permit easy handling of material without the operator placing a hand in the danger zone. Hand tools are not a point of operation guard or protection device and shall not be used in lieu of guards or devices.

(5) Hazards to Personnel Associated with Broken or Fallen Machine Components. Machine components shall be designed, secured, or covered to minimize hazards caused by breakage, or loosening and falling, or release of mechanical energy (such as, broken springs).

(c) Mechanical Power Presses

(1) Care and Use of Mechanical Power Presses. The requirements of this Section pertaining to the care and use of mechanical power presses shall apply to all mechanical power press operations, including design, construction, setting, and feeding of dies, in accordance with the requirements of 29 CFR 1910.217.

(2) Additional Requirements

(A) Chip Removal. Brushes and scrapers to remove chips shall be provided and used by the operators of punches and shears and constructed to prevent the employee from placing his hands in the danger zone of the point of operation of the machines.

(B) Special Tools. Soft headed hammers shall be provided and used for striking punch dies, spindle holders, or other hardened tools.

Authority G.S. 95-131.

13 NCAC 07F .0410 CRANES: DERRICKS: AND HOISTS

Cranes, derricks, and hoists shall be constructed, installed, tested, inspected, operated, and maintained in accordance with the requirements of 29 CFR 1910.179, 29 CFR 1910.180, and 29 CFR 1910.181.

Authority G.S. 95-131.

13 NCAC 07F .0411 MATERIAL HANDLING DEVICES

(a) Material handling devices shall be visually checked for worn, damaged, or broken parts before use, and shall not be used unless in proper working order.

(b) Chains requiring repairs shall be returned to the manufacturer or shall be repaired by a competent person with proper facilities.

(c) Instructions for the proper selection and use of material handling devices shall be given all individuals whose duties require the handling of materials.

Authority G.S. 95-131.

13 NCAC 07F .0412 SLINGS AND ALLOY-STEEL CHAINS

Slings and alloy steel chains shall be used, maintained and inspected in accordance with the requirements of American National Standard Safety Code for Slings B30.9 1971.

Authority G.S. 95-131.

13 NCAC 07F .0413 MOBILE EQUIPMENT

(a) All powered industrial trucks shall be serviced, maintained, and operated in accordance with the requirements of 29 CFR 1910.178.

(b) Additional Requirements

(1) Forklifts and tractors shall be equipped with roll-over protective structure and seat belts.

(2) Signs instructing operators to shut off the engines when refueling their vehicles shall be conspicuously located at all fueling stations. Smoking in these areas shall be absolutely prohibited and a "no smoking" sign shall be prominently displayed. All fueling stations shall be located outside building.

(3) At blind corners, mirrors or other aids shall be provided to assist in the safe movement of mobile equipment.

(4) When vehicles are used to move shop buggies, there shall be provided tow bards, chains, or cables to attach the buggy to the vehicles so the operator can control the movement of the buggy while towing.

Authority G.S. 95-131.

13 NCAC 07F .0414 JACKS: LEVER: RATCHET: SCREW: AND HYDRAULIC

All jacks shall be designed and constructed in accordance with the requirements of 29 CFR 1910.244(a).

Authority G.S. 95-131.

13 NCAC 07F .0415 PORTABLE POWER AND HAND TOOLS

(a) Guarding of Portable Power Tools

(1) Portable power tools shall meet the requirements of 29 CFR 1910.243.

(2) Additional Requirements

(A) Power-operated Tools. When power-operated tools, not specifically described in (a) of this Rule, are designed to accommodate guards,

they will be equipped with such guards while in use.

(B) Electric Tools. The use of electric cords for hoisting or lowering electric tools shall not be permitted.

(C) Pneumatic Tools

(i) Pneumatic power tools shall be secured to the hose or whip by some positive means such as safety clips or wire to prevent the tool from becoming accidentally disconnected.

(ii) Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools to prevent attachments from being accidentally expelled.

(iii) The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings on pneumatic tools shall not be permitted.

(D) Fuel Powered Tools

(i) All fuel powered tools shall be stopped while being transported, refueled, serviced or maintained or while left unattended.

(ii) Fire resistant fluids used in hydraulic powered tools shall be fire-resistant fluids approved under Schedule 30 of the Bureau of Mines, U.S. Department of Interior and shall retain their operating characteristics at the most extreme temperatures to which they will be exposed.

(iii) The manufacturer's safe operating pressures for hoses, valves, pipes, filters, and other fittings shall not be exceeded.

(E) Explosive Actuated Tools

(i) Explosive actuated tools shall meet the requirements of 29 CFR 1910.243(d).

(ii) Only employees who have been trained in the operation of the particular tool in use and have been issued a "Qualified Operator's Card" shall be allowed to operate a power actuated tool.

(b) Hand Tools

(1) Employers shall not issue or permit the use of defective hand tools.

(2) Wrenches, including adjustable, pipe, end, and sprocket wrenches, shall not be used when jaws are sprung to the point that slippage occurs.

(c) Impact Hand Tools

(1) Impact hand tools, such as drift pins, wedges and chisels, shall be kept free of mushroomed heads.

(2) The wooden handle of tools shall be unpainted or covered and kept free of splinters, and cracks and shall be kept tight in the tool.

Authority G.S. 95-131.

13 NCAC 07F .0416 ELECTRICAL

The installation, operation, and maintenance of all electrical apparatus shall comply with the requirements of 29 CFR 1910.308 and 29 CFR 1910.309.

Authority G.S. 95-131.

13 NCAC 07F .0417 HANDLING AND STORING MATERIAL

(a) Yard Arrangement

(1) The specific location of material in a receiving yard or a shipping yard is beyond the scope of this standard. It is assumed, however, that insofar as possible the mill material and the fabricated material will be located in close proximity to the fabrication facility for minimum crane travel.

(2) A minimum clearance of four feet shall be provided along the outside of the rails of an operating railroad track.

(3) Where 30 inch clearance cannot be provided along the outside rails of an operating buggy track, signs indicating close clearance shall be installed.

(4) Where 11 foot roadway width cannot be provided, signs indicating close clearance shall be installed.

(b) Storage Area

(1) Areas used for the storage of mill material or fabricated material shall be reasonably level, free from obstructions, and sufficiently compacted or paved.

(2) Skids placed on the storage area surface shall be adequate to support the maximum loads anticipated.

(3) During periods of freezing and thawing weather, and during periods of heavy rainfall, support skids shall be inspected for stability.

(c) Timber Blocking

(1) Timber blocking, for use in the receiving yard or shipping yard, shall be of sound lumber.

(2) Recommended sizes of timber blocking are three by four inches, four by four inches, four by six inches, and six by eight inches. Length shall be selected as required for end use.

Timbers of lesser dimension shall not be used, except in storage of plates and sheets in which case the wide dimension of the block shall be horizontal.

(3) In general where blocking is used, it must be placed directly over points of skid support. Rectangular blocks supporting steel shall be placed with the long dimension horizontal.

(4) Blocking shall not extend beyond piles of steel so as to interfere with adjacent lifts. Blocking subjected to concentrated loading as from beam flanges shall extend at least one and one-half inches beyond the face of edge of steel.

(d) Receiving Yard Handling and Storing Practices

(1) General. Good receiving-yard practice involves the piling of material so as to obtain the greatest yield in tons per square foot compatible with safety and expeditious handling. This is best accomplished by constructing single, solid piles. The requirements listed in (2) to (9) of this Paragraph limit the height and extent of such piles, and describe the methods of nesting, interlocking and blocking necessary to their integrity.

(2) Single Solid Piles of Standard and Webbed Flange Shapes. Standard and webbed flange shapes, including H and column sections as well as beams, shall be stacked in single, solid piles spaced at least three inches apart, with maximum heights above skid tops as indicated in (A) to (C) of this Subparagraph:

(A) All shapes shall be nested with webs horizontal and flange toes resting on the flat position of the supporting web, entirely free of the fillet:

(i) Standard I beam and webbed flange shapes nested.

Nominal Depth Range	Approximate Pile Height [see also (d)(2)(B)]
six to eight inches	six feet no inches
10 to 16 inches	11 feet no inches
18 to 36 inches	18 feet no inches

(ii) Standard channels nested.

Nominal Depth Range	Approximate Pile Height [see also (d)(2)(B)]
six to nine inches	six feet no inches
10 to 18 inches	12 feet no inches

(B) It is recognized that even with the precautions given in (A) of this Subparagraph certain high piles may pose a hazard; if so, it shall be corrected by interlocking lifts, straightening the pile, bracing the pile, or reducing the pile height.

(C) To avoid top-heavy piles, single, solid piles shall be limited to pieces of approximately the same length or of lengths generally diminishing from bottom to top of pile. The overhang of individual pieces at the tail end of a pile shall be limited to 25 percent of the piece length. The head (marked) ends of piles shall be vertically aligned adjacent to walkways. Individual lifts in a single pile may be staggered endwise to facilitate handling on and off. Likewise, individual heavy column sections with thick webs constituting a single pile may be staggered endwise to facilitate handling.

(3) Blocked Piles of Standard and Webbed Flange Shapes

(A) For shorter standard and webbed flange shapes, including crop ends, lifts shall be separated by timber blocking, with pile arrangements.

(B) Nominal depths of webbed flange shapes and I-beams in succeeding tiers of single or multiple piles shall be stable. Succeeding tiers of channels, nested in single or multiple piles which present a flat surface to both upper and lower faces of the blocking, may be of differing nominal depths providing piles are aligned one above the other. For the stability of tiered single and multiple piles, shapes shall be arranged to diminish generally in weight per foot and length from bottom to top of piles. The over-hang of individual pieces at the tail end of a pile shall be limited to 25 percent of the piece length.

(4) Interlocked Multiple Piles. In stacking standard I beams, channels, and webbed flange shapes, particularly in the smaller sizes, it is necessary to construct piles which are interlocked as well as nested, to provide stability and to facilitate handling of multiple piles in single lifts. Single piles of angles, whether equal or unequal, shall be stable. Angles in a single pile are not limited to any particular size, but long heavy angles, where one or two piles make up a convenient crane

lift, are best adopted to this method of stacking. There is no restriction on leg thickness of angles nested in any one pile.

(5) Blocked Piles of Structural Angles

(A) Blocked Multiple Piles. Solid piles may be extended in height by arranging piles in tiers with timber blocking between each tier. Tiered piles of all angles shall be proportioned so that the height of the pile does not exceed the base width. In tiered piles of unequal leg angles, larger angles and those with more nearly equal shall be placed in the lower tiers. Piles of angles in succeeding tiers shall be shifted laterally to avoid excessive overhang.

(B) Interlocked and Blocked Multiple Piles. For maximum stability in stacking angles, equal and unequal leg angles shall be stacked multiple piles with inverted courses of locking angles. Although multiple piles with alternate interlocking courses provide the most stable arrangement, it will be satisfactory to nest several angles vertically and interlock the piles at intervals. Interlocking intervals shall be every fourth to sixth angle. Succeeding lifts of interlocked angles on blocking shall be placed so as to be supported substantially by the tops of piles below. Lifts shall not be placed so as to cantilever laterally over piles below. For maximum stability, a pyramidal arrangement of lifts shall be used. The head (marked) end of piles of angles shall be vertically aligned adjacent to walks. It will be permissible to offset lifts, or angles within lifts, endwise to allow identification. The maximum overhang of individual angles at the tail end of a pile shall not exceed 25 percent of the length of the angle.

(C) Stacked Multiple Piles. Where space is available, maximum safety and convenience in handling shall be obtained by stacking angles in multiples of two or three piles in pockets between stakes. Since interlocking is not necessary, angles so stacked may be piled heels up for optimum drainage. Piles shall not extend above the tops of stakes.

(6) Flat Material

(A) Bars, Six to Eight Inches, and Plates to 30 Inches Wide. Flat material from 6 to 30 inches wide shall be stacked in solid piles, in multiple piles, blocked and tiered, or in single blocked and tiered piles. Bars and plates up to approximately 12 inches wide are frequently received in banded or wired bundles. They shall remain so unless it is necessary that they be broken to sort for handling. Plate widths and lengths in any one lift shall be approximately the same. For stability of piles, lifts shall be arranged to generally diminish in width and length from bottom to top of pile. Preference shall be given to a pyramidal arrangement of lifts in all piles. Offset or step stacking of plates to reveal identification marks is permissible. Plates may extend unsupported beyond the tail end of a pile, provided the overhang Lo is less than 25 percent of L, and provided further that Lo is limited as follows:

Plate Thickness	Overhand Lo
1/4 to 1/2 inch	six feet no inches
over 1/2 to 3/4 inch	nine feet no inches
over 3/4 to one inch	12 feet no inches
over one inch	15 feet no inches

Overhanging plates exceeding the above limits shall be supported from the ground or pavement by cribbed blocks. The use of blocks set vertically on end to support overhanging plates from the ground, or from plates below, shall not be permitted. The normal skid spacing of 7 feet to 10 feet is usually sufficient to support plates without sagging. However, sheet or strip in gage thicknesses shall require more closely spaced supports.

(B) Plates Over 30 Inches Wide. Plates over 30 inches wide form stable piles in any convenient height. When piled solid, succeeding lifts shall be staggered laterally to facilitate handling. Where width variations occur, and plates are handled with hooks, the widest plate should be at the bottom of the lift. Edges of this plate should extend beyond the edges of the plate above. Plates and slabs too short to span skids shall be piled on temporary timber. Piles shall be tiered with timber blocks between each plate or lift of plates.

(C) Blocking for Material. Timber blocks separating tiers or lifts of flat material

up to 30 inches wide shall be placed over each skid point.

(7) Edge Stacking of Plates. An alternate method of storing plates is to set them on edge in pockets formed by suitable stakes.

(8) Bar-size Material. Bar-size material shall be understood to include shapes, angles, rounds and pipe with a maximum cross sectional dimension of less than three inches, and bar flats less than six inches wide. Much of this bar size material is received banded or wired in lifts. Except when stored in racks, bundles shall be left intact, and any banding or wiring that may be broken shall be repaired:

(A) Bundled Bar-size Material. Material received bundled can be stacked as individual lifts or arranged in multiple piles with tiers separated by timber blocking. Small structural shapes, angles, square and rectangular bundles shall be multiple piles in tiers as are the larger sizes. Rivet stock, small rounds, squares, and small flats are usually received in random-packed bundles. This, and other similar material which is not subject to damage due to superimposed weight, shall be arranged in multiple piles. Structural shapes, angles, tee, pipe, and tubing received in random-packed bundles may be piled the same as rivet stock.

(B) Loose Bar-sized Material. Bar-sized material, not bundled, shall be stacked in pockets between stakes, with timber blocking separating the tiers.

(9) Coils flat Gage Material. Flat gage material received in coils shall be stacked tiered in pyramidal form. Tiers shall be pyramided metal to metal with no blocking between tiers. The length and width of piles is limited only by the space available and the carrying capacity of the floor. Banding on the coils as received shall remain in place. Broken bands permitting the free ends to uncoil shall be replaced:

(A) Coils-rod Stock. Coils of rod stock shall be stacked on edge, leaning at about 15 degrees against a substantial wall or framework. Coils may be tiered in pyramidal form and shall be chained together at the end coils so as to prevent the coils from falling apart. Blocking shall be placed at least along the outer edges of piles or isolated pyramids.

(B) Coil Banding. Banding on the coils as received shall be inspected and replaced if broken or missing.

(e) Shipping Yard Handling and Storing Practices

(1) When overhead equipment is used, long, flexible material shall be transferred from the fabrication area to the shipping yard by use of one overhead crane with a lifting device that provides adequate distance between support points, or by use of two overhead cranes.

(2) Fabricated material piles shall maintain stability.

(3) Intermediate layers of fabricated material may contain a mixture of structural shapes (beams, columns, angles, channels, etc.), so long as the top surfaces shall be blocked approximately level.

(4) Layers of fabricated material that will not nest shall be separated by timber blocking adequate to support anticipated loads.

(5) Timber blocking placed to support succeeding layers shall be aligned over one another.

(6) Beams and columns, with webs vertical, may be stored in layers provided the top blocking surfaces are approximately level.

(7) Deep narrow members, such as trusses and girders, may be stored either upright or flat provided they are stable or secured.

Authority G.S. 95-131.

13 NCAC 07F .0418 HANDLING MATERIAL FROM A RAILROAD CAR

(a) Before entering any railroad car, tracks shall be protected with flags or other warning devices so that the railroad crew will not couple to or bump the car.

(b) Before entering the drop end gondolas, the condition of the latches shall be checked on the end gates. The end gate shall be properly secured so it will not fail. Ladders, if not attached to the car, shall be provided for climbing in and out of cars.

(c) Before cars are moved, the area shall be clear and brakes shall be checked. Employees shall not remain in cars while they are being moved.

(d) The wheels of railroad cars shall be chocked while being loaded or unloaded. A railroad car shall be held on grade by brakes and chocks.

(e) At open ended rails, rail stops or other secure chocks shall be installed.

(f) A car shall be blocked from tipping when loading or unloading material that would cause unbalancing of the car.

Authority G.S. 95-131.

13 NCAC 07F .0419 UNLOADING MATERIAL FROM A TRUCK

(a) Slings shall be in place on the lift before the binders are loosened.

(b) Stanchions shall be placed on the sides of flatbed trailers when the possibility exists that material might shift or fall off when the binders are removed.
(c) Brakes shall be set and wheel blocks or other visible positive means shall be in place to prevent movement of trucks or trailers.

Authority G.S. 95-131.

13 NCAC 07F .0420 REAMING AND DRILLING
(a) Adequate instruction, including a demonstration, shall be provided all new operators.
(b) All equipment shall be checked at the start of each workshift and any that is damaged or inoperable shall be immediately returned to the storeroom for repairs.
(c) Bits shall be checked for dull edges, burrs, nicks, or other defects and any that are defective shall be removed from service.
(d) When mobile equipment is in use, procedures and traffic rules shall be established to protect workers in the area from such equipment.
(e) Safety bars shall be provided and used by operators of portable hand reamers.
(f) All portable reamers shall be provided with a deadman control.
(g) Brushes shall be provided to remove clips or cuttings from work areas.
(h) Clamps shall be provided to secure small material.
(i) Safety chains shall be provided on all magnetic equipment when drilling in a horizontal position.

Authority G.S. 95-131.

13 NCAC 07F .0421 RIVETING
(a) All rivet hammers shall be equipped with a spring clip die holder. The plunger shall be removed when the hammer is not in use.
(b) Both riveter and bucker up shall be properly instructed to coordinate their movements before starting to drive rivets.
(c) Hammers shall be disconnected from air supply when not is use.
(d) Areas around rivet operations shall be kept free of bolts, pins, washers, combustible material, etc., at all times.
(e) All rivet operations shall be performed as close to the rivet heating furnace as practicable. Where stationary furnaces are generally used, portable furnaces shall also be provided to facilitate the operation when the work is away from the furnace.
(f) Throwing rivets is prohibited.
(g) When pins become exceptionally tight or frozen in a hole, they shall be burned off and drilled out of the hole.
(h) Rivet heaters shall be properly instructed and shall demonstrate their ability to safely light in a heating furnace.
(i) Gantry machines shall be provided with an alarm so the operator can warn other workers when he is preparing to move the machine.
(j) When rivet heads are being backed out or knocked off, a protective shield shall be provided to prevent them from striking an employee.

Authority G.S. 95-131.

13 NCAC 07F .0422 BOLTING
(a) When bolts or drift pins are being knocked out, means shall be provided to keep them from falling.
(b) Bolts, nuts washers and pins shall not be thrown. They shall be placed in bolt buckets or other approved containers and raised or lowered by using a line when they cannot be passed from hand to hand.
(c) Impact wrenches shall be provided with a locking device for retaining the socket.
(d) Impact wrenches shall be disconnected from the power source before they are adjusted or repaired.
(e) Air line hose sections shall be securely fastened together.
(f) Containers shall be provided for storing or carrying bolts or drift pins.
(g) Employees shall be instructed in the proper care and use of bolting equipment and in the proper method of bolt installation and tightening.
(h) Impact wrenches shall not be passed from one employee to another by the air hose. If the impact wrench cannot be handed from one employee to another, a rope shall be provided to pass the wrench.
(i) Open end or spanner wrenches with sprung openings shall not be used.
(j) Leverage devices, such as pipe extensions, shall not be used to give greater leverage to an open end or spud wrench. If the wrench is designed for use with a pipe extension, only an approved length of pipe shall be used.
(k) Open end wrenches shall have jaw openings that match the bolts being tightened. Shims shall not be used to adjust the jaw opening.

Authority G.S. 95-131.

13 NCAC 07F .0423 MANUAL ABRASIVE BLASTING
(a) Only employees authorized by the employer shall be permitted to operate manual abrasive blasting equipment.
(b) Operators shall keep their hoods on at all times while blowing loose abrasive material, shoveling abrasives, blasting, or performing other work which causes dust.
(c) Blasting nozzles shall be equipped with automatic cutoff valves or deadman controls in the event the operator loses control.
(d) Blasting equipment shall be grounded to prevent static sparks when it is used on tanks, etc., that contain or have contained volatile substances. Such tanks shall be purged before blasting.
(e) Blasting shall be done in a restricted area.
(f) Abrasive blasting shall conform to the requirements of 29 CFR 1910.94.

Authority G.S. 95-131.

13 NCAC 07F .0424 PAINTING
(a) All spray finishing using flammable or combustible liquids shall comply with the provisions of 29 CFR 1910.107.
(b) Employees working with lead or other toxic materials shall be instructed concerning the various ways that toxic substances such as paint can enter the human body and in the importance of

~~practicing good personal hygiene. Washing facilities shall be made available.~~
~~(c) Respiratory protection in accordance with American National Standard Practices for Respiratory Protection, Z88.2-1969, shall be worn at all times while spraying or working within 10 feet of spraying operations.~~
~~(d) No mixing or spray painting shall be done in areas where the probability exists that ignition might occur.~~
~~(e) Painting between upright girders or other large members shall be prohibited unless the members are secured.~~
~~(f) Flammable solvents shall be stored in approved safety cans equipped with flame arrestors.~~
~~(g) Painting equipment shall be inspected regularly.~~

Authority G.S. 95-131.

13 NCAC 07F .0425 GALVANIZING AND PICKLING OPERATIONS
~~(a) All personnel working in galvanizing areas shall be instructed in safe operating procedures.~~
~~(b) A visual check of all chains, brackets, racks, pins, rods, hooks, etc., shall be made at the start of each workshift and defective or worn equipment shall be removed from service.~~
~~(c) Anyone operating valves or switches in conjunction with galvanizing and pickling operations shall be given adequate instruction so that he is thoroughly familiar with their function.~~
~~(d) Areas around galvanizing and pickling operations shall be kept clean and free of tripping hazards.~~
~~(e) Employees working in galvanizing and pickling operations shall be instructed that the following conditions may cause eruption in the tank:~~
~~(1) charging wet material,~~
~~(2) charging cold material,~~
~~(3) rapid immersion,~~
~~(4) excessive charges,~~
~~(5) trapped air pockets.~~
~~(f) All tools shall be preheated before being placed in molten zinc.~~
~~(g) Cranes, crane runways, and all hoisting, pickling, and galvanizing equipment shall be visually inspected for unsafe conditions during every drossing period. Unsafe equipment shall be removed from service until repairs have been made.~~
~~(h) Provisions shall be made so that no work will require employees to stand on the top edge of pickling or galvanizing vats.~~
~~(i) Signs indicating that pickling and galvanizing are being performed in the area shall be conspicuously posted.~~
~~(j) No galvanizing shall be done on pipe or tube without weep holes.~~
~~(k) Acid shall be transported in containers that are of acid resistant material.~~

Authority G.S. 95-131.

13 NCAC 07F .0426 SOURCE OF STANDARDS
~~The sources of the standards in this Section are ANSI Z 229.1-1973 and 29 CFR Part 1910.~~

Authority G.S. 95-131.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .0544 and amend the rules cited as 15A NCAC 02D .0530-.0531.*

Proposed Effective Date: *January 2, 2011*

Public Hearing:
Date: *August 31, 2010*
Time: *7:00 p.m.*
Location: *Division of Air Quality, 2728 Capital Blvd., Air Quality Annex Training Room (AQ-526), Raleigh, NC 27604*

Reason for Proposed Action: *Hearing 1: The purpose of the proposed amendments of 15A NCAC 02D .0530 and 15A NCAC 02D .0531 is to incorporate particulate matter with a diameter of 2.5 micron or less (fine particulate) as a National Ambient Air Quality Standard (NAAQS) pollutant. The amendments also include technically modified language to better reflect federal language regarding notification of federal land managers of Prevention of Significant Deterioration (PSD) permit applications. Hearing 2: The purpose of the proposed adoption of 15A NCAC 02D .0544 is to incorporate Prevention of Significant Deterioration tailoring provisions for greenhouse gases.*

Procedure by which a person can object to the agency on a proposed rule: *If you have any objections to the proposed rules, please mail a letter including your specific reasons to: Ms. Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.*

Comments may be submitted to: *Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 733-1474; fax (919) 715-7476; email joelle.burleson@ncdenr.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

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

☒ **State**
☒ **Local**
☒ **Substantial Economic Impact (**≥$3,000,000**)**
15A NCAC 02D .0544
☐ **None**

Fiscal Note posted at:
http://www.osbm.state.nc.us/files/pdf_files/DENR07222010.pdf
15A NCAC 02D .0530, .0531
http://www.osbm.state.nc.us/files/pdf_files/DENR07292010.pdf
15A NCAC 02D .0544

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT COMMISSION

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

NOTE: Text shown in italics reflects proposed changes which were published in 24:17 NCR 1509-11. However, due to word processor issues, proposed changes to Paragraph (v) were not correctly reflected in that version, but are correctly reflected in this proposed version.

15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions."

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions.

(iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6.

(v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant.

(vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.

(B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.

(2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.

(3) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(4) Particulate matter $PM_{2.5}$ significant levels in 40 CFR 51.166(b)(23)(i) are incorporated by reference except as otherwise provided in this Rule. A net emission increase or the potential of a source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tons per year. Sulfur dioxide and nitrogen oxides are precursor to $PM_{2.5}$ in all attainment and unclassifiable areas. Volatile organic compounds and ammonia are not significant precursors to $PM_{2.5}$.

(c) All areas of the State shall be classified as Class II except that the following areas are Class I:

(1) Great Smoky Mountains National Park;

(2) Joyce Kilmer Slickrock National Wilderness Area;

(3) Linville Gorge National Wilderness Area;

(4) Shining Rock National Wilderness Area;

(5) Swanquarter National Wilderness Area.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) New natural gas-fired electrical utility generating units *for which cost recovery is sought pursuant to G.S. 62-133.6* shall install best available control technology for NO_X and ~~*SO_2.*~~ *SO_2, regardless of applicability of the rest of this Rule.*

(i) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the

sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(k) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(l) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall also be exempted when calculating source applicability and control requirements under this Rule.

(n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected in any manner by:

(1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or

(2) any other dispersion technique not implemented before then.

(o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) shall be subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

(p) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(r) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(s) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(t) When a source or modification is subject to this Rule ~~may affect the visibility of a Class I area named in Paragraph (c) of this Rule,~~ the following procedures shall apply:

(1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an administratively complete application, notify the Federal Land Manager for the closest Class I area to a source or modification subject to this Rule.

~~(1)~~(2) When a source or modification may affect visibility of a Class I area named in Paragraph (c) of this Rule, ~~The~~ the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

~~(2)~~(3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.

~~(3)~~(4) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(u) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

(1) a description of the project,

(2) identification of sources whose emissions could be affected by the project,

(3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c),

(4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated, and

(5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule,

the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(v) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. *Except for 40 CFR 81.334*, ~~*The*~~ *the* version of the ~~*Code of Federal Regulations*~~ *CFR* incorporated in this Rule is that as of ~~*June 13, 2007.*~~ *May 16, 2008*, ~~*except those provisions noticed as stayed in 69 FR 40274*~~, and does not include any subsequent amendments or editions to the referenced material.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.

Note: Text shown in italics reflects proposed changes which were published in 24:17 NCR 1511-15. However, due to word processor issues, proposed changes to Paragraph (o) were not correctly reflected in that version, but are correctly reflected in this proposed version.

15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS

(a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions."

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions.

(iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6.

(v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant.

(vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.

(B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.

(2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

(3) Particulate matter $PM_{2.5}$ significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by reference except as otherwise provided in this Rule. A net emission increase or the potential of a source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tpy. Sulfur dioxide and nitrogen oxides are precursor to $PM_{2.5}$ in all nonattainment areas. Volatile organic compounds and ammonia are not significant precursors to $PM_{2.5}$.

(b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment ~~*for ozone or carbon monoxide,*~~ all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to *areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.*
~~*the following areas:*~~

~~*(1) Ozone Nonattainment Areas, to major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located is designated according to Part (A) or (B) of this Subparagraph:*~~

~~*(A) areas designated in 40 CFR 81.334 as nonattainment for ozone, or*~~

~~*(B) any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:*~~

~~*(i) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties; with the exception allowed under Paragraph (l) of this Rule;*~~

~~*(ii) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or*~~

~~*(iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.*~~

~~*Violations of the ambient air quality standard for ozone shall be determined according to 40 CFR 50.9.*~~

~~*(2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as nonattainment for carbon monoxide and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.*~~

(d) This Rule is not applicable to:

(1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;

(2) emission of pollutants at the new major stationary source or major modification

located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);

(3) emission of pollutants for which the source or modification is not major;

(4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or

(5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.

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

(f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

(1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;

(2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;

(3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the *National* Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and

(4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(g) New natural gas-fired electrical utility generating units *for which cost recovery is sought pursuant to G.S. 62-133.6* shall install lowest achievable emission rate technology for NO_X and ~~*SO_2.*~~ *SO_2, regardless of the applicability of the rest of this Rule.*

(h) 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(k) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(l) Approval of an application regarding the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(m) Except as provided in 40 CFR 52.28(c)(6), ~~When~~ for a source or modification subject to this Rule ~~may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section,~~ the following procedures shall be followed:

(1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an administratively complete application, notify the Federal Land Manager for the closest Class I area to a source or modification subject to this Rule.

~~(1)~~(2) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general

commercial, industrial and other growth associated with the source or modification;

~~(2)~~(3) When a source or modification may affect the visibility of in a Class I area named in Paragraph (c) of Rule .0530 of this Section, ~~The~~ the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;

~~(3)~~(4) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice where the explanation can be obtained;

~~(4)~~(5) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and

~~(5)~~(6) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

~~*(n) Paragraphs (f) and (j) of this Rule shall not apply to a new major stationary source or a major modification of a source of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located has been designated according to Part (c)(1)(B) of this Rule and before the area is designated in 40 CFR 81.334 as nonattainment for ozone if the owner or operator of the source demonstrates, using the Urban Airshed Model (UAM), that the new source or modification will not contribute to or cause a violation. The model used shall be that maintained by the Division. The Division shall run the model only after the permit application has been submitted. The permit application shall be incomplete until the modeling analysis is completed. The owner or operator of the source shall apply such degree of control and obtain such offsets necessary to demonstrate the new source or modified source will not cause or contribute to a violation.*~~

~~(o)~~*(n)* If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment new source review, the owner or operator shall notify the director of the modification before beginning actual construction. The notification shall include:

(1) a description of the project,

(2) identification of sources whose emissions could be affected by the project,

(3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3),

(4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated, and

(5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a nonattainment new source review evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through (C). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

~~(p)~~*(o)* *The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. Except for 40 CFR 81.334,* ~~The~~ *the* version of the ~~Code of Federal Regulations~~ *CFR* incorporated in this Rule is that as of ~~June 13, 2007.~~ *May 16, 2008,* ~~except those provisions noticed as stayed in 69 FR 40274~~, and does not include any subsequent amendments or editions to the referenced material.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR GREENHOUSE GASES

(a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality for greenhouse gases as required by 40 CFR 51.166. For purposes of greenhouse gases, the provisions of this Rule shall apply rather than the provisions of Rule .0530 of this Section. For all other regulated NSR pollutants, the provisions of Rule .0530 of this Section apply.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions." "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Subparagraphs (1) through (3) of this Paragraph:

(1) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;

(C) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and

(F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Parts (B) and (C) of this Subparagraph.

(2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.

(c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.

(d) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(e) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule,

except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(f) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

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

(h) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(i) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(j) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(k) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(l) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(m) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

(1) a description of the project;

(2) identification of sources whose emissions could be affected by the project;

(3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);

(4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and

(5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(n) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. Except for 40 CFR 81.334, the version of the CFR incorporated in this Rule is that as of June 3, 2010 and does not include any subsequent amendments or editions to the referenced material. This Rule is applicable as of its effective date in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02D .1206.*

Proposed Effective Date: *January 1, 2011*

Public Hearing:
Date: *September 7, 2010*
Time: *7:00 p.m.*
Location: *Moore Humanities & Research Administration, Bldg. 246, Room 1215, Spring Garden Street, UNCG Campus, Greensboro, NC 27412; Free parking behind Weatherspoon Art Museum (Cone Building), Bldg. 99, Spring Garden Street*

Reason for Proposed Action: *The purpose of the proposed amendments of 15A NCAC 02D .1206 is to reflect new emission guidance from USEPA as published in the Federal Register Notice of October 6, 2009, 74 FR 51368, Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators. The Environmental Management Commission requests written public comments to include a discussion related to the selection of a Rule compliance date option. Option 1 is October 6, 2012. Option 2 sets the Rule compliance date as October 6, 2014.*

Procedure by which a person can object to the agency on a proposed rule: *If you have any objections to the proposed rule, please mail a letter including your specific reasons to: Ms. Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.*

Comments may be submitted to: *Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 733-1474; fax (919) 715-7476; email joelle.burleson@ncdenr.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

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

☐ **State**
☐ **Local**
☒ **Substantial Economic Impact (**≥$3,000,000**)**
☐ **None**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT COMMISSION

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1206 HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to any hospital, medical, and infectious waste incinerator (HMIWI), except:

(1) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;
(2) any pyrolysis unit;
(3) any cement kiln firing hospital waste or medical and infectious waste;
(4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;
(5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:
  (A) notifies the Director of an exemption claim; and
  (B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or
(6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:
  (A) notifies the Director of an exemption claim;
  (B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and
  (C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51c shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

(1) The emission standards in this Paragraph apply to all ~~incinerators~~ HMIWIs subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs ~~(13)~~ (6) or ~~(14)~~ (7) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

(2) Prior to (Option 1, October 6, 2012; Option 2, October 6, 2014), each HMIWI for which construction was commenced after June 20, 1996, but no later than December 1, 2008, or for which modification is commenced after March 16, 1998, but no later than April 6, 2010, shall not exceed the requirements listed in Table 1A of Subpart Ce of 40 CFR 60.

(3) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), each HMIWI for which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, shall not exceed the more stringent of the requirements listed in Table 1B of Subpart Ce and Table 1A of Subpart Ec of 40 CFR 60.

(4) Each small remote HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and which burns less than 2,000 pounds per week of hospital waste and medical or infectious waste shall not exceed emission standards listed in Table 2A of Subpart Ce of 40 CFR 60 before (Option 1, October 6, 2012; Option 2, October 6, 2014). On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), each small remote HMIWI shall not exceed emission standards listed in Table 2B of Subpart Ce of 40 CFR 60.

~~(2) Particulate Matter.~~

~~(A) Emissions of particulate matter from a HMIWI shall not exceed:~~

~~Incinerator Size~~	~~Allowable Emission Rate (mg/dscm) [corrected to seven percent oxygen]~~
~~Small~~	~~115~~
~~Medium~~	~~69~~
~~Large~~	~~34~~

~~(B) Emissions of particulate matter from any small remote HMIWI shall not exceed 197 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~

~~(3) Visible Emissions. On and after the date on which the initial performance test is completed, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (6 minute block average).~~

(5) Visible Emissions. Prior to (Option 1, October 6, 2012; Option 2, October 6, 2014), the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (six-minute block average). On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than six percent opacity (six-minute block average).

~~(4) Sulfur Dioxide. Emissions of sulfur dioxide from any HMIWI shall not exceed 55 parts per million corrected to seven percent oxygen (dry basis).~~

~~(5) Nitrogen Oxide. Emissions of nitrogen oxides from any HMIWI shall not exceed 250 parts per million by volume corrected to seven percent oxygen (dry basis).~~

~~(6) Carbon Monoxide. Emissions of carbon monoxide from any HMIWI shall not exceed 40 parts per million by volume, corrected to seven percent oxygen (dry basis).~~

~~(7) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.~~

~~(8) Hydrogen Chloride.~~

~~(A) Emissions of hydrogen chloride from any small, medium, or large HMIWI shall be reduced by at least 93 percent by weight or volume or to no more than 100 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.~~

~~(B) Emissions of hydrogen chloride from any small remote HMIWI shall not exceed 3100 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Part shall be determined by averaging emissions over a one hour period.~~

~~(9) Mercury Emissions.~~

~~(A) Emissions of mercury from any small, medium, or large HMIWI shall be reduced by at least 85 percent by weight or shall not exceed 0.55 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one hour period.~~

~~(B) Emissions of mercury from any small remote HMIWI shall not exceed 7.5 milligrams per dry standard cubic meter, corrected to seven percent~~

~~oxygen. Compliance with this Part shall be determined by averaging emissions over a one-hour period.~~

~~(10) Lead Emissions.~~

~~(A) Emissions of lead from any small, medium, or large HMIWI shall be reduced by at least 70 percent by weight or shall not exceed 1.2 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.~~

~~(B) Emissions of lead from any small remote HMIWI shall not exceed 10 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~

~~(11) Cadmium Emissions.~~

~~(A) Emissions of cadmium from any small, medium, or large HMIWI shall be reduced by at least 65 percent by weight or shall not exceed 0.16 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.~~

~~(B) Emissions of cadmium from any small remote HMIWI shall not exceed 4 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~

~~(12) Dioxins and Furans.~~

~~(A) Emissions of dioxins and furans from any small, medium, or large HMIWI shall not exceed 125 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 2.3 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.~~

~~(B) Emissions of dioxins and furans from any small remote HMIWI shall not exceed 800 nanograms per dry standard cubic meter total dioxins and furans, corrected to seven percent oxygen or 15 nanograms per dry standard cubic meter (total equivalency), corrected to seven percent oxygen.~~

~~(13)~~(6) Toxic Emissions. The owner or operator of any ~~incinerator~~ HMIWI subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.

~~(14)~~(7) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all ~~incinerators~~ HMIWIs at a facility subject to this Rule:

(i) arsenic and its compounds $2.3x10^{-7}$

(ii) beryllium and its compounds $4.1x10^{-6}$

(iii) cadmium and its compounds $5.5x10^{-6}$

(iv) chromium (VI) and its compounds $8.3x10^{-8}$

(B) The owner or operator of a facility with ~~incinerators~~ HMIWIs 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~~ HMIWIs subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any ~~incinerator~~ HMIWI subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.

(2) Annual Equipment Inspection.

(A) Each ~~small remote~~ HMIWI shall ~~have an initial equipment inspection by July 1, 2000,~~ undergo an equipment inspection initially within six months upon this Rule's effective date and an annual equipment inspection ~~each year thereafter~~ (no more than 12 months following the previous annual equipment inspection).

~~(A)~~(B) ~~At a minimum, the~~ The equipment inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii).

~~(B)~~(C) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period.

~~(C)~~(D) The Director shall grant the extension ~~if:~~ if the owner or operator submits a written request to the Director for an extension of the 10 operating day period if

~~(i)~~ the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not ~~feasible;~~ feasible, ~~and~~

~~(ii)~~ the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written ~~request.~~ request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed.

(3) Air Pollution Control Device Inspection.

(A) Each HMIWI shall undergo air pollution control device inspections, as applicable, initially within six months upon this Rule's effective date and annually (no more than 12 months following the previous annual air pollution control device inspection) to inspect air pollution control device(s) for proper operation, if applicable: ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and generally observe that the equipment is maintained in good operating condition. Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period.

(B) The Director shall grant the extension if the owner or operator of the HMIWI demonstrates that achieving compliance by the 10 operating day period is not feasible, the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed.

~~(3) The owner or operator of any HMIWI, except small remote HMIWI, subject to this Rule shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the fugitive emissions testing requirements under 40 CFR 60.56c(b)(12) and (c)(3).~~

(4) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any HMIWI, except for small remote HMIWI, for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR 60 or any HMIWI For which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, and subject to the more stringent of the requirements listed in Table 1B of Subpart Ce and Table 1A of Subpart Ec of 40 CFR 60 shall comply with:

(A) the annual fugitive emissions testing requirements under 60.56c(c)(3) of Subpart Ec of 40 CFR 60; and

(B) the CO CEMS requirements under 60.56c(c)(4) of Subpart Ec of 40 CFR 60; and

(C) the compliance requirements for monitoring listed in 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10) of Subpart Ec of 40 CFR 60; and

(D) sources subject to the emissions limits under Table 1B of Subpart Ce of 40 CFR 60 or more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR 60 and Table 1A of Subpart Ec of 40 CFR 60 may, however, elect to use CO CEMS as specified under 60.56c(c)(4) of Subpart Ec of 40 CFR 60 or bag leak detection systems as specified under 60.57c(h) of Subpart Ec of 40 CFR 60.

~~(4)~~(5) Prior to (Option 1, October 6, 2012; Option 2, October 6, 2014), ~~The~~ the owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:

(A) conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11)(mercury

only), and (c)(1). The 2,000 pounds per week limitation does not apply during performance tests; and

(B) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and

(C) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.

(6) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any small remote HMIWI constructed on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR 60. The owner or operator shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding test methods listed in 60.56c(b)(7), (8), (12), (13) (Pb and Cd), and (14), the annual PM, CO, and HCl emissions testing requirements under 60.56c(c)(2), the annual fugitive emissions testing requirements under 60.56c(c)(3), the CO CEMS requirements under 60.56c(c)(4), and the compliance requirements for monitoring listed in 60.56c(c)(5) through (7), and (d) through (k).

(7) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any small remote HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, subject to the requirements listed in Table 2A or 2B of Subpart Ce of 40 CFR 60, and not equipped with an air pollution control device shall meet the following compliance and performance testing requirements:

(A) Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits. The 2,000 pounds per week limitation does not apply during performance tests.

(B) The owner or operator shall not operate the HMIWI above the maximum charge rate or below the minimum secondary chamber temperature measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s).

(C) Operation of an HMIWI above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emissions limits. The owner or operator of an HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted shall be conducted under process and control device operating conditions duplicating as nearly as possible those that indicated during the violation.

(8) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any small HMIWI constructed commenced emissions guidelines as promulgated on September 15, 1997, meeting all requirements listed in Table 2B of Subpart Ce of 40 CFR 60, which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital waste and medical/infectious waste and is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR 60. The 2,000 pounds per week limitation does not apply during performance tests. The owner or operator shall comply with the compliance and performance testing requirements of 40 CFR

60.56c, excluding the annual fugitive emissions testing requirements under 60.56c(c)(3), the CO CEMS requirements under 60.56c(c)(4), and the compliance requirements for monitoring listed in 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10). The owner or operator may elect to use CO CEMS as specified under 60.56c(c)(4) or bag leak detection systems as specified under 60.57c(h).

~~(5) Except as provided in Subparagraph (3) of this Paragraph, operation of the HMIWI above the maximum charge rate and below the minimum secondary temperature, each measured on a three hour rolling average, simultaneously shall constitute a violation of the particulate matter, carbon monoxide, and dioxin and furan emission limits.~~

~~(6) The owner or operator of a HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameters to demonstrate that the HMIWI is not in violation of the applicable emission limits. Repeat performance tests conducted pursuant to this Subparagraph shall be conducted using the identical operating parameters that indicated a violation under Subparagraph (4) of this Paragraph.~~

(9) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), the owner or operator of any HMIWI equipped with selective noncatalytic reduction technology shall:

(A) Establish the maximum charge rate, the minimum secondary chamber temperature, and the minimum reagent flow rate as site specific operating parameters during the initial performance test to determine compliance with the emissions limits; and

(B) Ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature or the minimum reagent flow rate measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests; and

(C) Operation of any HMIWI above the maximum charge rate, below the minimum secondary chamber temperature, and below the minimum reagent flow rate simultaneously shall constitute a violation of the NO_X emissions limit. The owner or operator may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the affected facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted pursuant to this Paragraph shall be conducted using the identical operating parameters that indicated a violation.

(e) Test Methods and Procedures.

(1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.

(2) The Director may require the owner or operator to test ~~his incinerator~~ the HMIWI to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

(1) The owner or operator of an ~~incinerator~~ HMIWI 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~~ HMIWI subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an ~~incinerator~~ HMIWI 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~~ HMIWI 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.~~ HMIWI. The Director may require the owner or operator of an ~~incinerator~~ HMIWI with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the ~~incinerator.~~ HMIWI.

(3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7).

(4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this Paragraph, the owner or operator of a small remote HMIWI shall:

(A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;

(B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and

(C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 02Q .0500, Title V Procedures.

(5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan.

(6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c.

(7) The owner or operator of any small remote HMIWI shall:

(A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.

(B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.

(C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste.

(8) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any HMIWI, except for small remote HMIWI not equipped with an air pollution control device, subject to the emissions requirements in Table 1B or Table 2B of Subpart Ce of 40 CFR 60, or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR 60 and Table 1A of Subpart Ec of 40 CFR 60, shall perform the monitoring requirements listed in 60.57c of Subpart Ec of 40 CFR 60.

(9) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), the owner or operator of a small remote HMIWI, not equipped with an air pollution control device and subject to the emissions requirements in Table 2B of Subpart Ce of 40 CFR 60 shall:

(A) install, calibrate (to manufacturers' specifications), maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation; and

(B) install, calibrate (to manufacturers' specifications), maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and

(C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day for 90 percent of the operating hours per calendar quarter that the designated facility is combusting hospital waste and/or medical/infectious waste.

(10) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any HMIWI for which construction commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and is subject to requirements listed in Table 1B of Subpart Ce of 40 CFR 60; or any HMIWI which construction was commenced after June

20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, and subject to the requirements of Table 1B of this Subpart and Table 1A of Subpart Ec of this Part, may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that:

(A) Previous emissions tests must have been conducted using the applicable procedures and test methods listed in 60.56c(b) of Subpart Ec of 40 CFR 60.

(B) The HMIWI is currently operated in a manner that would be expected to result in the same or lower emissions than observed during the previous emissions test and not modified such that emissions would be expected to exceed.

(C) The previous emissions test(s) must have been conducted in 1996 or later.

(11) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any HMIWI, (with the exception of small remote HMIWI and HMIWIs for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR 60 or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR 60 and Table 1A of Subpart Ec), shall include the reporting and recordkeeping requirements listed in 60.58c(b) through (g) of Subpart Ec of this Part.

(12) On or after (Option 1, October 6, 2012; Option 2, October 6, 2014), any HMIWI for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR 60 and Table 1A of Subpart Ec of 40 CFR 60, is not required to maintain records required in 60.58c(b)(2)(xviii) (bag leak detection system alarms), (b)(2)(xix) (CO CEMS data), and (b)(7) (siting documentation).

(g) Excess Emissions and Start-up and Shut-down. All ~~incinerators~~ HMIWIs subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Training and Certification.

(1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators.

(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g).

(3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10).

(4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The reviews of the information shall be conducted annually.

(5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 03I .0121; 03O .0113, amend the rules cited as 15A NCAC 03H .0102-.0103; 03I .0101, .0116; 03J .0302; 03L .0207; 03M .0101, .0520; 03O .0202, .0209, .0501; 03R .0103-.0105, .0112, .0117 and repeal the rule cited as 15A NCAC 03H .0104.*

Proposed Effective Date: *April 1, 2011*

Public Hearing:
Date: *Thursday, September 30, 2010*
Time: *6:00 p.m.*
Location: *Craven County Cooperative Extension, 300 Industrial Drive, New Bern, NC 28562*

Reason for Proposed Action:
15A NCAC 03H .0102 - *Proposed amendments will structure this rule according to guidance from Rules Review Commission staff, by removing portions that merely repeat statutory language or contain non-regulatory statements.*
15A NCAC 03H .0103 - *Proposed amendments will structure this rule according to guidance from Rules Review Commission staff, by removing portions that merely repeat statutory language or contain non-regulatory statements.*
15A NCAC 03H .0104 - *This rule is proposed for repeal to relocate regulations from Subchapter 03H, General Information to Subchapter 03I, General Rules, for clarity and better organization.*
15A NCAC 03I .0101 - *Proposed amendments add definitions for corkline, headrope and lead, to clarify measurements of fishing gear. Amendments are also proposed to add a definition*

of pectoral fin curved fork length measurement, to facilitate consistent enforcement between State and Federal fisheries rules.

15A NCAC 03I .0116 - *Proposed amendments correct a cross reference to 15A NCAC 03I .0101, Definitions.*

15A NCAC 03I .0121 - *This rule is proposed for adoption to relocate regulations from Subchapter 03H, General Information, Rule 03H .0104 to Subchapter 03I, General Rules, for clarity and better organization.*

15A NCAC 03J .0302 *- Proposed amendments clarify that only persons holding a Recreational Commercial Gear License (RCGL) that use pots authorized by 15A NCAC 03O .0302 are required to mark those pots as specified in 15A NCAC 03J .0302.*

15A NCAC 03L .0207 *- Proposed amendments provide the Fisheries Director proclamation authority to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab.*

15A NCAC 03M .0101 - *Proposed amendments allow removal of the head of commercially caught tuna, as provided in 15A NCAC 03M .0520.*

15A NCAC 03M .0520 - *Proposed amendments allow for consistent enforcement between State and Federal fisheries rules.*

15A NCAC 03O .0113 - *This rule is proposed for adoption to establish new reporting requirements for ocean pier owners to submit daily counts of anglers to the Division. The reporting requirement is necessary for North Carolina to maintain an exemption to the National Marine Fisheries Service National Angler Registry.*

15A NCAC 03O .0202 *- Proposed amendments specify training requirements for new lease applicants as required by G.S. 113-201(c).*

15A NCAC 03O .0209 *- Proposed amendments specify training requirements for lease transferees as required by G.S. 113-201(c).*

15A NCAC 03O .0501 - *Proposed amendments eliminate the requirement for permit renewals to be notarized, in order to remove undue burden on the public. Amendments are also proposed to correct two permit name references in the rule.*

15A NCAC 03R .0103 *- Proposed amendments make minor format corrections and designate Eastham Creek and Long Creek Gut (Pamlico County) as Primary Nursery Areas. Sampling has confirmed their primary nursery function in accordance with Division criteria.*

15A NCAC 03R .0104 *- Proposed amendments make minor format corrections and remove Eastham Creek (Pamlico County) as a Permanent Secondary Nursery Area. Sampling has confirmed its function as a primary nursery area in accordance with Division criteria.*

15A NCAC 03R .0105 *- Proposed amendments make minor format corrections and designate a portion of Chadwick Bay (Onslow County) as a Special Secondary Nursery Area. Sampling has confirmed its nursery function in accordance with division criteria. This will implement a recommendation of the 2006 North Carolina Shrimp Fishery Management Plan.*

15A NCAC 03R .0112 - *Proposed amendments make minor format corrections and correct references to no trawl areas described in Rule* ***15A NCAC 03R .0106*** *- where gill nets must be attended, by removing an incorrect reference to Cape Lookout Bight and adding references to areas in the Newport, White Oak and Cape Fear rivers, and Cape and Bald Head creeks, in accordance with the 2006 North Carolina Shrimp Fishery Management Plan.*

15A NCAC 03R .0117 - *Proposed amendments add the boundaries of a new Coastal Fishing Reef/Oyster Sanctuary (Gibbs Shoal, Hyde County), correct a typographical error involving a sanctuary boundary (Deep Bay, Hyde County), and consistently list the descriptions of sanctuary boundaries.*

Procedure by which a person can object to the agency on a proposed rule: *Objections shall be submitted in writing to Catherine Blum, Rulemaking Coordinator, NC Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557; fax (252)726-0254; email catherine.blum@ncdenr.gov. Explain the reasons for objection and specify the portion of the rule to which the objection is being made.*

Comments may be submitted to: *Catherine Blum, Rulemaking Coordinator, NC Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557 ;phone (252)808-8013, fax (252)726-0254; email catherine.blum@ncdenr.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☒ **None**

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03H –SCOPE OF MANAGEMENT

SECTION .0100 –SCOPE OF MANAGEMENT

15A NCAC 03H .0102 SCOPE OF MANAGEMENT

~~(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.~~

~~(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)~~ The rules ~~herein are applicable~~ in this Chapter apply to the conservation and protection of marine and estuarine resources occurring in all coastal fishing waters of North Carolina, including joint fishing waters, and in the Atlantic Ocean.

~~(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.~~

Authority G.S. 113-129; 113-132; 113-134; 143B-289.52.

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

(a) ~~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.~~

(1) compliance with changes mandated by the Fisheries Reform Act and its amendments;
(2) biological impacts;
(3) environmental conditions;
(4) compliance with Fishery Management Plans;
(5) user conflicts;
(6) bycatch issues; and
(7) variable spatial distributions.

Authority G.S. 113-134; 113-135; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03H .0104 MAPS AND MARKING

~~(a) Maps or charts showing the boundaries of the areas identified in Subchapter 15A NCAC 03R and 03Q .0202 are available for inspection at the Morehead City Office of the Division of Marine Fisheries.~~

~~(b) The Division of Marine Fisheries shall mark the boundaries of areas identified in 15A NCAC 03R and 03Q.0202 with signs insofar as may be practical. No removal or relocation of any such marker or sign shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such removal or relocation or the absence of any marker or sign affect the applicability of any rule pertaining to any such body of water or portion thereof. Where there is conflict between signs and 15A NCAC 03R or 03Q .0202 boundaries, rule boundaries shall prevail.~~

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

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

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

(1) Enforcement and management terms:
  (a) Commercial Quota. Total quantity of fish allocated for harvest by commercial fishing operations.
  (b) Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education.
  (c) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
  (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.
    (ii) Fork 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 length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
    (iii) Pectoral fin curved fork length. A length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the

contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

~~(iii)~~(iv) Total 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.

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

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

(g) Regular Closed Oyster Season. 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:

(a) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from 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:

(i) food,
(ii) predator protection,
(iii) salinity,
(iv) temperature controls, or
(v) water circulation,

utilizing technology not found in the natural environment.

(b) Attended. Being in a vessel, in the water or on the shore 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.

(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:

(i) food,
(ii) predator protection,
(iii) salinity,
(iv) temperature controls, or
(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.

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

(e) Long Haul Operations. Fishing a seine towed between two boats.

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

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

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

(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.

(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.

(k) Shellfish production on leases and franchises:

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

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

(l) Swipe Net Operations. Fishing a seine towed by one boat.

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

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

(3) Gear:

(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) 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.

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

(i) Cast nets;

(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;

(iii) 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;

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

(v) Hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;

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

(vii) Landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;

(viii) Minnow traps when no more than two are in use;

(ix) Seines less than 30 feet in length;

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

(d) Corkline. The support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.

~~(d)~~(e) 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.

~~(e)~~(f) 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.

~~(f)~~(g) 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).

~~(g)~~(h) 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.

(i) Headrope. The support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured

from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.

~~(h)~~(j) 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).

(k) Lead. A mesh or webbing structure consisting of nylon, monofilament, plastic, wire or similar material set vertically in the water, held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.

~~(i)~~(l) Mechanical methods for clamming. 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.

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

~~(k)~~(n) 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.

~~(l)~~(o) 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.

~~(m)~~(p) 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.

~~(n)~~(q) 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) Fish habitat areas. The 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:

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

(c) Coral:

(i) Fire corals and hydrocorals (Class Hydrozoa);

(ii) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or

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

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

(e) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:

(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 treeworms (Serpulidae), and sand castle worms (Sabellaridae);

(viii) Mussel banks (Phylum Mollusca: Gastropoda); and

(ix) Acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).

(f) 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.

(g) 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.

(h) Strategic Habitat Areas. Strategic Habitat Areas are locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.

(i) Submerged aquatic vegetation habitat. Submerged aquatic vegetation (SAV) habitat is submerged lands that:

(i) are vegetated with one or more species of submerged aquatic vegetation including 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; or

(ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule 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.

This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining 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.

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

(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) 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.

(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.

(d) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.

(e) Land:

(i) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.

(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.

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

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

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

(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.

(i) North Carolina Trip Ticket. Paper forms provided by the Division, and electronic data files generated from software provided by the Division, for the reporting of fisheries statistics, which include quantity, method and location of harvest.

(j) Office of the Division. Physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Columbia, 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.

(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 statutes and rules.

(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.

(m) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed.

(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 .0116 CORAL AND LIVE ROCK

(a) It is unlawful to harvest or possess aboard a vessel coral or live rock as defined in ~~15A NCAC 3I .0101(24) and (25).~~ 15A NCAC 03I .0101.

(b) Live rock and coral shall be returned immediately to the waters where taken.

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

15A NCAC 03I .0121 MAPS AND MARKING

(a) Maps or charts showing the boundaries of areas identified in this Chapter and in proclamations issued by the Fisheries Director shall be available for inspection at the Morehead City Office of the Division of Marine Fisheries.

(b) The Division of Marine Fisheries shall mark the boundaries of areas identified in this Chapter and in proclamations issued by the Fisheries Director with signs insofar as may be practical. No removal or relocation of any such marker or sign shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such removal or relocation or the absence of any marker or sign affect the applicability of any rule pertaining to any such body of water or portion thereof. Where there is conflict between markers or signs, and boundaries described in this Chapter and in proclamations issued by the Fisheries Director, boundary descriptions shall prevail.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

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

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

15A NCAC 03J .0302 RECREATIONAL USE OF POTS

(a) It is unlawful ~~to use pots for recreational purposes~~ for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching 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 using engraved buoys or by attaching engraved metal or plastic tags to the buoy. Such identification shall include the 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.

(b) It is unlawful for a person to use more than one crab pot attached to the shore along privately owned land or to a privately owned pier without possessing a valid Recreational Commercial Gear License.

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

SUBCHAPTER 03L - SHRIMP, CRABS, AND LOBSTER

SECTION .0200 – CRABS

15A NCAC 03L .0207 HORSESHOE CRABS

~~(a) It is unlawful to possess more than 500 horseshoe crabs per vessel per trip.~~

~~(b) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are exempt from this Rule.~~

~~(c)~~(a) The annual (January through December) commercial quota for North Carolina for horseshoe crabs shall be established by the Atlantic States Marine Fisheries Commission ~~Horseshoe Crab Management Plan.~~Interstate Fishery Management Plan for Horseshoe Crab. ~~Once the quota is projected to be taken, the Fisheries Director shall, by proclamation, close the season for the landing of horseshoe crabs.~~

(b) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of horseshoe crabs to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab:

(1) Specify season;

(2) Specify areas;

(3) Specify quantity;

(4) Specify means and methods; and

(5) Specify size.

(c) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are subject to this Rule.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

SUBCHAPTER 03M - FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0101 MUTILATED FINFISH

It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of finfish that is subject to a size or harvest restriction without having head and tail attached, ~~except for mullet when used for bait. Blueback herring, hickory shad and alewife shall be exempt from this Rule when used for bait provided that not more than two fish per boat or fishing operation may be cut for bait at any one time.~~ except:

(1) mullet when used for bait;

(2) blueback herring, hickory shad and alewife when used for bait provided that not more than

two fish per boat or fishing operation may be cut for bait at any one time; and

(3) tuna possessed in a commercial fishing operation as provided in 15A NCAC 03M .0520.

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0520 TUNA

(a) It is unlawful to possess in a commercial fishing operation:

(1) Yellowfin tuna less than 27 inches curved fork ~~length.~~ length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna.

(2) Bigeye tuna less than 27 inches curved fork ~~length.~~ length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna.

(3) Bluefin tuna less than 73 inches curved fork ~~length.~~ length or 54 inches pectoral fin curved fork length.

(b) It is unlawful to possess in a commercial fishing operation tunas subject to a size or harvest restriction without having tails attached.

~~(b)~~(c) It is unlawful to possess for recreational purposes:

(1) Yellowfin tuna less than 27 inches curved fork length.

(2) Bigeye tuna less than 27 inches curved fork length.

(3) More than three yellowfin tuna per person per day.

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

SUBCHAPTER 03O – LICENSES, LEASES, FRANCHISES AND PERMITS

SECTION .0100 – LICENSES

15A NCAC 03O .0113 OCEAN FISHING PIER BLANKET COASTAL RECREATIONAL FISHING LICENSE

(a) The length of the pier used to determine the license fee for an Ocean Fishing Pier Blanket Coastal Recreational Fishing License shall be obtained from the Ocean Fishing Pier License.

(b) It is unlawful for the responsible party of the Ocean Fishing Pier Blanket Coastal Recreational Fishing License to fail to provide to the Division by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail.

Authority G.S.113-134; 113-169.4; 113-174.1; 113-174.4; 143B-289.52.

SECTION .0200 – LEASES AND FRANCHISES

15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

(a) Application forms are available from the Division's office headquarters at 3441 Arendell Street, Morehead City, NC 28557 for persons desiring to apply for shellfish bottom and water column leases. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including an inset vicinity map showing the location of the proposed lease with detail sufficient to permit on-site identification and must meet the information requirements pursuant to G.S. 113-202(d).

(b) As a part of the application, the applicant shall submit a management plan for the area to be leased on a form provided by the Division which meets the following standards:

(1) States the methods through which the applicant will cultivate and produce shellfish consistent with the minimum requirements set forth in 15A NCAC 03O .0201;

(2) States the time intervals during which various phases of the cultivation and production plan will be achieved;

(3) States the materials and techniques that will be utilized in management of the lease;

(4) Forecasts the results expected to be achieved by the management activities; and

(5) Describes the productivity of any other leases or franchises held by the applicant.

(c) The completed application, map or diagram, and management plan for the requested lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.

(d) Applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees holding one or more shellfish cultivation leases which are not meeting production requirements, shall complete and submit an examination, with a minimum of seventy percent correct answers, based on an educational package provided by the Division of Marine Fisheries. The examination shall demonstrate the applicant's knowledge of:

(1) the shellfish lease application process;

(2) shellfish lease planting and production requirements;

(3) lease marking requirements;

(4) lease fees;

(5) shellfish harvest area closures due to pollution;

(6) safe handling practices;

(7) lease contracts and renewals;

(8) lease termination criteria; and

(9) shellfish cultivation techniques.

~~(d)~~(e) Immediately after an application is deemed to have met all requirements and is accepted by the Division, the applicant shall identify the area for which a lease is requested with stakes at each corner in accordance with 15A NCAC 03O .0204(a)(1)(A). The applicant shall attach to each stake a sign, provided by the Division containing the name of the applicant, the date the application was filed, and the estimated acres.

Authority G.S. 113-134; 113-201; 113-202; 143B-289.52.

15A NCAC 03O .0209 TRANSFER OF INTEREST

(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 3O .0202(b).

(b) If the new owner obtains a portion of an existing shellfish bottom lease or franchise, it shall not contain less than one-half acre and the required notification to the Division shall be accompanied by a survey prepared in accordance with the standards in 15A NCAC 3O .0203(d).

(c) Water column leases are not transferrable except when the Secretary approves such transfer in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(f).

(d) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.

(e) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training as specified in 15A NCAC 03O .0202(d).

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.52.

SECTION .0500 – PERMITS

15A NCAC 03O .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~~ Prohibited (Polluted)Shellfish;

(2) Permit to Transplant Oysters from Seed Oyster 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 abide by the permit general and specific conditions established under 15A NCAC 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.~~For permit renewals, the permittee's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.

(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 03R .0103 PRIMARY NURSERY AREAS

The primary nursery areas referenced in 15A NCAC 03N .0104 are delineated in the following coastal water areas:

(1) In the Roanoke Sound Area:

(a) Shallowbag Bay:

(i) Dough Creek - northeast of a line beginning on the west shore at a point 35° 54.5396' N - 75° 39.9681' W; running northeasterly to the east shore to a point 35° 54.4615' N - 75° 40.1598' W; and

west of a line that crosses a canal on the east side of Dough Creek beginning on the north shore at a point 35° 54.7103' N - 75° 40.0951' W; running southerly to the south shore to a point 35° 54.6847' N - 75° 40.0882' W;

(ii) Scarborough Creek - south of a line beginning on the west shore at a point 35° 53.9801' N - 75° 39.5985' W; running northeasterly to the east shore to a point 35° 54.0372' N - 75° 39.5558' W.

(b) Broad Creek - all waters north of a line beginning on the west shore at a point 35° 51.9287' N - 75° 38.3377' W; running northeasterly to the east shore to a point 35° 52.0115' N - 75° 38.1792' W; and west and south of a line beginning on the north shore at a point ~~35° 53.3655' N - 75° 38.0254' W;~~ 35° 53.3655' N - 75° 38.0254' W; running southeasterly to the south shore to a point ~~35° 53.3474' N - 75° 37.9430' W.~~ 35° 53.3474' N - 75° 37.9430' W.

(2) In the Northern Pamlico Sound Area:

(a) Long Shoal River:

(i) Long Shoal River - northwest of a line beginning on the north shore at a point 35° 38.0175' N - 75° 52.9270' W; running southwesterly to the south shore to a point 35° 37.8369' N - 75° 53.1060' W;

(ii) Deep Creek - southeast of a line beginning on the north shore at a point 35° 37.7346' N - 75° 52.1383' W; running southwesterly to the south shore to a point 35° 37.6673' N - 75° 52.2997' W;

(iii) Broad Creek - west of a line beginning on the north shore at a point 35° 35.9820' N - 75° 53.6789' W; running southerly to the south shore to a point 35° 35.7093' N - 75° 53.7335' W;

(iv) Muddy Creek - east of a line beginning on the north shore at a point 35° 36.4566' N - 75° 52.1460' W; running southerly to the south shore to a point 35° 36.2828' N - 75° 52.1640' W;

(v) Pains Bay - north of a line beginning on the west shore at a point 35° 35.4517' N - 75° 49.1414' W; running easterly to the east shore to a point 35° 35.4261' N - 75° 48.8029' W;

(vi) Otter Creek - southwest of a line beginning on the west shore at a point 35° 33.2597' N - 75° 55.2129' W; running easterly to the east shore to a point 35° 33.1995' N - 75° 54.8949' W;

(vii) Clark Creek - northeast of a line beginning on the north shore at a point 35° 35.7776' N - 75° 51.4652' W; running southeasterly to the south shore to a point 35° 35.7128' N - 75° 51.4188' W;

(b) Far Creek - west of a line beginning on the north shore at a point ~~35° 30.9782' N - 75° 57.7611' W;~~ 35° 30.9782' N - 75° 57.7611' W; running southerly to Gibbs Point to a point 35° 30.1375' N - 75° 57.8108' W;

(c) Middletown Creek - west of a line beginning on the north shore at a point 35° 28.4868' N - 75° 59.8186' W; running southwesterly to the south shore to a point 35° 28.1919' N - 76° 00.0216' W;

(d) Wysocking Bay:

(i) Lone Tree Creek - east of a line beginning on the north shore at a point 35° 25.6048' N - 76° 02.3577' W; running southeasterly to the south shore to a point 35° 25.1189' N - 76° 02.0499' W;

(ii) Wysocking Bay - north of a line beginning on the west shore at a point 35° 25.7793' N - 76° 03.5773' W; running northeasterly to the east shore to a point 35° 25.9585' N - 76° 02.9055' W;

(iii) Douglas Bay - northwest of a line beginning on Mackey Point at a point 35° 25.2627' N - 76° 03.1702' W; running southwesterly to the south shore to a point 35° 24.8225' N - 76° 03.6353' W;

(iv) Tributaries west of Brown Island - west of a line beginning on Brown Island at a point 35° 24.3606' N - 76° 04.4557' W; running southerly to the north shore of Brown Island to a point 35° 24.2081' N - 76° 04.4622' W; and northwest of a line beginning on the south shore of Brown Island at a point ~~35° 23.8255' N - 76° 04.4761' W;~~ 35° 23.8255' N - 76° 04.4761' W; running southwesterly to a point 35° 23.6543' N - 76° 04.8630' W;

(e) East Bluff Bay - Harbor Creek east of a line beginning on the north shore at a point ~~35° 21.5762' N - 76° 07.8755' W;~~ 35° 21.5762' N - 76° 07.8755' W; running southerly to a point 35° 21.4640' N - 76° 07.8750' W; running easterly to the south shore to a point ~~35° 21.4332' N - 76° 07.7211' W;~~ 35° 21.4332' N - 76° 07.7211' W;

(f) Cunning Harbor tributaries - north of a line beginning on the west shore at a point 35° 20.7567' N - 76° 12.6379' W; running easterly to the east shore to a point 35° 20.7281' N - 76° 12.2292' W;

(g) Juniper Bay:

(i) Upper Juniper Bay - north of a line beginning on the west shore at a point 35° 23.1687' N - 76° 15.1921' W; running easterly to the east shore to a point 35° 23.1640' N - 76° 14.9892' W;

(ii) Rattlesnake Creek - west of a line beginning on the north shore at a point 35° 22.9453' N - 76° 15.2748' W, running southerly to the south shore to a point 35° 22.8638' N - 76° 15.3461' W;

(iii) Buck Creek - north of a line beginning on the west shore at a point 35° 21.5220' N - 76° 13.8865' W; running southeasterly to the east shore to a point 35° 21.3593' N - 76° 13.7039' W;

(iv) Laurel Creek - east of a line beginning on the north shore at a point 35° 20.6693' N - 76° 13.3177' W; running southerly to the south shore to a point 35° 20.6082' N - 76° 13.3305' W;

(v) Old Haulover - west of a line beginning on the north shore at a point 35° 22.0186' N - 76° 15.6736' W; running southerly to the south shore to a point 35° 21.9708' N - 76° 15.6825' W;

(h) Swanquarter Bay:

(i) Upper Swanquarter Bay - north of a line beginning on the west shore at a point ~~35° 23.5651' N - 76° 20.6715' W;~~ 35° 23.5651' N - 76° 20.6715' W; running easterly to the east shore to a point 35° 23.6988' N - 76° 20.0025' W;

(ii) Oyster Creek - east of a line beginning on the north shore at a point 35° 23.1214' N - 76° 19.0026' W; running southeasterly to the south shore to a point 35° 23.0117' N - 76° 18.9591' W;

(iii) Caffee Bay:

(A) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1604' N - 76° 18.9140' W; running easterly to the east shore to a point 35° 22.1063' N - 76° 18.7500' W;

(B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1573' N - 76° 18.5101' W; running easterly to the east shore to a point 35° 22.1079' N - 76° 18.1562' W;

(C) Upper Caffee Bay (Haulover) - east of a line beginning on the north shore at a point 35° 21.8499' N - 76° 17.5199' W; running southerly to the south shore to a point ~~35° 21.5451'~~

~~N 76° 17.4966' W;~~ 35° 21.5451' N - 76° 17.4966' W;

(i) Rose Bay:

(i) Rose Bay - north of a line beginning on the west shore at a point 35° 26.6543' N - 76° 25.3992' W; running easterly to Channel Marker "6"; running northeasterly to Watch Point to a point 35° 26.8515' N - 76° 25.0055' W;

(ii) Island Point Creek - west of a line beginning on the north shore at a point 35° 26.0413' N - 76° 25.0452' W; running southeasterly to the south shore to a point 35° 25.9295' N - 76° 24.9882' W;

(iii) Tooley Creek - west of a line beginning on the north shore at a point 35° 25.4937' N - 76° 25.5324' W; running southerly to the south shore to a point 35° 25.1819' N - 76° 25.5776' W;

(iv) Broad Creek - east of a line beginning on the north shore at a point 35° 24.4620' N - 76° 23.3398' W; running southwesterly to the south shore to a point 35° 24.2352' N - 76° 23.5158' W;

(v) Lightwood Snag Bay - northwest of a line beginning on the north shore at a point 35° 24.3340' N - 76° 25.9680' W; running southwesterly to a point 35° 24.2610' N - 76° 26.1800' W; running southwesterly to a point on the shore 35° 23.9270' N - 76° 26.3300' W;

(vi) Deep Bay:

(A) Old Haulover - north of a line beginning on the west shore at a point 35° 23.2140' N - 76° 22.8560' W; running easterly to the east shore to a point 35° 23.2124' N - 76° 22.7340' W;

(B) Drum Cove (Stinking Creek) - south of a line beginning on the west shore at a point 35° 22.5212' N - 76° 24.7321' W; running southeasterly to the east shore to a point 35° 22.4282' N - 76° 24.5147' W;

(vii) Eastern tributaries (Cedar Hammock and Long Creek) - east of a line beginning on the north shore at a point 35° 24.9119' N - 76° 23.1587' W; running southerly to the south shore to a point 35° 24.6700' N - 76° 23.2171' W;

(j) Spencer Bay:

(i) Germantown Bay:

(A) Ditch Creek - northwest of a line beginning on the north shore at a point 35° 24.1874' N - 76° 27.8527' W; running southwesterly to the south shore to a point 35° 24.0937' N - 76° 27.9348' W;

(B) Jenette Creek - northwest of a line beginning on the north shore at a point 35° 24.5054' N - 76° 27.6258' W; running southwesterly to the south shore to a point 35° 24.4642' N - 76° 27.6659' W;

(C) Headwaters of Germantown Bay - north of a line beginning on the west shore at a point 35° 24.8345' N - 76° 27.2605' W; running southeasterly to the east shore to a point 35° 24.6210' N - 76° 26.9221' W;

(D) Swan Creek - southeast of a line

beginning on the north shore at a point 35° 24.4783' N - 76° 27.1513' W; running southwesterly to the south shore to a point 35° 24.3899' N - 76° 27.2809' W;

(ii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 22.9741' N - 76° 28.3469' W; running southerly to the south shore to a point 35° 22.8158' N - 76° 28.3280' W;

(iii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 23.1375' N - 76° 28.5681' W; running southerly to the south shore to a point 35° 23.0209' N - 76° 28.5060' W;

(iv) Unnamed tributary - southwest of a line beginning on the north shore at a point 35° 23.3775' N - 76° 28.7332' W; running southeasterly to the south shore to a point 35° 23.3297' N - 76° 28.5608' W;

(v) Unnamed tributaries - northwest of a line beginning on the north shore at a point 35° 23.7207' N - 76° 28.6590' W; running southwesterly to the south shore to a point 35° 23.4738' N - 76° 28.7763' W;

(vi) Upper Spencer Bay - northwest of a line beginning on the north shore at a point 35° 24.3129' N - 76° 28.5300' W; running southwesterly to the south shore to a point 35° 23.9681' N - 76° 28.7671' W;

(vii) Spencer Creek - east of a line beginning on the north shore at a point 35° 23.9990' N - 76° 27.3702' W; running southerly to the south shore to a point 35° 23.8598' N - 76° 27.4037' W;

(k) Long Creek - north of a line beginning on the west shore at a point 35° 22.4678' N - 76° 28.7868' W; running southeasterly to the east shore to a point 35° 22.3810' N - 76° 28.7064' W;

(l) Willow ~~Creek -~~Creek -east of a line beginning on the north shore at a point 35° 23.1370' N - 76° 29.8829' W; running southeasterly to the south shore to a point 35° 22.9353' N - 76° 29.7215' W;

(m) Abels Bay - north and east of a line beginning on the west shore at a point 35° 24.1072' N - 76° 30.3848' W; running southeasterly to the east shore to a point 35° 23.9898' N - 76° 30.1178' W; thence running southerly to the south shore to a point 35° 23.6947' N - 76° 30.1900' W;

(n) Crooked Creek - north of a line beginning on the west shore at a point 35° 24.4138' N - 76° 32.2124' W; running easterly to the east shore to a point 35° 24.3842' N - 76° 32.0419' W.

(3) In the Pungo River Area:

(a) Fortescue Creek:

(i) Headwaters of Fortescue Creek - southeast of a line beginning on the south shore at a point ~~35° 25.5379' N - 76° 30.6923' W;~~ 35° 25.5379' N - 76° 30.6923' W; running easterly to the north shore to a point 35° 25.5008' N - 76° 30.5537' W;

(ii) Warner Creek - north of a line beginning on the west shore at a point ~~35° 26.2778' N - 76° 31.5463' W;~~ 35° 26.2778' N - 76° 31.5463' W; running easterly to the east shore to a point 35° 26.3215' N - 76° 31.4522' W;

(iii) Island Creek - north of a line beginning on the west shore at a point 35° 26.1342' N - 76° 32.3883' W; running easterly to the east shore to a point 35° 26.1203' N - 76° 32.2603' W;

(iv) Dixon Creek - south of a line beginning on the west shore at a point 35° 25.5766' N - 76° 31.8489' W; running easterly to the east shore to a point 35° 25.5865' N - 76° 31.6960' W;

(v) Pasture Creek - north of a line beginning on the west

shore at a point 35° 25.9437' N - 76° 31.8468' W; running southwesterly to the east shore to a point ~~35° 25.9918' N - 76° 31.7224' W;~~ 35° 25.9918' N - 76° 31.7224' W;

(vi) Cox, Snell, and Seer Creeks - northeast of a line beginning on the west shore at a point 35° 26.0496' N - 76° 31.2087' W; running southeasterly to the east shore to a point 35° 25.8497' N - 76° 30.8828' W;

(vii) Unnamed tributary on the north side of Fortescue Creek - northeast of a line beginning on the west shore at a point 35° 25.7722' N - 76° 30.7825' W; running southeasterly to the east shore to a point ~~35° 25.7374' N - 76° 30.7102' W;~~ 35° 25.7374' N - 76° 30.7102' W;

(viii) Runway Creek - northeast of a line beginning on the west shore at a point 35° 25.6547' N - 76° 30.6637' W; running easterly to the east shore to a point 35° 25.6113' N - 76° 30.5714' W;

(b) Slade Creek:

(i) Upper Slade Creek - south of a line beginning on the north shore at a point 35° 27.9168' N - 76° 30.5189' W; running westerly to the south shore to a point 35° 27.9532' N - 76° 30.7140' W;

(ii) Jarvis Creek - northeast of a line beginning on the west shore at a point 35° 28.2450' N - 76° 30.8921' W; running southeasterly to the east shore to a point 35° 28.2240' N - 76° 30.8200' W;

(iii) Jones Creek - south of a line beginning on the west shore at a point 35° 28.0077' N - 76° 30.9337' W; running southeasterly to the east shore to a point ~~35° 27.9430' N - 76° 30.8938' W;~~ 35° 27.9430' N - 76° 30.8938' W;

(iv) Becky Creek - north of a line beginning on the west shore at a point ~~35° 28.6081' N - 76° 31.6886' W;~~ 35° 28.6081' N - 76° 31.6886' W; running northeasterly to the east shore to a point 35° 28.6297' N - 76° 31.6073' W;

(v) Neal Creek - north of a line beginning on the west shore at a point 35° 28.7797' N - 76° 31.8657' W; running northeasterly to the east shore to a point 35° 28.8084' N - 76° 31.7727' W;

(vi) Wood Creek - north of a line beginning on the west shore at a point 35° 28.5788' N - 76° 32.4163' W; running northeasterly to the east shore to a point 35° 28.6464' N - 76° 32.3339' W;

(vii) Spellman Creek - north of a line beginning on the east shore at a point 35° 28.2233' N - 76° 32.6827' W; running southwesterly to the west shore to a point 35° 28.2567' N - 76° 32.6533' W;

(viii) Speer Creek - east of a line beginning on the north shore at a point ~~35° 27.9680' N - 76° 32.3593' W;~~ 35° 27.9680' N - 76° 32.3593' W; running southerly to the south shore to a point 35° 27.9216' N - 76° 32.3862' W;

(ix) Church Creek and Speer Gut - east of a line beginning on the north shore at a point 35° 27.5910' N - 76° 32.7412' W; running southwesterly to the south shore to a point 35° 27.5282' N - 76° 32.8227' W;

(x) Allison and Foreman Creek - south of a line beginning on Parmalee Point at a point 35° 27.2812' N - 76° 33.0634' W; running southwesterly to the west shore to a point 35° 27.2418' N - 76° 33.1451' W;

(c) Flax Pond - west of a line beginning the north shore at a point 35° 32.0297' N - 76° 33.0389' W; running southwesterly to the south shore to a point 35° 31.9212' N - 76° 33.2061' W;

(d) Battalina and Tooleys creeks - northwest of a line beginning on the north shore at a point 35° 32.3914' N - 76° 36.1548' W; running southwesterly to the south shore to a point 35° 32.0627' N - 76° 36.3769' W.

(4) In the Pamlico River Area:

(a) North Creek:

(i) North Creek - north of a line beginning on the west shore at a point 35° 25.6764' N - 76° 39.9970' W; running northeasterly to the east shore to a point 35° 25.5870' N - 76° 40.0806' W;

(ii) East Fork:

(A) Northeast of a line beginning on the west shore at a point 35° 25.8000' N - 76° 39.2679' W; running southeasterly to the east shore to a point 35° 25.6914' N - 76° 39.1374' W;

(B) Unnamed tributary of East Fork - northwest of a line beginning on the north shore at a point 35° 25.6950' N - 76° 39.4337' W; running southwesterly to the south shore to a point 35° 25.6445' N - 76° 39.4698' W;

(iii) Frying Pan Creek - east of a line beginning on the north shore at a point 35° 24.9881' N - 76° 39.5948' W; running southwesterly to Chambers Point to a point 35° 24.8508' N - 76° 39.6811' W;

(iv) Little Ease Creek - west of a line beginning on the north shore at a point 35° 25.1463' N - 76° 40.3490' W; running southwesterly to Cousin Point to a point 35° 25.0075' N - 76° 40.4159' W;

(b) Goose Creek:

(i) Hatter Creek - west of a line beginning on the north shore at a point 35° 19.9593' N - 76° 37.5992' W; running southerly to the south shore to a point 35° 19.9000' N - 76° 37.5904' W;

(ii) Upper Spring Creek:

(A) Headwaters of Upper Spring Creek - east of a line beginning on the north shore at a point 35° 16.3636' N - 76° 36.0568' W; running southeasterly to the south shore to a point 35° 16.1857' N - 76° 36.0111' W;

(B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 16.8386' N - 76° 36.4447' W; running easterly to the east shore to a point 35° 16.8222' N - 76° 36.3811' W;

(iii) Eastham ~~Creek:~~ Creek - east of a line beginning on the north shore at a point 35° 17.7423' N - 76° 36.5164' W; running southeasterly to the south shore to a point 35° 17.5444' N - 76° 36.3963' W;

~~(A) Slade Landing Creek - south of a line beginning on the west shore at a point 35° 17.5450' N - 76° 35.9677' W; running southeasterly to the east shore to a point 35° 17.4845' N - 76° 35.8946' W;~~

~~(B) Mallard Creek - north of a line beginning on the west shore at a point 35° 17.8230' N - 76° 36.1314' W; running southeasterly to the east shore to a point 35° 17.7927' N - 76° 36.0330' W;~~

(iv) Mud Gut - northeast of a line beginning on the north shore at a point 35° 17.8754' N - 76° 36.7704' W; running southeasterly to the south shore to a point 35°17.8166' N - 76° 36.7468' W;

(v) Wilkerson Creek - east of a line beginning on the north shore at a point 35° 18.4096' N - 76° 36.7479' W; running southwesterly to the south shore to a point 35° 18.3542' N - 76° 36.7741' W;

(vi) Dixon Creek - east of a line beginning on the north shore at a point 35° 18.8893' N - 76° 36.5973' W; running southerly to the south shore to a point ~~35° 18.5887' N - 76° 36.7142' W;~~ 35° 18.5887' N - 76° 36.7142' W;

(c) Oyster ~~Creek;~~ Creek ~~-~~Middle Prong:

(i) Oyster Creek:

(A) West of a line, beginning on the north shore at a point 35° 19.4780' N - 76° 34.0131' W; running southerly to the south shore to a point 35° 19.3796' N - 76° 34.0021' W;

(B) Duck Creek - south of a line beginning on the west shore at a point 35° 19.0959' N - 76° 33.2998' W; running northeasterly to the east shore to a point 35° 19.1553' N - 76° 33.2027' W;

(ii) James Creek - southwest of a line beginning on the north shore at a point ~~35° 18.6045' N - 76° 32.3233' W;~~ 35° 18.6045' N - 76° 32.3233' W; running southeasterly to James Creek Point at a point 35° 18.4805' N - 76° 32.0240' W;

(iii) Middle Prong - south of a line beginning on the west shore at a point 35° 17.8888' N - 76° 31.9379' W; running southerly to the east shore to a point 35° 17.7323' N - 76° 31.9052' W;

(iv) Clark Creek:

(A) Headwaters of Clark Creek (including Mouse Harbor Ditch) - southeast of a line beginning on the west shore at a point 35° 18.1028' N - 76° 31.1661' W; running northeasterly to the east shore to a point 35° 18.1907' N - 76° 31.0610' W;

(B) Boat Creek - east of a line beginning on the north shore at a point 35° 18.5520' N - 76° 31.2927' W; running southerly to the south shore to a point 35° 18.4189' N - 76° 31.2660' W.

(5) In the Western Pamlico Sound Area:

(a) Mouse Harbor:

(i) Long Creek - north of a line beginning on the west shore at a point 35° 18.4025' N - 76° 29.8139' W; running northeasterly to the east shore to a point 35° 18.4907' N - 76° 29.5652' W;

(ii) Lighthouse Creek - north of a line beginning on the west shore at a point 35° 18.5166' N - 76° 29.2166' W; running southeasterly to the east shore to a point 35° 18.4666' N - 76° 29.1666' W;

(iii) Cedar Creek and Island creeks - south of a line beginning on the west shore at a point 35° 16.9073' N - 76° 29.8667' W; running southeasterly to the east shore to a point 35° 16.6800' N - 76° 29.4500' W;

(b) Porpoise Creek - west of a line beginning on the north shore at a point 35° 15.7263' N - 76° 29.4897' W; running southeasterly to the south shore to a point 35° 15.6335' N - 76° 29.3346' W;

(c) Middle Bay:

(i) Middle Bay - west of a line beginning on the north shore at a point 35° 14.6137' N - 76° 30.8086' W; running southeasterly to the south shore to a point 35° 14.0631' N - 76° 30.5176' W;

(ii) Little Oyster Creek - north of a line beginning on the west shore at a point 35° 14.4745' N - 76° 30.2111' W; running northeasterly to the east shore to a point 35° 14.5825' N - 76° 29.9144' W;

(d) Jones Bay, west of the IWW:

(i) Little Drum Creek and Little Eve Creek - south of a line beginning on the west shore at a point 35° 12.4380' N - 76° 31.7428' W; running southeasterly to the east shore to a point 35° 12.3499' N - 76° 31.2554' W;

(ii) Ditch Creek - south of a line beginning on the west shore at a point ~~35°13.3609' N - 76° 33.6539' W;~~ 35° 13.3609' N - 76° 33.6539' W; running southeasterly to the east shore to a point 35° 13.2646' N - 76° 33.1996' W;

(iii) Lambert Creek - west of a line beginning on the north shore at a point 35° 13.8980' N - 76° 34.3078' W; running southeasterly to the south shore to a point 35° 13.8354' N - 76° 34.2665' W;

(iv) Headwaters of Jones Bay, (west of the IWW) - west of a line beginning on the north shore at a point 35° 14.4684' N - 76° 35.4307' W; running southerly to the south shore to a point 35° 14.3947' N - 76° 35.4205' W;

(v) Bills Creek - north of a line beginning on the west shore at a point 35° 14.4162' N - 76° 34.8566' W; running northerly to the east shore to a point 35° 14.4391' N - 76° 34.7248' W;

(vi) Doll Creek - north of a line beginning on the west shore at a point 35° 14.3320' N - 76° 34.2935' W; running southeasterly to the east shore to a point 35° 14.2710' N - 76° 34.0406' W;

(vii) Drum Creek - north of a line beginning on the west shore at a point 35° 14.1764' N - 76° 33.2632' W; running easterly to the east shore to a point 35° 14.1620' N - 76° 33.0614' W.

(6) In the Bay River Area:

(a) Mason Creek - southeast of a line beginning on the north shore at a point 35° 08.2531' N - 76° 41.4897' W; running southwesterly to the west shore to a point 35° 08.1720' N - 76° 41.6340' W;

(b) Moore Creek - southeast of a line beginning on the north shore at a point 35° 08.9671' N - 76° 40.2017' W; running southeasterly to the south shore to a point 35° 08.8629' N - 76° 40.1598' W;

(c) Small tributaries from Bell Point to Ball Creek:

(i) Tributary west of Bell Point - south of a line beginning on the west shore at a point 35° 09.9536' N - 76° 39.3977' W; running northeasterly to the east shore to a point 35° 09.9970' N - 76° 39.3420' W;

(ii) Little Pasture Creek - south of a line beginning on the west shore at a point ~~35° 09.8944' N - 76° 39.1483';~~ 35° 09.8944' N - 76° 39.1483' W; running southeasterly to the east shore to a point 35° 09.8417' N - 76° 39.1130' W;

(iii) Rice Creek - south of a line beginning on the west shore at a point 35° 09.7616' N - 76° 38.9686' W; running southeasterly to the east shore to a point 35° 09.7378' N - 76° 38.8833' W;

(d) Ball and Cabin creeks - south of a line beginning on the west shore at a point 35° 09.6479' N - 76° 37.9973' W; running southeasterly to the east shore to a point 35° 09.5589' N - 76° 37.5879' W;

(e) Bonner Bay:

(i) Riggs Creek - west of a line beginning on the north shore at a point 35° 09.4050' N -

76° 36.2205' W; running southeasterly to the south shore to a point 35° 09.2298' N - 76° 36.0949' W;

(ii) Spring Creek - west of a line beginning on the north shore at a point 35° 08.5149' N - 76° 36.0799' W; running southerly to the south shore to a point 35° 08.3575' N - 76° 36.0713' W;

(iii) Bryan and Ives creeks - south of a line beginning on the west shore at a point ~~35° 08.3632' N- 76° 35.8653' W;~~ 35° 08.3632' N - 76° 35.8653' W; running northeasterly to the east shore to a point 35° 08.4109' N - 76° 35.7075' W;

(iv) Long Creek Gut - north of a line beginning on the west shore at a point 35º 09.1993' N - 76º 34.8517' W; running easterly to the east shore to a point 35º 09.1987' N - 76º 34.5373' W;

~~(iv)~~(v) Dipping Vat Creek - east of a line beginning on the north shore at a point 35° 09.2734' N - 76° 34.3363' W; running southerly to the south shore to a point 35° 09.1212' N - 76° 34.3667' W;

~~(v)~~(vi) Long Creek - east of a line beginning on the west shore at a point 35° 08.1404' N - 76° 34.5741' W; running northeasterly to the east shore to a point 35° 08.2078' N - 76° 34.4819' W;

~~(vi)~~(vii) Cow Gallus Creek - west of a line beginning on the north shore at a point 35° 08.5125' N - 76° 34.6417' W; running southerly to the south shore to a point 35° 08.4083' N - 76° 34.6131' W;

(f) Rock Hole Bay - northeast of a line beginning on the west shore at a point 35° 11.6478' N - 76° 32.5840' W; running southeasterly to the east shore to a point 35° 11.2664' N - 76° 32.2160' W;

(g) Dump Creek - north of a line beginning on the west shore at a point 35° 11.7105' N - 76° 33.4228' W; running easterly to the east shore to a point 35° 11.7174' N - 76° 33.1807' W;

(h) Tributaries east of IWW at Gales Creek:

(i) Raccoon Creek - east of a line beginning on the north shore at a point 35° 12.9169' N - 76° 35.4930' W; running southeasterly to the south shore to a point 35° 12.6515' N - 76° 35.3368' W;

(ii) Ditch Creek - east of a line beginning on the north shore at a point 35° 12.4460' N - 76° 35.0707' W; running southeasterly to the south shore to a point 35° 12.3495' N - 76° 34.9917' W;

(i) Tributaries west of IWW at Gales Creek:

(i) Jumpover Creek - west of a line beginning on the north shore at a point 35° 13.2830' N - 76° 35.5843' W; running southerly to the south shore to a point 35° 13.2035' N - 76° 35.5844' W;

(ii) Gales Creek - west of a line beginning on the north shore at a point 35° 12.9653' N - 76° 35.6600' W; running southerly to the south shore to a point 35° 12.8032' N - 76° 35.6366' W;

(iii) Whealton and Tar creeks - west of a line beginning on the north shore at a point 35° 12.7334' N - 76° 35.5430' W; running southeasterly to the south shore to a point 35° 12.4413' N - 76° 35.3594' W;

(j) Chadwick and No Jacket creeks - north of a line beginning on the west shore at a point 35° 11.9511' N - 76° 35.8899' W; running northeasterly to the east shore to a point 35° 12.0599' N - 76° 35.3973' W;

(k) Bear Creek - west of a line beginning on the north shore at a point 35° 11.7526' N - 76° 36.2721' W; running southwesterly to the south shore to a point 35° 11.5781' N - 76° 36.3366' W;

(l) Little Bear Creek - north of a line beginning on the west shore at a point 35° 11.1000' N - 76° 36.3060' W; running northeasterly to the east

shore to a point 35° 11.2742' N - 76° 35.9822' W;

(m) Tributaries to Bay River from Petty Point to Sanders Point:

(i) Oyster Creek - north of a line beginning on the west shore at a point 35° 10.7971' N - 76° 36.7399' W; running northeasterly to the east shore to a point 35° 10.9493' N - 76° 36.4878' W;

(ii) Potter Creek - north of a line beginning on the west shore at a point 35° 10.7259' N - 76° 37.0764' W; running northeasterly to the east shore to a point 35° 10.7778' N - 76° 36.7933' W;

(iii) Barnes and Gascon creeks - north of a line beginning on the west shore at a point 35° 10.6396' N - 76° 37.3137' W; running northeasterly to the east shore to a point 35° 10.6929' N - 76° 37.2087' W;

(iv) Harris Creek - north of a line beginning on the west shore at a point 35° 10.5922' N - 76° 37.5333' W; running northeasterly to the east shore to a point 35° 10.6007' N - 76° 37.5103' W;

(v) Mesic Creek - north of a line beginning on the west shore at a point 35° 10.5087' N - 76° 37.9520' W; running easterly to the east shore to a point 35° 10.4830' N - 76° 37.8477' W;

(n) In Vandemere Creek:

(i) Cedar Creek - north of a line beginning on the west shore at a point 35° 11.2495' N - 76° 39.5727' W; running northeasterly to the east shore to a point 35° 11.2657' N - 76° 39.5238' W;

(ii) Long Creek - east of a line beginning on the north shore at a point 35° 11.4779' N - 76° 38.7790' W; running southerly to the south shore to a point 35° 11.4220' N - 76° 38.7521' W;

(iii) Little Vandemere Creek - north of a line beginning on the west shore at a point 35° 12.1449' N - 76° 39.2620' W; running southeasterly to the east shore to a point ~~35° 12.1182' W 76° 39.1993' W;~~ 35° 12.1182' N - 76° 39.1993' W;

(o) Smith Creek - north of a line beginning on the west shore to a point 35° 10.4058' N - 76° 40.2565' W; running northeasterly to the east shore to a point 35° 10.4703' N - 76° 40.1593' W;

(p) Harper Creek - west of a line beginning on the north shore at a point 35° 09.2767' N - 76° 41.8489' W; running southwesterly to the south shore to a point 35° 09.1449' N - 76° 41.9137' W;

(q) Chapel Creek - north of a line beginning on the west shore at a point 35° 08.9333' N - 76° 42.8382' W; running northeasterly to the east shore to a point 35° 08.9934' N - 76° 42.7694' W;

(r) Swindell Bay - south of a line beginning on the west shore at a point 35° 08.2580' N - 76° 42.9380' W; running southeasterly to the east shore to a point 35° 08.2083' N - 76° 42.8031' W.

(7) In the Neuse River Area North Shore:

(a) Swan Creek - west of a line beginning on the south shore at a point 35° 06.5470' N - 76° 33.8203' W; running northeasterly to a point ~~35° 06.4155' N - 76° 33.9479';~~ 35° 06.4155' N - 76° 33.9479' W; running to the south shore of Swan Island to a point ~~35° 06.3168' N - 76° 34.0263 W;~~ 35° 06.3168' N - 76° 34.0263' W; running northeasterly to a point 35° 06.6705' N - 76° 33.7307' W, running northeasterly to the north shore to a point 35° 06.8183' N - 76° 33.5971' W;

(b) Broad Creek:

(i) Greens Creek - north of a line beginning on the west shore at a point 35° 06.0730' N - 76° 35.5110' W; running southeasterly to the east shore to a point 35° 05.9774' N - 76° 35.3704' W;

(ii) Pittman Creek - north of a line beginning on the west shore at a point 35° 05.8143' N - 76° 36.1475' W; running northeasterly to the east shore to a point 35° 05.8840' N - 76° 36.0144' W;

(iii) Burton Creek - west of a line beginning on the north shore at a point 35° 05.7174' N - 76° 36.4797' W; running southwesterly to the south shore to a point 35° 05.6278' N - 76° 36.5067' W;

(iv) All tributaries on the north shore of Broad Creek - north of a line beginning on the west shore of the western most tributary at a point 35° 05.5350' N - 76° 37.4058' W; running easterly to a point 35° 05.4752' N - 76° 36.9672' W; running to a point ~~35° 05.4868 N - 76° 36.9163' W;~~ 35° 05.4868' N - 76° 36.9163' W; north of a line beginning on the west shore of the eastern most tributary at 35° 05.4415' N - 76° 36.7869' W, running northeasterly to a point 35° 05.4664' N - 76° 36.7540' W;

(v) Brown Creek - northwest of a line beginning on the west shore at a point 35° 05.5310' N - 76° 37.8132' W; running northeasterly to the east shore to a point 35° 05.5737' N - 76° 37.6908' W;

(vi) Broad Creek including Gideon Creek - west of a line beginning on the north shore at a point 35° 05.5310' N - 76° 37.8132' W; running southerly to the south shore to a point 35° 05.3212' N - 76° 37.8398' W;

(vii) Tar Creek - south of a line beginning on the west shore at a point 35° 05.2604' N - 76° 37.5093' W; running easterly to the east shore to a point 35° 05.2728' N - 76° 37.6251' W;

(viii) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.3047' N - 76° 37.0316' W; running easterly to the east shore to a point 35° 05.2674' N - 76° 36.8086' W;

(ix) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.2674' N - 76° 36.8086' W; running easterly to the east shore to a point 35° 05.2445' N - 76° 36.5416' W;

(x) Parris Creek - south of a line beginning on the west shore at a point ~~35° 05.2445' N - 76° 36.5416' W;~~ 35° 05.2445' N - 76° 36.5416' W; running southeasterly to the east shore to a point 35° 05.2031' N - 76° 36.4573' W;

(xi) Mill Creek - south of a line beginning on the west shore at a point 35° 05.4439' N - 76° 36.0260' W; running northeasterly to the east shore to a point 35° 05.4721' N - 76° 35.8835' W;

(xii) Cedar Creek - south of a line beginning on the west shore at a point ~~35° 05.3711' N - 76° 35.6556' W;~~ 35° 05.3711' N - 76° 35.6556' W; running southeasterly to the east shore to a point ~~35° 05.2867' N - 76° 35.5348' W;~~ 35° 05.2867' N - 76° 35.5348' W;

(c) Orchard and Old House creeks - north of a line beginning on the west shore at a point 35° 03.3302' N - 76° 38.4478' W; running northeasterly to the east shore to a point 35° 03.6712' N - 76° 37.9040' W;

(d) Pierce Creek - north of a line beginning on the west shore at a point 35° 02.5030' N - 76° 40.0536' W; running northeasterly to the east shore to a point ~~35° 02.5264' - 76° 39.9901 W;~~ 35° 02.5264' N - 76° 39.9901' W;

(e) Whittaker Creek - north of a line beginning on the west shore at a point 35° 01.7186' N - 76° 41.1309' W; running easterly to the east shore to a point 35° 01.6702' N - 76° 40.9036' W;

(f) Oriental:

(i) Smith and Morris creeks - north of a line beginning on the west shore at a point 35° 02.1553' N - 76° 42.2931' W; running southeasterly to the east shore to a point 35° 02.1097' N - 76° 42.1806' W;

(ii) Unnamed tributary west of Dewey Point - north of a line beginning on the west shore

at a point 35° 01.3704' N - 76° 42.4906' W; running northeasterly to the east shore to a point 35° 01.3530' N - 76° 42.4323' W;

(iii) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.4340' N - 76° 42.7920' W; running southeasterly to the east shore to a point 35° 01.4040' N - 76° 42.7320' W;

(iv) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.3680' N - 76° 42.4920' W; running southeasterly to the east shore to a point 35° 01.3560' N - 76° 42.4320' W;

(v) Greens Creek - west of a line beginning on the north shore at a point 35° 01.5985' N - 76° 42.9959' W; running southeasterly to the south shore to a point ~~35° 01.4759' N - 76° 42.9570' W;~~ 35° 01.4759' N - 76° 42.9570' W;

(vi) Kershaw Creek - north of a line beginning on the west shore at a point 35° 01.5985' N - 76° 42.9959' W; running easterly to the east shore to a point 35° 01.6077' N - 76° 42.8459' W;

(vii) Shop Gut Creek - west of a line beginning on the north shore at a point ~~35° 01.2720' N - 76° 42.1500' W;~~ 35° 01.2720' N - 76° 42.1500' W; running southerly to the south shore to a point ~~35° 01.1700' N - 76° 42.1380' W;~~ 35° 01.1700' N - 76° 42.1380' W;

(g) Dawson Creek:

(i) Unnamed eastern tributary of Dawson Creek - east of a line beginning on the north shore at a point ~~35° 00.2064' N - 76° 45.2652' W;~~ 35° 00.2064' N - 76° 45.2652' W; running southeasterly to the south shore to a point 35° 00.1790' N - 76° 45.2289' W;

(ii) Unnamed tributary of Dawson Creek (at mouth) - east of a line beginning on the north shore at a point ~~34° 59.6620' N - 76° 45.1156' W;~~ 34° 59.6620' N - 76° 45.1156' W; running southerly to the south shore to a point ~~34° 59.6326' N - 76° 45.1177' W;~~ 34° 59.6326' N - 76° 45.1177' W;

(h) Beard Creek tributary - southeast of a line beginning on the north shore at a point 35° 00.3176' N - 76° 51.9098' W; running southwesterly to the southwest shore to a point 35° 00.1884' N - 76° 51.9850' W.

(8) In the Neuse River Area South Shore:

(a) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 52.4621' N - 76° 45.9256' W; running easterly to the east shore to a point 34° 52.4661' N - 76° 45.7567' W:

(i) Mitchell Creek - west of a line beginning on the north shore at a point 34° 54.4176' N - 76° 45.7680' W; running southerly to the south shore to a point ~~34° 54.2610' N - 76° 45.8277 W;~~ 34° 54.2610' N - 76° 45.8277' W;

(ii) Gulden Creek - east of a line beginning on the north shore at a point 34° 54.1760' N - 76° 45.4438' W; running southerly to the south shore to a point 34° 54.0719' N - 76° 45.4888' W;

(b) Adams Creek:

(i) Godfrey Creek - south of a line beginning on the west shore at a point 34° 57.3104' N - 76° 41.1292' W; running easterly to the east shore to a point 34° 57.2655' N - 76° 41.1187' W;

(ii) Delamar Creek - south of a line beginning on the west shore at a point 34° 57.0475' N - 76° 40.7230' W; running southeasterly to the east shore to a point 34° 57.0313' N - 76° 40.7015' W;

(iii) Kellum Creek - west of a line beginning on the north shore at a point 34° 55.5240' N - 76° 39.8072' W; running southeasterly to the south shore to a point 34° 55.4356' N - 76° 39.8201' W;

(iv) Kearney Creek and unnamed tributary - west of a line beginning on the north shore of the north creek at a point 34° 55.1847' N - 76° 39.9686' W; running southerly to the south shore to a point 34° 54.9661' N - 76° 40.0091' W;

(v) Isaac Creek - south of a line beginning on the west shore at a point 34° 54.2457' N - 76° 40.1010' W; running easterly to the east shore to a point 34° 54.2630' N - 76° 40.0088' W;

(vi) Back Creek - southeast of a line beginning on the northeast shore at a point 34° 54.6598' N - 76° 39.5257' W; running southwesterly to the southwest shore to a point 34° 54.5366' N - 76° 39.7075' W;

(vii) Cedar Creek - southeast of a line beginning on the west shore at a point 34° 55.7759' N - 76° 38.6070' W; running easterly to the east shore to a point 34° 55.7751' N - 76° 38.4965' W;

(viii) Jonaquin Creek - northeast of a line beginning on the west shore at a point 34° 56.1192' N - 76° 38.4997' W; running easterly to the east shore to a point 34° 56.1172' N - 76° 38.4584' W;

(ix) Dumpling Creek - east of a line beginning on the northwest shore at a point 34° 56.9187' N - 76° 39.5559' W; running southeasterly to the southeast shore to a point 34° 56.8421' N - 76° 39.5155' W;

(x) Sandy Huss Creek - northeast of a line beginning on the west shore at a point 34° 57.2348' N - 76° 39.8457' W; running southeasterly to the east shore to a point 34° 57.1638' N - 76° 39.7169' W;

(c) Garbacon Creek - south of a line beginning on the west shore at a point 34° 59.0044' N - 76° 38.5758' W; running easterly to the east shore to a point 34° 59.0006' N - 76° 38.4845' W;

(d) South River:

(i) Big Creek - southwest of a line beginning on the northwest shore at a point 34° 56.9502' N - 76° 35.3498' W; running southeasterly to the southeast shore to a point 34° 56.8346' N - 76° 35.2091' W;

(ii) Horton Bay - north of a line beginning on the west shore at a point 34° 59.1936' N - 76° 34.7657' W; running easterly to the east shore to a point 34° 59.2023' N - 76° 34.4586' W;

(e) Brown Creek - south of a line beginning on the west shore at a point 34° 59.8887' N - 76° 33.5707' W; running easterly to the east shore to a point 34° 59.9440' N - 76° 33.4180' W;

(f) Turnagain Bay:

(i) Abraham Bay - west of a line beginning on the north shore at a point 35° 00.1780' N - 76° 30.7564' W; running southerly to the south shore to a point 34° 59.8338' N - 76° 30.7128' W;

(ii) Broad Creek and Persons Creek - southwest of a line beginning at a point on the north shore 34° 59.1974' N - 76° 30.4118' W; running southeasterly to the south shore to a point 34° 58.9738' N - 76° 30.1168' W;

(iii) Mulberry Point Creek - east of a line beginning on the north shore at a point 35° 00.4736' N - 76° 29.7538' W; running southerly to the south shore to a point 35° 00.3942' N - 76° 29.7082' W;

(iv) Tump ~~Creek~~ Creek -east of a line beginning on the north shore at a point ~~35° 00.2035' N 76° 29.5947' W;~~ 35° 00.2035' N - 76° 29.5947' W; running southerly to the south shore to a point ~~35° 00.0500' N 76° 29.4897' W;~~ 35° 00.0500' N - 76° 29.4897' W;

(v) Tributary south of Tump ~~Creek~~ Creek -east of a line beginning on the north shore at a point ~~34° 59.7784' N 76° 29.3548' W;~~ 34° 59.7784' N - 76° 29.3548' W; running southerly to the south shore to a point ~~34° 59.6830' N 76° 29.3303' W;~~ 34° 59.6830' N - 76° 29.3303' W;

(vi) Deep Gut - northeast of a line beginning on the north shore at a point 34° 59.6134' N - 76° 29.0376' W; running southeasterly to the south shore to a point 34° 59.4799' N - 76° 28.9362' W;

(vii) Big Gut - east of a line beginning on the north shore at a point 34° 59.0816' N - 76° 28.7076' W; running southerly to the south shore to a point 34° 58.9300' N - 76° 28.7383' W.

(9) West ~~Bay;~~ Bay -Long Bay Area:

(a) Fur Creek and Henrys Creek - southwest of a line beginning on the northwest shore at a point 34° 56.5580' N - 76° 27.7065' W; running southeasterly to the southeast shore to a point 34° 56.3830' N - 76° 27.4563' W;

(b) Caddugen Creek - south of a line beginning on the west shore at a point 34° 56.5767' N - 76° 23.8711' W; running easterly to the east shore to a point 34° 56.2890' N - 76° 23.6626' W.

(10) Core Sound Area:

(a) Cedar Island Bay - northwest of a line beginning on the northeast shore at a point 34° 59.7770' N - 76° 17.3837' W; running southwesterly to the southwest shore to a point 34° 59.0100' N - 76° 17.9339' W;

(b) Lewis Creek - north of a line beginning on the west shore at a point 34° 56.8736' N - 76° 16.8740' W; running easterly to the east shore to a point 34° 56.9455' N - 76° 16.8234' W;

(c) Thorofare Bay:

(i) Merkle Hammock Creek - southwest of a line beginning on the northwest shore at a point 34° 55.4796' N - 76° 21.4463' W; running southeasterly to the southeast shore to a point 34° 55.3915' N - 76° 21.1682' W;

(ii) Barry Bay - west of a line beginning on the north shore at a point 34° 54.6450' N - 76° 20.6127' W; running southerly to the south shore to a point 34° 54.4386' N - 76° 20.4912' W;

(d) Nelson Bay:

(i) Willis Creek and Fulchers Creek - west of a line beginning on the north shore of Willis Creek at a point 34° 51.1006' N - 76° 24.5996' W; running southerly to the south shore of Fulchers Creek to a ~~point34° 50.2861' N - 76° 24.8708' W; -~~point 34° 50.2861' N - 76° 24.8708' W;

(ii) Lewis Creek - west of a line beginning on the north shore at a point 34° 51.9362' N - 76° 24.6322' W; running southerly to the south shore to a point 34° 51.7323' N - 76° 24.6487' W;

(e) Cedar Creek between Sea Level and Atlantic - west of a line beginning on the north shore at a point 34° 52.0126' N - 76° 22.7046' W; running southerly to the south shore to a point 34° 51.9902' N - 76° 22.7190' W;

(f) Oyster Creek, northwest of the Highway 70 ~~bridge;~~ Bridge;

(g) Jarretts Bay Area:

(i) Smyrna Creek - northwest of the Highway 70 ~~bridge;~~ Bridge;

(ii) Ditch Cove and adjacent tributary - east of a line beginning on the north shore at a point 34° 48.0167' N - 76° 28.4674' W; running southerly to the south shore

to a point 34° 47.6143' N - 76° 28.6473' W;

(iii) Broad Creek - northwest of a line beginning on the west shore at a point 34° 47.7820' N - 76° 29.2724' W; running northeasterly to the east shore to a point ~~34° 47.9766' N – 76° 28.9729' W;~~ 34° 47.9766' N - 76° 28.9729' W;

(iv) Howland Creek - northwest of a line beginning on the northeast shore at a point 34° 47.5129' N - 76° 29.6217' W; running southwesterly to the southwest shore to a point 34° 47.3372' N - 76° 29.8607' W;

(v) Great Creek - southeast of a line beginning on the northeast shore at a point 34° 47.4279' N - 76° 28.9565' W; running southwesterly to the southwest shore to a point 34° 47.1515' N - 76° 29.2077' W;

(vi) Williston Creek - northwest of the Highway 70 ~~bridge;~~ Bridge;

(vii) Wade Creek - west of a line beginning on the north shore at a point 34° 46.3022' N - 76° 30.5443' W; running southerly to the south shore to a point 34° 46.2250' N - 76° 30.3864' W;

(viii) Jump Run - north of a line beginning on the west shore at a point 34° 45.5385' N - 76° 30.3974' W; running easterly to the east shore to a point 34° 45.5468' N - 76° 30.3485' W;

(ix) Middens Creek - west of a line beginning on the north shore at a point 34° 45.5046' N - 76° 30.9710' W; running southerly to the south shore to a point 34° 45.4093' N - 76° 30.9584' W;

(x) Tusk Creek - northwest of a line beginning on the northwest shore at a point 34° 44.8049' N - 76° 30.6248' W; running southerly to the south shore to a point 34° 44.6074' N - 76° 30.7553' W;

(xi) Creek west of Bells Island - west of a line beginning on the north shore at a point 34° 43.9531' N - 76° 30.4144' W; running southerly to the south shore to a point 34° 43.7825' N - 76° 30.3543' W.

(11) Straits, North River, Newport River Area:

(a) Straits:

(i) Sleepy Creek - north of a line beginning on the west shore at a point 34° 43.3925' N - 76° 31.4912' W; running easterly to the east shore to a point 34° 43.3651' N - 76° 31.3250' W;

(ii) Dicks Creek - north of a line beginning on the west shore at a point 34o 43.3858' N - 76o 32.9125' W; running southeasterly to the east shore to a point 34o 43.3912' N - 76o 32.8605' W;

(iii) Whitehurst Creek - north of a line beginning on the west shore at a point 34° 43.5118' N - 76° 33.3392' W; running northeasterly to the east shore to a point 34° 43.5561' N - 76° 33.1869' W;

(b) North River, north of Highway 70 ~~bridge:~~ Bridge:

(i) Ward Creek - north of Highway 70 ~~bridge:~~ Bridge:

(A) North Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.9573' N - 76° 34.4208' W; running northeasterly to the northeast shore to a point 34° 46.0511' N - 76° 34.3170' W;

(B) South Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.4930' N - 76° 34.7622' W; running northeasterly to the

northeast shore to a point 34° 45.5720' N - 76° 34.6236' W;

(ii) Turner Creek (Gibbs Creek) - west of a line beginning on the north shore at a point 34° 43.4693' N - 76° 37.6372' W; running southerly to the south shore to a point 34° 43.4054' N - 76° 37.6585' W;

(c) Newport River - west of a line beginning on the north shore at a point 34° 46.5635' N - 76° 44.3998' W; running southerly to Lawton Point to a point 34° 45.6840' N - 76° 44.0895' W;

(i) Russel Creek - northeast of a line beginning on the north shore at a point 34° 45.5840' N - 76° 39.8020' W; running southeasterly to the south shore to a point 34° 45.5819' N - 76° 39.7895' W;

(ii) Ware Creek - northeast of a line beginning on the north shore at a point 34° 46.4576' N - 76° 40.5020' W; running southeasterly to the south shore to a point 34° 46.4125' N - 76° 40.4460' W;

(iii) Bell Creek - east of a line beginning on the north shore at a point 34° 47.2805' N - 76° 40.9082' W; running southerly to the south shore to a point 34° 47.0581' N - 76° 40.8854' W;

(iv) Eastman Creek - east of a line beginning on the north shore at a point 34° 47.8640' N - 76° 41.0671' W; running southerly to the south shore to a point 34° 47.8027' N - 76° 41.0605' W;

(v) Oyster Creek - north of a line beginning on the west shore at a point 34° 46.6610' N - 76° 42.5011' W; running easterly to the east shore to a point 34° 46.7161' N - 76° 42.3481' W;

(vi) Harlow Creek - north of a line beginning on the west shore at a point 34° 46.7138' N - 76° 43.4838' W; running northeasterly to the east shore to a point 34° 46.8490' N - 76° 43.3296' W;

(vii) Calico Creek - west of a line beginning on the north shore at a point 34° 43.7318' N - 76° 43.1268' W; running southerly to the south shore to a point 34° 43.6066' N - 76° 43.2040' W;

(viii) Crab Point Bay - northwest of a line beginning on the northeast shore at a point 34° 44.0615' N - 76° 42.9393' W; running southwesterly to the southwest shore to a point ~~34° 43.9328' N - 76° 43.0721' W.~~ 34° 43.9328' N - 76° 43.0721' W.

(12) Bogue ~~Sound;~~ Sound -Bogue Inlet Area:

(a) Gales Creek - north of the Highway 24 ~~bridge;~~ Bridge;

(b) Broad Creek - north of the Highway 24 ~~bridge;~~ Bridge;

(c) Sanders ~~Creek -~~ Creek -north of a line beginning at a point 34° 42.4694' N - 76° 58.3754' W on the west shore; running easterly to a point ~~34° 42.4903' N - 76° 58.143' W -~~ 34° 42.4903' N - 76° 58.1434' W on the east shore;

(d) Goose Creek - north of a line beginning on the west shore at a point 34° 41.8183' N - 77° 00.7208' W; running easterly to the east shore to a point 34° 41.8600' N - 77° 00.5108' W;

(e) Archer Creek - west of a line beginning on the north shore at a point 34° 40.4721' N - 77° 00.7577' W; running southerly to the south shore to a point 34° 40.3521' N - 77° 00.8008' W;

(f) White Oak River - northwest of a line beginning on the northeast shore at a point 34° 45.6730' N - 77° 07.5960' W; running southwesterly to the southwest shore to a point 34° 45.2890' N - 77° 07.7500' W;

(i) Pettiford Creek - east of a line beginning on the north shore at a point 34° 42.8670' N - 77° 05.3990' W; running southerly to the south shore to a point 34° 42.6310' N - 77° 05.3180' W;

(ii) Holland Mill Creek - west of a line beginning on the north

shore at a point 34° 43.8390' N - 77° 08.0090' W; running southeasterly to the south shore to a point 34° 43.4800' N - 77° 07.7650' W;

(g) Hawkins Creek - west of a line beginning on the north shore at a point 34° 41.1210' N - 77° 07.5720' W; running southerly to the south shore to a point 34° 41.0460' N - 77° 07.5930' W;

(h) Queen's Creek - north of state road number 1509 bridge:

(i) Dick's Creek - west of a line beginning on the north shore at a point 34° 39.9790' N - 77° 09.3470' W; running southeasterly to the south shore to a point 34° 39.9350' N - 77° 09.3280' W;

(ii) Parrot Swamp - west of a line beginning on the north shore at a point 34° 40.6170' N - 77° 09.7820' W; running southeasterly to the south shore to a point 34° 40.3660' N - 77° 09.5980' W;

(iii) Hall's Creek - east of a line beginning on the north shore at a point 34° 41.0740' N - 77° 09.8640' W; running easterly to the south shore to a point 34° 41.0300' N - 77° 09.6740' W;

(i) Bear Creek - west of a line beginning at Willis Landing at a point 34° 38.7090' N - 77° 12.6860' W; running southeasterly to the south shore to a point 34° 38.4740' N - 77° 12.3810' W.

(13) New River Area:

(a) Salliers Bay area - all waters north and northwest of the IWW beginning at a point on the shoreline ~~34° 37.0788' N - 77° 12.5350' W;~~ 34° 37.0788' N - 77° 12.5350' W; running easterly to a point near Beacon "58" at a point 34° 37.9670' N - 77° 12.3060' W; running along the IWW near Cedar Point to a point ~~34° 33.1860' N - 77° 20.4370' W;~~ 34° 33.1860' N - 77° 20.4370' W; running northerly to a point on the shoreline ~~34° 33.1063' N - 77°20.4679'W;~~ 34° 33.1063' N - 77° 20.4679' W; following the shoreline to the point of origin; including Howard Bay, Mile Hammock Bay, Salliers Bay, and Freeman Creek;

(b) New River Inlet area (including Hellgate Creek and Ward's Channel) - all waters south of the IWW from a point on the shoreline ~~34° 33.0486'N - 77° 18.6295' W~~ 34° 33.0486' N - 77° 18.6295' W; running northwesterly to a point near Beacon "65" 34° 33.0550' N - 77° 18.6380' W; running along the IWW to a point near Beacon "15" 34° 31.0630' N - 77° 22.2630' W; running southerly to a point on the shoreline ~~34° 30.9212' N - 77° 22.2257'W;~~ 34° 30.9212' N - 77° 22.2257' W; following the shoreline across New River Inlet at the COLREGS demarcation line back to the point of origin excluding the marked New River Inlet Channel;

(c) New River:

(i) Trap's Bay - northeast of a line beginning on the west shore at a point 34° 34.0910' N - 77° 21.0010' W; running southeasterly to the east shore to a point 34° 33.8260' N - 77° 20.4060' W;

(ii) Courthouse Bay:

(A) Tributary of Courthouse Bay - southeast of a line beginning on Harvey's Point at a point 34° 35.0050' N - 77° 22.3910' W; running northeasterly to the east shore to a point 34° 35.0830' N - 77° 22.1890' W;

(B) Tributary of Courthouse Bay - northwest of a line beginning on the west shore at a point 34° 35.0970' N - 77° 22.6010' W; running northeasterly to the east shore to a point 34° 35.1630' N - 77° 22.5030' W;

(C) Rufus Creek - east of a line beginning at a point on the north shore 34° 34.4630' N - 77° 21.6410' W;

running southerly to a point near Wilken's Bluff 34° 34.3140' N - 77° 21.6620' W;

(iii) Wheeler Creek - south of a line beginning on the west shore at a point 34° 34.0570' N - 77° 23.3640' W; running easterly to a point near Poverty Point 34° 34.1060' N - 77° 23.2440' W;

(iv) Fannie Creek - south of a line beginning on the west shore at a point 34° 34.1470' N - 77° 23.6390' W; running easterly to the east shore to a point 34° 34.1300' N - 77° 23.5600' W;

(v) Snead's Creek - northwest of a line beginning on the west shore at a point 34° 35.2850' N - 77° 23.5500' W; running northerly to the east shore to a point 34° 35.3440' N - 77° 23.4860' W;

(vi) Everette Creek - south of a line beginning on the west shore at a point 34° 34.2570' N - 77° 24.8480' W; running easterly to the east shore to a point 34° 34.2380' N - 77° 24.6970' W;

(vii) Stone's Creek - southwest of a line beginning on the northwest shore at a point 34° 36.6170' N - 77° 26.8670' W; running southeasterly to the southeast shore to a point 34° 36.5670' N - 77° 26.8500' W;

(viii) Muddy Creek - north of a line beginning on the west shore 34° 36.8670' N - 77° 26.6340' W; running easterly to the east shore to a point 34° 36.8670' N - 77° 26.6170' W;

(ix) Mill Creek - north of a line beginning on the west shore at a point 34° 37.2350' N - 77° 25.7000' W; running easterly to the east shore to a point 34° 37.2360' N - 77° 25.6890' W;

(x) Whitehurst Creek - west of a line beginning on the north shore at a point 34° 38.0780' N - 77° 22.6110' W; running easterly to the south shore to a point 34° 38.0720' N - 77° 22.6000' W;

(xi) Town Creek - west of a line beginning on the north shore at a point 34° 39.6060' N - 77° 23.0690' W; running southerly to the south shore to a point 34° 39.5950' N - 77° 23.0830' W;

(xii) Lewis Creek - southwest of a line beginning on the northwest shore at a point 34° 40.9330' N - 77° 24.5290' W; running southeasterly to the southeast shore to a point 34° 40.9190' N - 77° 24.5040' W;

(xiii) Northeast Creek - east of a line beginning at the mouth of Scale's Creek at a point 34° 43.7350' N - 77° 24.1190' W; running southeasterly to the south shore to a point 34° 43.3950' N - 77° 23.5450' W;

(xiv) Southwest Creek - southwest of a line beginning on the north shore at a point 34° 41.8500' N - 77° 25.6460' W; running southeasterly to the south shore to a point 34° 41.5540' N - 77° 25.2250' W;

(xv) Upper New River - north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W;

(d) Chadwick Bay - all waters bounded by a line beginning on Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; running easterly to a point near Marker "6" at ~~34° 32.4180' N - 77° 21.6080' W;~~ 34° 32.4180' N - 77° 21.6080' W; then following the IWW to a point near Marker "14" at ~~34° 31.3220' N - 77° 22.1520' W;~~ 34° 31.3220' N - 77° 22.1520' W; following the shoreline of Chadwick Bay back to the point of ~~origin:~~ origin;

(i) Fullard Creek (including Charles Creek) - northwest of a line beginning on the north shore at a point 34° 32.2210' N - 77° 22.8080' W; running southeasterly to the south shore to a point 34° 32.0340' N - 77° 22.7160' W;

(ii) Bump's Creek - north of a line beginning on the west shore at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W.

(14) Stump Sound ~~Area:~~ Area -Stump Sound - all waters north of the IWW from a point on the shoreline ~~34° 31.1228' N – 77° 22.3181' W;~~ 34° 31.1228' N - 77° 22.3181' W; running southerly to a point across the IWW from Beacon"15" ~~34° 31.1040' N – 77° 22.2960' W;~~ 34° 31.1040' N - 77° 22.2960' W; running along the IWW to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W; running northerly to a point on the shoreline 34° 24.5183' N - 77° 34.9833' W; running along the shoreline to the point of origin; except 100 feet north of the IWW from a point across from Beacon "49" ~~34° 28.1330' N – 77° 30.5170' W~~ 34° 28.1330' N - 77° 30.5170' W to a point near Marker "78" ~~34° 25.4050'N – 77° 34.2120'W.~~ 34° 25.4050' N - 77° 34.2120' W. All waters south of IWW from a point on the shoreline ~~34° 31.0550' N – 77° 22. 2574' W;~~ 34° 31.0550' N - 77° 22.2574' W; running northerly to a point near Beacon "15" at 34° 31.0630' N - 77° 22.2630' W; running along the IWW to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W; running southeasterly to a point on the shoreline ~~34° 23.9817' N – 77° 35.0367' W;~~ 34° 23.9817' N - 77° 35.0367' W; running along the shoreline to the point of origin; except 100 feet on the south side of the IWW from a point near Beacon "49" ~~34° 28.082' N – 77° 30.4600'W~~ 34° 28.0820' N - 77° 30.4600' W at Morris Landing to a point across the IWW from Marker "78" ~~34° 25.3110' N – 77° 34.1710'W~~ 34° 25.3110' N - 77° 34.1710' W and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker "57" to the Old Settler's Beach Canals.

(15) Topsail Sound Area:

(a) Virginia Creek - all waters northwest of a line beginning on the southwest shore near the mouth at a point 34° 24.8030' N - 77° 35.5960' W; running northeasterly to a point 34° 25.0333' N - 77° 35.3167' W; running easterly to intersect the nursery area line near Becky's Creek at a point 34° 25.4050' N - 77° 34.2120' W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;

(b) Old Topsail Creek - all waters northwest of a line beginning on the northeast shore at a point 34° 21.7740' N - 77° 40.3870' W; running southwesterly to the southwest shore to a point ~~34° 21.4930' N – 77° 40.6900' " W,~~ 34° 21.4930' N - 77° 40.6900' W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;

(c) Topsail Sound - all waters enclosed within a line starting near Beacon "BC" at a point 34° 24.6110' N - 77° 35.7050' W; then bounded on the northeast and southeast by Bank's Channel, on the southwest by Marker "98" channel and on the northeast by the IWW; then back to the point of origin;

(d) Mallard Bay Area - all waters northwest of the IWW beginning at a point on the shoreline ~~34° 24.0278' N – 77° 36.8498' W;~~ 34° 24.0278' N - 77° 36.8498' W; running southerly to a point ~~34° 24.0167' N – 77° 36.7333' W~~ 34° 24.0167' N - 77° 36.7333' W near Beacon "93"; running southwesterly to a point 34° 23.8167' N - 77° 36.9667' W; running southwesterly along the marsh line to a point on the shoreline ~~34° 22.6168' N – 77° 38.8580' W~~ 34° 22.6168' N - 77° 38.8580' W near Beacon "96"; running along the shoreline to the point of origin.

(16) Middle Sound Area:

(a) Howard Channel and Long Point Channel area - all waters southeast of the IWW beginning at a point on the shoreline ~~34° 20.4514' N – 77° 40.0183' W;~~ 34° 20.4514' N - 77° 40.0183' W; running along the shorelines of Topsail Inlet Channel and Marker # 98 Channel to a point near Beacon "98" 34° 21.5670' N - 77° 40.4580' W; ~~to~~ running along the IWW to a point on the north side of the Figure 8 Island Marina Channel to a point 34° 16.5120' N - 77° 45.4870' W; following the shoreline of Figure

8 Island Marina Channel to a point ~~34° 16.2628'N - 77° 44.7855' W;~~ 34° 16.2628' N - 77° 44.7855' W; following the shoreline across Rich Inlet at the COLREGS ~~demarkation~~ demarcation line to the point of origin. [with the exception of Howard Channel from the IWW to New Topsail Inlet, Green Channel from Marker "105" to Rich's Inlet, Butler's Creek (Utley's Channel) from the IWW to Nixon's Channel, and Nixon's Channel from IWW to Rich's Inlet;]

(b) Futch Creek - northwest of a line beginning on the north shore at Baldeagle Point at a point 34° 17.9900' N - 77° 44.4930' W; running southerly to Porter's Neck to a point 34° 18.1170' N - 77° 44.3760' W;

(c) Page's Creek - northwest of a line beginning on the north shore at a point 34° 16.7420' N - 77° 46.6940' W; running southwesterly to the south shore to a point 34° 16.6910' N - 77° 46.8510' W;

(d) All waters bounded on the north by the Figure Eight Island Causeway, on the east by Mason's Channel, on the south by Mason's Inlet Channel and on the west by the Intracoastal Waterway, with the exception of Mason's Channel.

(17) Greenville Sound Area:

(a) Shell Island area - all waters bounded on the north by Mason's Inlet Channel, on the west by the IWW, on the south by Old Moores Inlet Channel and on the east by Wrightsville Beach;

(b) Howe Creek (Moore's Creek) - northwest of a line beginning on the north shore at a point 34° 14.9060' N - 77° 47.2180' W; running southwesterly to the south shore to a point 34° 14.8470' N - 77° 47.3810' W;

(c) Bradley Creek - all waters west of a line beginning on the north side of the Highway 17, 74 and 76 ~~bridge~~ Bridge at a point ~~34° 12.9700' N - 77° 50.0260' W~~ 34° 12.9700' N - 77° 50.0260' W; running southerly to the south side of the ~~Bridge~~ bridge at a point ~~34° 12.8620' N - 77° 50.0550' W;~~ 34° 12.8620' N - 77° 50.0550' W;

(d) Wrightsville Beach area - all waters in an area enclosed by a line beginning across the IWW from the mouth of Bradley Creek at a point 34° 12.3530' N - 77° 49.1250' W; running easterly to a point (near the Borrow Pit) 34° 12.3820' N - 77° 48.6610' W; then bounded by Bank's Channel on the east, Shinn Creek on the south and the IWW on the west, back to point of origin.

(18) Masonboro Sound Area:

(a) ~~Masonboro-Myrtle -~~ Masonboro - Myrtle Grove Sound area (west side) ~~-all -~~ all waters west and northwest of the IWW beginning at a point on the shoreline ~~34° 12.7423' N - 77° 49.8391' W;~~ 34° 12.7423' N - 77° 49.8391' W; running southeasterly to a point at the mouth of Bradley Creek at a point 34° 12.4130' N - 77° 49.2110' W; running along the west side of the IWW to a point opposite Beacon "161" at 34° 03.5590' N - 77° 53.4550' W; running westerly to a point on the shoreline ~~34° 03.5715' N - 77° 53.4979' W;~~ 34° 03.5715' N - 77° 53.4979' W; running along the shoreline back to the point of origin;

(b) ~~Masonboro-Myrtle -~~ Masonboro - Myrtle Grove Sound area (east side) - all waters south and southeast of a line beginning on the north end of Masonboro Island at a point 34° 10.9130' N - 77° 48.9550' W; running northwesterly to a point near the intersection of Shinn Creek and the IWW 34° 11.3840' N - 77° 49.5240' W; running along the east side of the IWW to a point near Marker "161" 34° 03.5270' N - 77° 53.3550' W; running southerly to a point on the shoreline ~~34° 03.3917' N - 77° 53.0423' W;~~ 34° 03.3917' N - 77° 53.0423' W; running along the shoreline across Carolina Beach Inlet at the COLREGS demarcation line back to the point of origin (with the exception of Old Masonboro Channel and Carolina Beach Inlet Channel).

(19) Cape Fear River Area:

(a) Cape Fear River - all waters north of a line beginning on the west shore at a point 34° 10.4410' N - 77° 57.7400' W; running easterly through Beacon "59" to the east shore to a point 34° 10.4050' N - 77° 57.1310' W; with the exception of the maintained channel, and all waters north of a line beginning on the west shore at a point 34° 04.6040' N - 77° 56.4780' W; running easterly through Beacon "41"

to the east shore to a point 34° 04.7920' N - 77° 55.4740' W; with the exception of 300 yards east and west of the main shipping channel up to Beacon "59" (mouth of Brunswick River);

(b) The Basin (Ft. Fisher area) - east of a line beginning on the north shore at a point 33° 57.2950' N - 77° 56.1450' W; running southeasterly to the south shore to a point 33° 57.1120' N - 77° 56.2060' W;

(c) Walden Creek - all waters northwest of a line beginning on the north side of county road No. 1528 bridge at a point ~~33° 58.2950' N - 77° 59.0280' W~~ 33° 58.2950' N - 77° 59.0280' W; running southerly to the south side of the bridge at a point ~~33° 58.2250' N - 77° 59.0440' W;~~ 33° 58.2250' N - 77° 59.0440' W;

(d) Baldhead Island Creeks:

(i) Baldhead Creek - southeast of a line beginning on the north shore at a point 33° 51.7680' N - 77° 59.1700' W; running westerly to the south shore to a point 33° 51.7590' N - 77° 59.1850' W;

(ii) Cape Creek - southeast of a line beginning on the north shore at a point 33° 51.9740' N - 77° 58.3090' W; running southwesterly to the south shore to a point 33° 51.9480' N - 77° 58.3480' W;

(iii) Bluff Island Creek (East Beach Creek) - south of a line beginning on the west shore at a point 33° 52.6740' N - 77° 58.1530' W; running easterly to the east shore to a point 33° 52.6850' N - 77° 58.0780' W;

(iv) Deep Creek - south of a line on the west shore at a point 33° 52.6850' N - 77° 58.0780' W; running northeasterly to the east shore to a point 33° 52.7690' N - 77° 58.0110' W;

(e) Dutchman Creek - north of a line beginning on the west shore at a point 33° 55.1560' N - 78° 02.7260' W; running southeasterly to the east shore to a point 33° 55.1130' N - 78° 02.5990' W;

(f) Denis Creek - west of a line beginning on the north shore at a point 33° 55.0410' N - 78° 03.5180' W; running southerly to the south shore to a point 33° 55.0120' N - 78° 03.5110' W;

(g) Piney Point Creek - west of a line beginning on the north shore at a point 33° 54.6310' N - 78° 03.5020' W; running southerly to the south shore to a point 33° 54.6040' N - 78° 03.5010' W;

(h) Molasses, Coward and Smokehouse creeks - all waters bounded by the IWW and the Elizabeth River on the north and east, the Oak Island Coast Guard canal on the east, Oak Island on the south and the CP and L Discharge canal on the west;

(i) Oak Island area - all waters north of the IWW from a point on the shoreline ~~33° 55.2827' N - 78° 03.7681' W;~~ 33° 55.2827' N - 78° 03.7681' W; running southerly to a point across the IWW from Marker # 9 ~~33° 55.2610' N - 78° 03.7630' W;~~ 33° 55.2610' N - 78° 03.7630' W; running along the IWW to a point near Beacon "18" 33° 55.7410' N - 78° 10.2760' W; running northerly to a point on the shoreline ~~33° 55.7718'N - 78° 10.2744' W;~~ 33° 55.7718' N - 78° 10.2744' W; running along the shoreline back to the point of origin; all waters south of the IWW from a point near Marker "9" 33° 55.2060' N - 78° 03.7580' W; running along the IWW to a point across the IWW from Beacon "18" ~~33° 55.7199' N - 78° 10.2764' W;~~ 33° 55.7199' N - 78° 10.2764' W; running southerly to a point on the shoreline ~~33° 55.6898' N - 78° 10.2775'W;~~ 33° 55.6898' N - 78° 10.2775' W; running along the shoreline back to the point of origin.

(20) Lockwoods Folly Inlet Area:

(a) Davis Creek and Davis Canal - east of a line beginning on the north shore at a point 33° 55.2280' N - 78° 10.8610' W; running southerly to the south shore to a point 33° 55.1970' N - 78° 10.8390' W;

(b) Lockwoods Folly River - north of a line beginning on the west shore at a point 33° 56.3880' N - 78° 13.2360' W; running easterly to the east shore to a point 33° 56.6560' N - 78° 12.8350' W;

(c) Spring Creek (Galloway Flats area) - all waters northwest of a line beginning on the north shore at a point 33° 55.7350' N - 78° 13.7090' W; running southwesterly to the south shore to a point 33° 55.5590' N - 78° 13.7960' W.

(21) Shallotte Inlet Area:

(a) Shallotte River - north of a line beginning on Bill Holden's Landing at a point 33° 55.8840' N - 78° 22.0710' W; running northeasterly to Gibbins Point to a point 33° 56.3190' N - 78° 21.8740' W;

(b) Shallotte River ~~(Ocean Flats)~~ (Ocean Flats) -excluding Gibbs Creek, the area enclosed by a line beginning at Long Point 33° 54.6210' N - 78° 21.7960' W; then bounded on the south by the IWW, the west by Shallotte River, the north by Gibb's Creek and the east by the shoreline of the Shallotte River back to the point of origin;

(c) Shallotte Creek (Little Shallotte River) - east of a line beginning on Shell Landing at a point 33° 55.7390' N - 78° 21.6410' W; running southerly to Boone's Neck Point to a point 33° 55.5990' N - 78° 21.5480' W;

(d) Saucepan Creek - northwest of a line beginning on the west shore at a point 33° 54.7007' N - 78° 23.4183' W; running northerly to the east shore (mouth of Old Mill Creek) to a point 33° 54.9140' N - 78° 23.4370' W;

(e) Old Channel area - all waters south of the IWW from a point near Beacon "83" 33° 54.2890' N - 78° 23.1930' W; running along the IWW to a point near Ocean Isle Beach ~~bridge~~ Bridge 33° 53.7270' N - 78° 26.3760' W; running southerly to a point on the shoreline ~~33° 53.7082' N - 78° 26.3732' W;~~ 33° 53.7082' N - 78° 26.3732' W; running southerly along the shoreline to a point on the shoreline ~~33° 53.3827'N - 78° 26.2118' W;~~ 33° 53.3827' N - 78° 26.2118' W; running along the shoreline to the point of origin; except the dredged finger canals at Ocean Isle Beach located on the south side of the IWW between the Ocean Isle Beach Bridge and IWW Marker "89".

(22) Little River Inlet Area:

(a) Gause Landing area - all waters north of the IWW from a point on the shoreline ~~33° 53.9053' N - 78° 25.6064' W;~~ 33° 53.9053' N - 78° 25.6064' W; running southerly to a point near Beacon "90" 33° 53.8790' N - 78° 25.5950' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line; ~~33° 52.0003'N - 78° 33.5633'W;~~ 33° 52.0003' N - 78° 33.5633' W; running northerly along the South Carolina line to a point on the shoreline ~~33° 52.0290' N - 78° 33.5893' W;~~ 33° 52.0290' N - 78° 33.5893' W; running along the shoreline to the point of origin;

(b) Eastern Channel ~~Area -~~ Area -all waters bounded on the east and south by Eastern Channel, on the west by Jink's Creek and on the north by the IWW;

(c) The Big Narrows Area:

(i) Big Teague Creek - west of a line beginning on the north shore at a point 33° 52.8260' N - 78° 30.0110' W; running southerly to the south shore to a point 33° 52.8040' N - 78° 29.9940' W;

(ii) Little Teague Creek - west of a line beginning on the north shore at a point 33° 52.9280' N - 78° 30.1500' W; running southeasterly to the south shore to a point 33° 52.9130' N - 78° 30.1220' W;

(iii) Big Norge Creek - south of a line beginning on the west shore at a point 33° 52.8550' N - 78° 30.6190' W; running easterly to the east shore to a point 33° 52.8620' N - 78° 30.5900' W;

(d) Mad Inlet area - all waters south of the IWW from a point on the shoreline ~~33° 52.3121' N - 78° 30.4990' W;~~ 33° 52.3121' N - 78° 30.4990' W; running northerly to a point near the Sunset Beach ~~bridge~~ Bridge 33° 52.8450' N - 78° 30.6510' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line ~~33° 51.9888'N - 78° 33.5458' W;~~ 33° 51.9888' N - 78° 33.5458' W; running southeasterly along the South Carolina line to a point on the

shoreline; running along the shoreline across Mad Inlet at the COLREGS demarcation line to the point of origin; with the exception of Bonaparte Creek;

(e) Calabash River - all waters east of a line beginning at a point on the north side of state road No. 1164 bridge at a point ~~33° 53.3850' N - 78° 32.9710' W~~ 33° 53.3850' N - 78° 32.9710' W; running southerly to the south side of the bridge at a point ~~33° 53.3580' N - 78° 32.9750' W.~~ 33° 53.3580' N - 78° 32.9750' W.

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

15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS

The permanent secondary nursery areas referenced in 15A NCAC 03N .0105(a) are delineated in the following coastal water areas:

(1) Roanoke Sound

(a) Inner Shallowbag ~~Bay -~~Bay -west of a line beginning on the northeast shore at a point ~~35° 54.6729' N - 75° 39.8099' W;~~ 35° 54.6729' N - 75° 39.8099' W; running southerly to the southeast shore to a point ~~35° 54.1722' N - 75° 39.6806' W;~~ 35° 54.1722' N - 75° 39.6806' W;

(2) In the Pamlico Long Sound Area:

(a) Long Shoal River - north of a line beginning at the 5th Avenue Canal at a point ~~35° 35.2120' N - 75° 53.2232' W,~~ 35° 35.2120' N - 75° 53.2232' W; running easterly to the east shore on Pains Point to a point 35° 35.0666' N - 75° 51.2000' W;

(b) Pains Bay - east of a line beginning on Pains Point at a point ~~35° 35.0666' N - 75° 51.2000' W,~~ 35° 35.0666' N - 75° 51.2000' W; running southerly to Rawls Island to a point ~~35° 34.4666' N - 75° 50.9666' W;~~ 35° 34.4666' N - 75° 50.9666' W; running easterly to the east shore to a point 35° 34.2309' N - 75° 50.2695' W;

(c) Wysocking ~~Bay -~~Bay -northwest of a line beginning at Benson Point at a point ~~35° 22.9684' N - 76° 03.7129' W,~~ 35° 22.9684' N - 76° 03.7129' W; running northeasterly to Long Point to a point 35° 24.6895' N - 76° 01.3155' W;

(d) Juniper Bay-Cunning Harbor - north of a line beginning on the west shore of Juniper Bay at a point ~~35° 20.6217' N - 76° 15.5447' W,~~ 35° 20.6217' N - 76° 15.5447' W; running easterly to a point 35° 20.4372' N - 76° 13.2697' W; running easterly to the east shore of Cunning Harbor to a point 35° 20.3413' N - 76° 12.3378' W;

(e) Swanquarter Bay - north of a line beginning at The Narrows at a point ~~35° 20.9500' N - 76° 20.6409' W,~~ 35° 20.9500' N - 76° 20.6409' W; running easterly to the east shore to a point 35° 21.5959' N - 76° 18.3580' W;

(f) Deep Cove - The Narrows - north and east of a line beginning on the west shore at a point 35° 20.9790' N - 76° 23.8577' W; running southeasterly to Swanquarter Island to a point ~~35° 20.5321' N - 76° 22.7869' W,~~ 35° 20.5321' N - 76° 22.7869' W; and west of a line at The Narrows beginning on the north shore to a point ~~35° 20.9500' N - 76° 20.6409' W,~~ 35° 20.9500' N - 76° 20.6409' W; running southerly to Swanquarter Island to a point 35° 20.7025' N - 76° 20.5620' W;

(g) Rose Bay - north of a line beginning on Long Point at a point ~~35° 23.3404' N - 76° 26.2491' W,~~ 35° 23.3404' N - 76° 26.2491' W; running southeasterly to Drum Point to a point 35° 22.4891' N - 76° 25.2012' W;

(h) Spencer ~~Bay -~~Bay -northwest of a line beginning on Roos Point at a point ~~35° 22.3866' N - 76° 27.9225' W,~~ 35° 22.3866' N - 76° 27.9225' W; running northeasterly to Long Point to a point 35° 23.3404' N - 76° 26.2491' W;

(i) Abel ~~Bay -~~Bay -northeast of a line beginning on the west shore at a point ~~35° 23.6463' N - 76° 31.0003' W,~~ 35° 23.6463' N - 76° 31.0003' W; running southeasterly to the east shore to a point 35° 22.9353' N - 76° 29.7215' W;

(j) Mouse Harbor - west of a line beginning on Persimmon Tree Point at a point ~~35° 18.3915' N - 76° 29.0454' W,~~ 35° 18.3915' N - 76° 29.0454' W; running southerly to Yaupon Hammock Point to a point ~~35° 17.1825 N - 76° 28.8713' W;~~ 35° 17.1825' N - 76° 28.8713' W;

(k) Big Porpoise ~~Bay -~~Bay -northwest of a line beginning on Big Porpoise Point at a point ~~35° 15.6993' N - 76° 28.2041' W,~~ 35° 15.6993' N - 76° 28.2041' W; running southwesterly to

Middle Bay Point to a point 35° 14.9276' N - 76° 28.8658' W;

(l) Middle Bay - west of a line beginning on Deep Point at a point ~~35° 14.8003' N - 76° 29.1923' W,~~ 35° 14.8003' N - 76° 29.1923' W; running southerly to Little Fishing Point to a point 35° 13.5419' N - 76° 29.6123' W;

(m) Jones Bay - west of a line beginning on Mink Trap Point at a point 35° 13.4968' N - 76° 31.1040' W; running southerly to Boar Point to a point 35° 12.3253' N - 76° 31.2767' W;

(n) In the Bay River Area:

(i) Bonner ~~Bay -~~ Bay - southeast of a line beginning on the west shore at a point 35° 09.6281' N - 76° 36.2185' W; running northeasterly to Davis Island Point to a point 35° 10.0888' N - 76° 35.2587' W;

(ii) Gales Creek-Bear ~~Creek (tributaries of Bay River) -~~ Creek - north and west of a line beginning on Sanders Point at a point ~~35° 11.2833' N - 76° 35.9000' W,~~ 35° 11.2833' N - 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N - 76° 34.2833' W;

(3) In the Pamlico and Pungo Rivers Area:

(a) Pungo River - north of a line beginning on the west shore at a point ~~35° 32.2000' N - 76° 29.2500' W;~~ 35° 32.2000' N - 76° 29.2500' W; running east near Beacon "21" to the east shore to a point ~~35° 32' 0833' N 76° 28.1500' W;~~ 35° 32.0833' N - 76° 28.1500' W;

(b) Fortescue Creek - east of a line beginning on Pasture Point at a point 35° 25.9213' N - 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N - 76° 31.9641' W;

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

(d) North Creek - north of a line beginning on the west shore at a point ~~35° 25.3988' N - 76° 40.0455' W,~~ 35° 25.3988' N - 76° 40.0455' W; running southeasterly to the east shore to a point 35° 25.1384' N - 76° 39.6712' W;

(e) In the Goose Creek ~~area: -~~ Area, Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N - 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N - 76° 37.0965' W;

~~(i) Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N - 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N - 76° 37.0965' W;~~

~~(ii) Eastham Creek - east of a line beginning on the north shore at a point 35° 17.7423' N - 76° 36.5164' W; running southeasterly to the south shore to a point 35° 17.5444' N - 76° 36.3963' W;~~

(f) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N - 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N - 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N - 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N - 76° 31.7226' W; ~~and southwest of a line beginning on the west shore at a point 35° 19.5586' N - 76° 32.8830' W running easterly to the east shore to a point 35° 19.5490' N - 76° 32.7365' W;~~

(4) In the Neuse River Area:

(a) Lower Broad ~~Creek -~~ Creek - west of a line beginning on the north shore at a point 35° 05.8314' N - 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N - 76° 35.7249' W;

(b) Greens Creek - north of a line beginning on the west shore of Greens Creek at a point 35° 01.3476' N - 76° 42.1740' W; running northeasterly to the east shore to a point 35° 01.4899' N - 76° 41.9961' W;

(c) Dawson Creek - north of a line beginning on the west shore at a point 34° 59.5920' N - 76° 45.4620' W; running southeasterly to the east shore to a point ~~34° 59.5800' N - 76°~~

~~45.4140' W;~~ 34° 59.5800' N - 76° 45.4140' W;

(d) Goose Creek - ~~Creek,~~ north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N - 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N - 76° 56.0092' W;

(e) Upper Broad Creek - ~~Creek,~~ northeast of a line beginning at a point on Rowland Point on the north shore at a point ~~35° 02.6166' N - 76° 56.4500' W;~~ 35° 02.6166' N - 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N - 76° 56.7865' W;

(f) Clubfoot Creek - south of a line beginning on the west shore at a point ~~34° 54.5424' N - 76° 45.7252' W,~~ 34° 54.5424' N - 76° 45.7252' W; running easterly to the east shore to a point 34° 54.4853' N - 76° 45.4022' W;

(g) ~~(In~~ In the Adams Creek ~~Area)~~ Area, Cedar Creek - east of a line beginning on the north shore at a point 34° 56.1203' N - 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N - 76° 38.8153' W;

(5) Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;

(6) Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;

(7) Mill Creek - all waters west of a line beginning on the north shore at a point 34° 20.6420' N - 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N - 77° 42.2400' W;

(8) Pages Creek - all waters west of a line beginning on the north ~~south~~ shore at a point 34° 16.1610' N - 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N - 77° 46.1670' W;

(9) Bradley Creek - all waters west of a line beginning on the north shore at a point 34° 12.7030' N - 77° 49.1230' W; ~~4~~'' ~~W,~~ running southerly near the dredged channel to a point 34° 12.4130' N - 77° 49.2110' W;

(10) Davis ~~Creek,~~ Creek - all waters east of a line beginning on Horse Island at a point ~~33° 55.0160' N - 78°12.7380' W;~~ 33° 55.0160' N - 78° 12.7380' W; running southerly to Oak Island to a point ~~33° 54.9190' N - 78° 12.7170 W;~~ 33° 54.9190' N - 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N - 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the IWW and Davis Canal to a point 33° 55.2690' N - 78° 11.6550' W.

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

15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS

The special secondary nursery areas referenced in 15A NCAC 03N .0105(b) are designated in the following coastal water areas:

(1) Roanoke Sound:

(a) Outer Shallowbag ~~Bay -~~ Bay - west of a line beginning on Baum Point at a point ~~35° 55.1461' N - 75° 39.5618' W;~~ 35° 55.1461' N - 75° 39.5618' W; running southeasterly to Ballast Point to a point ~~35° 54.6250' N - 75° 38.8656' W;~~ 35° 54.6250' N - 75° 38.8656' W; including the canal on the southeast shore of Shallowbag Bay.

(b) Kitty Hawk Bay/Buzzard ~~Bay -~~ Bay - within the area designated by a line beginning at a point on the east shore of Collington Creek at a point 36° 02.4360' N - 75° 42.3189' W; running westerly to a point 36° 02.6630' N - 75° 41.4102' W; running along the shoreline to a point 36° 02.3264' N - 75° 42.3889' W; running southwesterly to a point 36° 02.1483' N - 75° 42.4329' W; running along the shoreline to a point 36° 01.6736' N - 75° 42.5313' W; running southwesterly to a point 36° 01.5704' N - 75° 42.5899' W; running along the shoreline to a point 36° 00.9162' N - 75° 42.2035' W; running southeasterly to a point 36° 00.8253' N - 75° 42.0886' W; running along the shoreline to a point 35° 59.9886' N - 75° 41.7284' W; running southwesterly to a point 35° 59.9597' N - 75° 41.7682' W; running along the shoreline to the mouth of Buzzard Bay to a point 35° 59.6480' N - 75° 32.9906' W; running easterly to Mann Point to a point 35° 59.4171' N - 75° 32.7361' W; running northerly along the shoreline to the point of beginning.

(2) In the Pamlico and Pungo rivers Area:

(a) Pungo Creek - west of a line beginning on Persimmon Tree Point

at a point 35° 30.7633' N - 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N - 76° 37.7590' W;

(b) Scranton Creek - south and east of a line beginning on the west shore at a point 35° 30.6810' N - 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N - 76° 28.6766' W;

(c) Slade Creek - east of a line beginning on the west shore at a point 35° 27.8879' N - 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N - 76° 32.7361' W;

(d) South Creek - west of a line beginning on Hickory Point at a point 35° 21.7385' N - 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N - 76° 41.7870' W;

(e) Bond Creek/Muddy Creek - south of a line beginning on Fork Point 35° 20.7534' N - 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N - 76° 41.4645' W;

(3) In the West Bay Area:

(a) West Thorofare Bay - south of a line beginning on the west shore at a point 34° 57.2199' N - 76° 24.0947' W; running easterly to the east shore to a point 34° 57.4871' N - 76° 23.0737' W;

(b) Long Bay-Ditch Bay - west of a line beginning on the north shore of Ditch Bay at a point 34° 57.9388' N - 76° 27.0781' W; running southwesterly to the south shore of Ditch Bay to a point ~~34° 57.2120' N - 76° 27.2185' W;~~ 34° 57.2120' N - 76° 27.2185' W; then south of a line running southeasterly to the east shore of Long Bay to a point ~~34° 56.7633' N - 76° 26.3927' W;~~ 34° 56.7633' N - 76° 26.3927' W;

(c) Turnagain Bay - south of a line beginning on the west shore at a point 34° 59.4065' N - 76° 30.1906' W; running easterly to the east shore to a point 34° 59.5668' N - 76° 29.3557' W;

(4) In the Core Sound Area:

(a) Cedar Island Bay - northwest of a line beginning near the gun club dock at a point 34° 58.7203' N - 76° 15.9645' W; running northeasterly to the south shore to a point 34° ~~57.7690' N - 76° 16.8781' W;~~ 57.7690' N - 76° 16.8781' W;

(b) Thorofare Bay-Barry Bay - northwest of a line beginning on Rumley Hammock at a point 34° 55.4853' N - 76° 18.2487' W; running northeasterly to Hall Point to a point 34° 54.4227' N - 76° 19.1908' W;

(c) Nelson Bay - northwest of a line beginning on the west shore of Nelson Bay at a point 34° 51.1353' N - 76° 24.5866' W; running northeasterly to Drum Point to a point 34° 51.6417' N - 76° 23.7620' W;

(d) Brett Bay - north of a line beginning on the west shore at a point 34° 49.4019' N - 76° 26.0227' W; running easterly to Piney Point to a point 34° 49.5799' N - 76° 25.0534' W;

(e) Jarrett Bay - north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N - 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N - 76° 28.7955' W;

(5) In the North River Area:

(a) North ~~River~~ River -north of a line beginning on the west shore at a point ~~34° 46.0383' N - 76° 37.0633' W;~~ 34° 46.0383' N - 76° 37.0633' W; running easterly to a point on the east shore 34° 46.2667' N - 76° 35.4933' W;

(b) Ward ~~Creek~~ Creek -east of a line beginning on the north shore at a point 34° 46.2667' N - 76° 35.4933' W; running southerly to the south shore to a point 34° 45.4517' N - 76° 35.1767' W;

(6) Newport ~~River~~ River -west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N - 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N - 76° 43.3296' W;

(7) New ~~River~~ River -all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point ~~34° 34.7680' N - 77° 23.9940' W;~~ 34° 34.7680' N - 77° 23.9940' W; running southerly to the south side of the bridge at a point ~~34° 34.6000' N - 77° 23.9710' W;~~ 34° 34.6000' N - 77° 23.9710' W;

(8) Chadwick Bay - all waters west of a line beginning on the northeast side of Chadwick Bay at a point 34° 32.5630' N - 77° 21.6280' W; running southeasterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; running westerly to Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; following the shoreline in Fullard Creek to a point 34°

32.0340' N - 77° 22.7160' W; running northwesterly to a point 34° 32.2210' N - 77° 22.8080' W; following the shoreline to the west point of Bump's Creek at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W; following the shoreline of Chadwick Bay back to the point of origin;

(8)(9) Intracoastal Waterway Waterway -all waters in the IWW maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N 77° 23.1290' W; 34° 30.7930' N - 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N - 77° 30.4710' W; 34° 28.0820' N - 77° 30.4710' W; and all waters in the IWW maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf City;

(9)(10) Cape Fear River River -all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the IWW and the Cape Fear River ship channel at a point 34° 01.5780' N - 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N - 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N - 77°56.4120' W; 33° 57.8080' N - 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N - 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to point of origin;

(10)(11) Lockwood Folly River River -all waters north of a line beginning on Howells Point at a point 33° 55.3680' N - 78° 12.7930' W and running in a westerly direction along the IWW near IWW Marker "46" to a point 33° 55.3650' N - 78° 13.8500' W;

(11)(12) Saucepan Creek - all waters north of a line beginning on the west shore at a point 33° 54.6290' N - 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N - 78° 22.8670' W.

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

15A NCAC 03R .0112 ATTENDED GILL NET AREAS

(a) The attended gill net areas referenced in 15A NCAC 03J .0103 (g) 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;

(2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of the 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; 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; and

(7) Within 200 yards of any shoreline in Neuse River and its tributaries east of the Highway 17 highrise bridge and 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.

(b) The attended gill net areas referenced in 15A NCAC 03J .0103 (h) 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 no-trawl areas described in

15A NCAC 03R .0106 (2), (4), (5), ~~and (6);~~ (7), (8), (10), (11), and (12);

(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 southwesterly 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 southwesterly to a point 35° 19.0333' N - 75° 36.3166' W near Beacon "2" in Cape Channel; running southwesterly 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 southwesterly to a point 35° 14.0377' N - 75° 45.9644' W near a "Danger" Beacon northwest of Austin Reef; running southwesterly 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 southwesterly 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 southwesterly to a point ~~35°01.5833' N - 76° 11.4500' W~~ 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 southwesterly to a point 34° 56.4833' N - 76° 13.2833' W; running westerly to a point ~~34° 56.5500' N - 76°13.6166' W;~~ 34° 56.5500' N - 76° 13.6166' W; running southwesterly 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 southwesterly to a point 34° 51.0617' N - 76° 21.0449' W; running southwesterly to a point 34° 48.3137' N - 76° 24.3717' W; running southwesterly to a point 34° 46.3739' N - 76° 26.1526' W; running southwesterly to a point 34° 44.5795' N - 76° 27.5136' W; running southwesterly to a point 34° 43.4895' N - 76° 28.9411' W near Beacon "37A"; running southwesterly 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 southwesterly 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 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; and

(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 from October 1 through November 30, 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.

Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03R .0117 OYSTER SANCTUARIES

The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following coastal water areas:

(1) Croatan Sound area: within the area described by a line beginning at a point ~~35° 48.2842' N - 75° 38.4575' W;~~ 35° 48.2842' N - 75° 38.3360' W; running ~~westerly~~ southerly to a point ~~35° 48.2842' N - 75° 38.3360' W;~~ 35° 48.1918' N - 75° 38.3360' W; running ~~southerly~~ westerly to

a point ~~35° 48.1918' N - 75° 38.3360' W;~~ 35° 48.1918' N - 75° 38.4575' W; running ~~easterly~~ northerly to a point ~~35° 48.1918' N - 75° 38.4575' W;~~ 35° 48.2842' N - 75° 38.4575' W; running ~~northerly~~ easterly to the point of beginning.

(2) Pamlico Sound area:

(a) Crab Hole: within the area described by a line beginning at a point ~~35° 43.6833' N - 75° 40.7500' W;~~ 35° 43.6833' N - 75° 40.5083' W; running ~~westerly~~ southerly to a point ~~35° 43.6833' N - 75° 40.5083' W;~~ 35° 43.5000' N - 75° 40.5083' W; running ~~southerly~~ westerly to a point ~~35° 43.5000' N - 75° 40.5083' W;~~ 35° 43.5000' N - 75° 40.7500' W; running ~~easterly~~ northerly to a point ~~35° 43.5000' N - 75° 40.7500' W;~~ 35° 43.6833' N - 75° 40.7500' W; running ~~northerly~~ easterly to the point of beginning.

(b) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3220' N - 75° 55.9590' W; running southerly to a point 35° 27.1340' N - 75° 55.9590' W; running westerly to a point 35° 27.1340' N - 75° 56.1900' W; running northerly to a point 35° 27.3220' N - 75° 56.1900' W; running easterly to the point of beginning.

~~(b)~~(c) Deep Bay: within the area described by a line beginning at a point ~~35° 22.9126' N - 75° 22.1612' W;~~ 35° 22.9126' N - 76° 22.1612' W; running ~~westerly~~ southerly to a point ~~35° 22.9126' N - 75° 22.3377' W;~~ 35° 22.7717' N - 76° 22.1612' W; running ~~southerly~~ westerly to a point ~~35° 22.7717' N - 75° 22.1612' W;~~ 35° 22.7717' N - 76° 22.3377' W; running ~~easterly~~ northerly to a point ~~35° 22.7717' N - 75° 22.3377' W;~~ 35° 22.9126' N - 76° 22.3377' W; running ~~northerly~~ easterly to the point of beginning.

~~(c)~~(d) ~~Bluff Point:~~West Bluff: within the area described by a line beginning at a point ~~35° 18.3000' N - 76° 10.2760' W;~~ 35° 18.3000' N - 76° 10.0890' W; running ~~westerly~~ southerly to a point ~~35° 18.3000' N - 76° 10.0890' W;~~ 35° 18.1460' N - 76° 10.0890' W; running ~~southerly~~ westerly to a point ~~35° 18.1460' N - 76° 10.0890' W;~~ 35° 18.1460' N - 76° 10.2760' W; running ~~easterly~~ northerly to a point ~~35° 18.1460' N - 76° 10.2760' W;~~ 35° 18.3000' N - 76° 10.2760' W; running ~~northerly~~ easterly to the point of beginning.

~~(d)~~(e) Clam Shoal: within the area described by a line beginning at a point ~~35° 17.4784' N - 75° 37.4173' W;~~ 35° 17.4800' N - 75° 37.1800' W; running ~~westerly~~ southerly to a point ~~35° 17.4800' N - 75° 37.1800' W;~~ 35° 17.1873' N - 75° 37.1800' W; running ~~southerly~~ westerly to a point ~~35° 17.1873' N - 75° 37.1826' W;~~ 35° 17.1873' N - 75° 37.4680' W; running ~~easterly~~ northerly to a point ~~35° 17.1873' N - 75° 37.4173' W;~~ 35° 17.4800' N - 75° 37.4680' W; running ~~northerly~~ easterly to the point of beginning.

~~(e)~~(f) Middle Bay: within the area described by a line beginning at a point ~~35° 14.1580' N - 76° 30.3320' W;~~ 35° 14.1580' N - 76° 30.1780' W; running ~~westerly~~ southerly to a point ~~35° 14.1580' N - 76° 30.1780' W;~~ 35° 14.1150' N - 76° 30.1780' W; running ~~southerly~~ westerly to a point ~~35° 14.1150' N - 76° 30.1780' W;~~ 35° 14.1150' N - 76° 30.3320' W; running ~~easterly~~ northerly to a point ~~35° 14.1580' N - 76° 30.3320' W;~~ 35° 14.1580' N - 76° 30.3320' W; running ~~northerly~~ easterly to the point of beginning.

~~(f)~~(g) Ocracoke area: within the area described by a line beginning at a point ~~35° 10.8150' N - 75° 59.8530' W;~~ 35° 10.8150' N - 75° 59.6320' W; running ~~westerly~~ southerly to a point ~~35° 10.8150' N - 75° 59.6320' W;~~ 35° 10.6320' N - 75° 59.6320' W; running ~~southerly~~ westerly to a point ~~35° 10.6320' N - 75° 59.6320' W;~~ 35° 10.6320' N - 75° 59.8530' W; running ~~easterly~~ northerly to a point ~~35° 10.6320' N - 75° 59.8530' W;~~ 35° 10.8150' N - 75° 59.8530' W; running ~~northerly~~ easterly to the point of beginning.

~~(g)~~(h) West Bay: within the area described by a line beginning at a point ~~34° 58.8517' N - 76° 21.4735' W;~~ 34° 58.8517' N - 76° 21.3632' W; running ~~westerly~~ southerly to a point ~~34°~~

~~58.8517' N - 76° 21.3632' W;~~ 34° 58.7661' N - 76° 21.3632' W; running ~~southerly~~ westerly to a point ~~34° 58.7661' N - 76° 21.3632' W;~~ 34° 58.7661' N - 76° 21.4735' W; running ~~easterly~~ northerly to a point ~~34° 58.7661' N - 76° 21.4735' W;~~ 34° 58.8517' N - 76° 21.4735' W; running ~~northerly~~ easterly to the point of beginning.

(3) Neuse River: within the area described by a line beginning at a point ~~35° 00.4742' N - 76° 32.0550' W;~~ 35° 00.4742' N - 76° 31.9550' W; running ~~westerly~~ southerly to a point ~~35° 00.4742' N - 76° 31.9550' W;~~ 35° 00.3920' N - 76° 31.9550' W; running ~~southerly~~ westerly to a point ~~35° 00.3920' N - 76° 31.9550' W;~~ 35° 00.3920' N - 76° 32.0550' W; running ~~easterly~~ northerly to a point ~~35° 00.3920' N - 76° 32.0550' W;~~ 35° 00.4742' N - 76° 32.0550' W; running ~~northerly~~ easterly to the point of beginning.

Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as 15A NCAC 13B .0101, .0563, .1604, .1626, .1632-.1635, .1637.*

Proposed Effective Date: *January 1, 2011*

Public Hearing:
Date: *September 30, 2010*
Time: *10:00 a.m.*
Location: *Cardinal Room at 5605 Six Forks Road, Raleigh, NC*

Reason for Proposed Action:
15A NCAC 13B .0101, .0563
1. In conflict with § 130A 290. Definitions (a) (15)
2. Do not have a definition of "untreated wood".
3. In the solid waste universe the occurrence of untreated wood not co-mingled with other types of wastes is rare (perhaps from an industrial source, e.g. a roof truss manufacturer?). It is almost always co-mingled with other waste types, usually construction and demolition waste, which can contain paints, shingles, wallboard, asbestos, plastics, metals, etc. If untreated wood has been source separated for disposal, there are numerous markets for untreated and clean wood now. Since the inception of the above referenced rules solid waste recovery and recycling markets have evolved substantially. Untreated wood can be used and is needed in a variety of ways rather than disposal (e.g. bulking agent at composting facilities and solidification operations, boiler fuel, mulch). This use of verified untreated and uncontaminated wood is also supported in the opening statement of 15A NCAC 13B .0563.
4. The source of "untreated wood" is not considered in the rules. As stated above "untreated wood" is almost always co-mingled with other wastes and is invariably contaminated by the other wastes. Therefore, while wood from various sources may be untreated, in reality, because the origin of generation, untreated wood can be highly contaminated. The present rules do not address this situation and addressing this situation in rules would be over burdensome for the regulator and the regulated.
5. With all the wood treatments available today, distinguishing treated from non-treated wood has become very difficult to impossible. Treated wood leaches various dangerous chemicals and metals, including but not limited to, chromate copper arsenate, formaldehyde, creosote and pentachlorophenol. Prevention of disposal of treated wood at land clearing and inert debris landfills, which have no groundwater monitoring, is critical. Coupled with the difficulty of identifying untreated wood is the difficulty of regulating/preventing the disposal of apparent untreated but contaminated wood (or wood that has become contaminated because it has been co-mingled with other wastes, such as, paints, shingles, wallboard, asbestos, plastics, metals, etc.).
6. Removal of the term "untreated wood" from the two rule references listed above would clarify and decrease confusion in the regulated community about the apparent contradiction between the statutes and rules.
15A NCAC 13B .1604 and .1626
1. The present wording of the cited rule is ambiguous, in that, followed by the phrase "from the permitted landfill facility", some in the regulated community have interpreted this to mean that leachate could flow anywhere and any distance beyond the liner or leachate collection system, as long as it stayed within the permitted landfill facility. Obviously, this interpretation is in direct contradiction to the primary reason for lined landfill facilities, CFR 258 Subtitle D regulations and N.C.'s lined landfill rules (i.e. section .1600). Since the discovery of the environmental impact unlined municipal solid waste landfills have had on the surrounding environment and the passage of the .1600 rules, tens of millions of dollars have been spent in N.C. to prevent the release of leachate to the environment, inside and outside the permitted boundaries of facilities.
2. Once leachate has been released outside containment features (e.g. disposal cell liner, leachate collection system, leachate storage vessels) at a facility, the potential exists for the release to contaminate 1) soils that could be transported to other locations, 2) groundwater that will continue to flow to a discharge feature (e.g. stream, well, wetlands) and 3) surface water, within and outside of the permitted facility. Once released, the contaminants can be difficult to retrieve and remediate. The present ambiguity in the rules has provided an avenue for a permitted facility not to report a release to the Solid Waste Section and not to react to releases unless they believe the release has migrated outside the permitted facility boundary. In such cases, an unresponsive permittee could allow a considerable amount of time and contamination to exist making the assessment and remediation of a release(s) very difficult, expensive and in some cases, relatively impossible,

therefore, posing a present and future risk to public health and the environment.

Rules .1632-.1635 and .1637

1. EPA's CFR 258 (Subtitle D regulations) contains statistical analysis as the initial method for analyzing sample results to determine whether a release has occurred at a MSWLF. North Carolina was somewhat unique at the time CFR 258 was promulgated, in that, our state had groundwater standards, most of which were developed as health-based standards. Many states at that time did not have their own groundwater standards.

Studies in the 1980's indicated that contaminants from many municipal landfills were also constituents that were naturally occurring. CFR 258 provided statistical analysis as a way to determine if detections of constituents were indeed naturally occurring, ghost detections, outliers, etc. and as an initial data screening tool to determine if further action was needed. If statistics indicated that a release had occurred, groundwater protection standards would then be developed for assessment and corrective action purposes.

But because North Carolina already had groundwater standards and were using them to determine if a significant release had occurred, the N.C. groundwater standards were incorporated into the state's Subtitle D program.

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit written objections to the proposed rule by contacting: Ellen Lorscheider, DENR-Division of Waste Management, Sold Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, fax (919)733-4810; or email ellen.lorscheider@ncdenr.gov.*

Comments may be submitted to: *Ellen Lorscheider, Planning and Programs Branch Head, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919)508-8400, fax (919)733-4810, email ellen.lorscheider@ncdenr.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (≥$3,000,000)**
☒ **None**

CHAPTER 13 – SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0100 - GENERAL PROVISIONS

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 (CH_4).

(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.~~ and grass.

Authority G.S. 130A-294.

SECTION .0500 - DISPOSAL SITES

15A NCAC 13B .0563 APPLICABILITY REQ. FOR LAND CLEARING/INERT DEBRIS (LCID) LANDFILLS

Management of land clearing and inert debris shall be in accordance with the State hierarchy for managing solid waste as provided for under G.S. 130A-309.04(a). Disposal in a landfill is considered to be the least desirable method of managing land clearing and inert debris. Where landfilling is necessary, the requirements of this Rule apply.

(1) An individual permit from the Division of Solid Waste Management is not required for Land Clearing and Inert Debris (LCID) landfills that meet all of the following conditions:

(a) The facility is to be operated for the disposal of land clearing waste, inert debris, ~~untreated wood,~~ and yard trash. Operations must be consistent and in compliance with the local government solid waste management plan as approved by the Division of Solid Waste Management.

(b) The total disposal area is under two acres in size.

(c) The facility and practices comply with the siting criteria under Rule .0564, and operational requirements under Rule .0566.

(d) The fill activity is not exempt from, and must comply with all other Federal, State, or Local laws, ordinances, Rules, regulations, or orders, including but not limited to zoning restrictions, flood plain restrictions, wetland restrictions, sedimentation and erosion control requirements, and mining regulations.

(2) Where an individual permit is not required, the following applies:

(a) The owner of the land where the landfill is located must notify the Division on a prescribed form, duly signed, notarized, and recorded as per Sub-item (2)(b) of this Rule. The operator of the landfill, if different from the land owner, shall also sign the notification form.

(b) The owner must file the prescribed notification form for recordation in the Register of Deeds' Office. The Register of Deeds shall index the notification in the grantor index under the name of the owner of the land in the county or counties in which the land is located. A copy of the recorded notification, affixed with the Register's seal and the date, book and page number of recording shall be sent to the Division of Solid Waste Management.

(c) When the land on which the Land Clearing and Inert Debris Landfill is sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a Land Clearing and Inert Debris Landfill and a reference by book and page to the recordation of the notification.

(3) An individual permit is required, except for landfills subject to Item (5) of this Rule, for the construction and operation of a Land Clearing and Inert Debris (LCID) landfill when:

(a) The facility is to be operated for the disposal of land clearing waste, inert debris, ~~untreated wood,~~ and yard trash. Operations must be consistent and in compliance with the local government solid waste management plan as approved by the Division of Solid Waste Management, and

(b) The total disposal area is greater than two acres in size.

(4) Individual permits for land clearing and inert debris landfills shall be issued for not more than five years.

(5) Landfilling of land clearing and inert debris generated solely from, and within the right of way of, North Carolina Department of Transportation projects shall be subject to the following:

(a) Only waste types as described in Sub-item (1)(a) of this Rule may be disposed of within the Department of Transportation right of way.

(b) Waste is landfilled within the project right of way from which it was generated.

(c) The disposal area shall not exceed two contiguous acres in size.

(d) Disposal sites shall comply with the siting requirements of Rule .0564 of this Section except for Item (10).

(e) Disposal sites are not subject to the requirements of Item (2) of this Rule and Rule .0204 of this Subchapter.

(6) Landfills that are currently permitted as demolition landfills are required to comply with the following:

(a) Only waste types as described in Sub-item (3)(a) of this Rule may be accepted for disposal, as of the effective date of this Rule unless otherwise specified in the existing permit.

(b) Operations must be in compliance with Rule .0566 of this Section as of the effective date of this Rule.

(c) Existing demolition landfills must comply with the siting criteria requirements of these Rules as of January 1, 1998 or cease operations and close in accordance with these Rules.

Authority G.S. 130A-294; 130A-301.

SECTION .1600 - REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES (MSWLFS)

15A NCAC 13B .1604 GENERAL REQUIREMENTS FOR MSWLF FACILITIES

(a) Applicability. Permits issued by the Division for new and existing MSWLF facilities shall be subject to the general requirements set forth in this Rule.

(b) Terms of the Permit. The Solid Waste Management Permit shall incorporate requirements necessary to comply with this Subchapter and the North Carolina Solid Waste Management

Act including, but not limited to, the provisions of this Paragraph.

(1) Division Approved Plan. Permits issued subsequent to the effective date of this Rule shall incorporate a Division approved plan.

(A) The scope of the Division approved plan shall be limited to the information necessary to comply with the requirements set forth in Rule .1617 of this Section.

(B) The Division approved plans shall be subject to and may be limited by the conditions of the permit.

(C) The Division approved plans for a new facility or permit renewal of an existing facility shall be described in the permit and shall include, but not be limited to, the following:

(i) Facility plan;

(ii) Engineering plan and Construction Quality Assurance Plan;

(iii) Operation plan;

(iv) Monitoring plan; and

(v) Closure and post-closure plan.

(D) The Division shall define the content of the Division approved plans for amendments or modifications to the permit, and for the transition plan of an existing MSWLF unit.

(2) Permit provisions. All disposal facilities shall conform to the specific conditions set forth in the permit and the following general provisions. Nothing in this Subparagraph shall be construed to limit the conditions the Division may impose on a permit.

(A) Duty to Comply. The permittee shall comply with all conditions of this permit, unless otherwise authorized by the Division. Any permit noncompliance, except as otherwise authorized by the Division, constitutes a violation of the Act and is grounds for enforcement action, or for permit revocation or modification.

(B) Duty to Mitigate. In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent adverse impacts on human health or the environment.

(C) Duty to Provide Information. The permittee shall furnish to the Division, any relevant information which the Division may request to determine whether cause exists for modifying or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by this permit.

(D) Recordation Procedures. The permittee shall comply with the requirements of Rule .0204 in order for a new permit to be effective.

(E) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee 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 this permit.

(F) Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause in accordance with G.S. 130A-23. The filing of a request by the permittee for a permit modification or termination, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.

(G) No Property Rights. This permit does not convey any property rights of any sort, or any exclusive privilege. This permit is not transferable.

(H) Construction. If construction does not commence within 18 months from the issuance date of the permit to construct, or an amendment to the permit, then the permittee shall obtain written approval from the Division prior to construction and comply with any conditions of said approval.

(I) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve

compliance with the conditions of the permit.

(J) Inspection and Entry. The permittee shall allow the Division, or an authorized representative, to:

(i) Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this permit;

(ii) Have access to a copy of any records required to be kept under the conditions of this permit;

(iii) Inspect any facilities, equipment (including monitoring and control equipment), practices or operations regulated by the Division;

(iv) Sample or monitor for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location; and

(v) Make photographs for the purpose of documenting items of compliance or noncompliance at waste management units, or where appropriate to protect legitimate proprietary interests, require the permittee to make such photos for the Division.

(K) Monitoring and Records.

(i) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall split any required samples with the Division upon request.

(ii) The permittee shall retain records of all monitoring information required by the permit for the active life of the facility and for the post-closure care period. This period may be extended by the Division at any time.

(iii) Records of monitoring information shall include:

(I) The date, exact place, and time of sampling or measurements;

(II) The individual(s) who performed the sampling or measurements;

(III) The date(s) analyses were performed;

(IV) The individual(s) who performed the analyses;

(V) The analytical techniques or methods used (including equipment used); and

(VI) The results of such analyses.

(L) Reporting Requirements.

(i) The permittee shall give notice to the Division as soon as possible of any planned physical alterations or additions to the permitted facility.

(ii) Monitoring results shall be reported at the intervals specified in the permit.

(iii) The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of any ~~release, discharge,~~ release or discharge outside the liner, collection system or other containment component, any fire, or explosion from the permitted landfill facility. Such reports shall be made to the Division representative at the appropriate regional office of the Department of ~~Environment, Health,~~ Environment and Natural Resources.

(iv) Where the permittee becomes aware that it failed to submit all relevant facts and corrected information in a permit application, or submitted incorrect information in a permit application or in any report to the Division, it shall

promptly submit such facts or information.

(M) Survey for Compliance.

(i) Within 60 days of the permittee's receipt of the Division's written request, the permittee shall cause to be conducted a survey of active or closed portions of their facility in order to determine if operations (e.g., cut and fill boundaries, grades) are being conducted in accordance with the approved design and operational plans. The permittee shall report the results of such survey to the Division within 90 days of receipt of the Division's request.

(ii) A survey may be requested by the Division:

(I) If there is reason to believe that operations are being conducted in a manner that significantly deviates from the Division approved plans; or

(II) As a periodic verification (but no more than annual) that operations are being conducted in accordance with the approved plans.

(iii) Any survey performed pursuant to this Part shall be performed by a registered land surveyor duly authorized under North Carolina law to conduct such activities.

~~(N) Waste Exclusions. The following wastes shall not be disposed of in a MSWLF unit:~~

~~(i) White goods;~~

~~(ii) Used oil, lead acid batteries, whole tires; and~~

~~(iii) Yard trash.~~

~~(O)~~(N) Additional Solid Waste Management Facilities. Construction and operation of additional solid waste management facilities at the landfill facility shall not impede operation of the MSWLF unit and shall be approved by the Division.

~~(P)~~(O) Existing Facilities. Permits issued by the Division prior to October 9, 1993 for the construction of a lateral expansion or a new MSWLF unit are subject to the requirements for permit renewal set forth in Subparagraph (a)(5) of Rule .1603.

(i) The owner or operator shall establish a schedule for permit renewal that demonstrates compliance with Rule .1603 of this Section.

(ii) The owner or operator shall place the demonstration in the operating record and submit a copy to the Division for approval.

Authority G.S. 130A-294.

15A NCAC 13B .1626 OPERATIONAL REQUIREMENTS FOR MSWLF FACILITIES

The owner or operator of any MSWLF unit must maintain and operate the facility in accordance with the requirements set forth in this Rule and the operation plan as described in Rule .1625 of this Section.

(1) Waste Acceptance and Disposal Requirements.

(a) A MSWLF shall only accept those solid wastes which it is permitted to receive. The landfill owner or operator shall notify the Division within 24 hours of attempted disposal of any waste the landfill is not permitted to receive, including waste from outside the area the landfill is permitted to serve.

(b) The following wastes are prohibited from disposal at a MSWLF unit:

(i) Hazardous waste as defined within 15A NCAC 13A, to also include hazardous waste from conditionally exempt small quantity generators.

(ii) Polychlorinated biphenyls (PCB) wastes as defined in 40 CFR 761.

(iii) Liquid wastes unless they are managed in accordance with Item (9) of this Rule.~~Rule .1626(9) of this Section.~~

(c) Spoiled foods, animal carcasses, abattoir waste, hatchery waste, and other animal waste delivered to the

disposal site shall be covered immediately.

(d) Asbestos waste shall be managed in accordance with 40 CFR 61, which is hereby incorporated by reference including any subsequent amendments and additions. Copies of 40 CFR 61 are available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste, 401 Oberlin Road, Raleigh, N.C. at no cost. The waste shall be covered immediately with soil in a manner that will not cause airborne conditions and must be disposed of separate and apart from other solid wastes:

(i) At the bottom of the working face; or

(ii) In an area not contiguous with other disposal areas. Separate areas shall be clearly designated so that asbestos is not exposed by future land-disturbing activities.

(e) Wastewater treatment sludges may only be accepted for disposal in accordance with the following conditions:

(i) Utilized as a soil conditioner and incorporated into or applied onto the vegetative growth layer but, in no case greater than six inches in depth.

(ii) Co-disposed if the facility meets all design requirements contained within Rule .1624, and approved within the permit, or has been previously approved as a permit condition.

(f) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of hazardous and liquid wastes. This program must include, at a minimum:

(i) Random inspections of incoming loads or other comparable procedures;

(ii) Records of any inspections;

(iii) Training of facility personnel to recognize hazardous and liquid wastes; and

(iv) Development of a contingency plan to properly manage any identified hazardous and liquid wastes. The plan must address identification, removal, storage and final disposition of the waste.

(g) Waste placement at existing MSWLF units shall meet the following criteria:

(i) Waste placement at existing MSWLF units not designed and constructed with a base liner system approved by the Division shall be within the areal limits of the actual waste boundary established prior to October 9, 1993 and in a manner consistent with the effective permit.

(ii) Waste placement at existing MSWLF units designed and constructed with a base liner system permitted by the Division prior to October 9, 1993 and approved for operation by the Division shall be within the areal limits of the base liner system and in manner consistent with the effective permit.

(2) Cover material requirements.

(a) Except as provided in Sub-Item (b) of this Item, ~~(2)(b) of this Paragraph,~~ the owners or operators of all MSWLF units must cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the Division if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. A MSWLF owner or operator may apply for a generic approval of an alternative cover material, which would extend to all MSWLF units.

(c) Areas which will not have additional wastes placed on them for 12 months or more, but where final termination

of disposal operations has not occurred, shall be covered with a minimum of one foot of intermediate cover.

(3) Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this Item, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

(4) Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that:

(i) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(ii) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(b) Owners or operators of all MSWLF units must implement a routine methane monitoring program to ensure that the standards of (4)(a) of this Rule are met. A permanent monitoring system shall be constructed on or before October 9, 1994. A temporary monitoring system shall be used prior to construction of the permanent system.

(i) The type and frequency of monitoring must be determined based on the following factors:

(A) Soil conditions;

(B) The hydrogeologic conditions surrounding the facility;

(C) The hydraulic conditions surrounding the facility; and

(D) The location of facility structures and property boundaries.

(ii) The minimum frequency of monitoring shall be quarterly.

(c) If methane gas levels exceeding the limits specified in (4)(a) of this Rule are detected, the owner or operator must:

(i) Immediately take all necessary steps to ensure protection of human health and notify the Division;

(ii) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(iii) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the Division that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(iv) Based on the need for an extension demonstrated by the operator, the Division may establish alternative schedules for demonstrating compliance with (4)(c)(ii) and (iii) of this Rule.

(d) For purposes of this Item, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

(5) Air Criteria.

(a) Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the U.S. EPA Administrator pursuant to Section 110 of the Clean Air Act, as amended.

(b) Open burning of solid waste, except for the infrequent burning of land clearing debris generated on site or debris from emergency clean-up operations, is prohibited at all MSWLF units. Any such infrequent

burning must be approved by the Division.

(c) Equipment shall be provided to control accidental fires or arrangements shall be made with the local fire protection agency to immediately provide fire-fighting services when needed.

(d) Fires that occur at a MSWLF require verbal notice to the Division within 24 hours and written notification shall be submitted within 15 days.

(6) Access and safety requirements.

(a) The MSWLF shall be adequately secured by means of gates, chains, berms, fences and other security measures approved by the Division to prevent unauthorized entry.

(b) An attendant shall be on duty at the site at all times while it is open for public use to ensure compliance with operational requirements.

(c) The access road to the site shall be of all-weather construction and maintained in good condition.

(d) Dust control measures shall be implemented when necessary.

(e) Signs providing information on dumping procedures, the hours during which the site is open for public use, the permit number and other pertinent information specified in the permit conditions shall be posted at the site entrance.

(f) Signs shall be posted stating that no hazardous or liquid waste can be received.

(g) Traffic signs or markers shall be provided as necessary to promote an orderly traffic pattern to and from the discharge area and to maintain efficient operating conditions.

(h) The removal of solid waste from a MSWLF is prohibited unless the owner or operator approves and the removal is not performed on the working face.

(i) Barrels and drums shall not be disposed of unless they are empty and perforated sufficiently to ensure that no liquid or hazardous waste is contained therein, except fiber drums containing asbestos.

(7) Erosion and sedimentation control requirements.

(a) Adequate sediment control measures (structures or devices), shall be utilized to prevent silt from leaving the MSWLF facility.

(b) Adequate sediment control measures (structures or devices), shall be utilized to prevent excessive on-site erosion.

(c) Provisions for a vegetative ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days upon completion of any phase of MSWLF development.

(8) Drainage control and water protection requirements.

(a) Surface water shall be diverted from the operational area.

(b) Surface water shall not be impounded over or in waste.

(c) Solid waste shall not be disposed of in water.

(d) Leachate shall be contained ~~on-site or~~ within a lined disposal cell or leachate collection and storage system. All leachate shall be properly treated prior to discharge. An NPDES permit may be required prior to the discharge of leachate to surface waters.

(e) MSWLF units shall not:

(i) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to Section 402.

(ii) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act, as amended.

(9) Liquids restrictions.

(a) Bulk or non-containerized liquid waste may not be placed in MSWLF units unless:

(i) The waste is household waste other than septic waste and waste oil; or

(ii) The waste is leachate or gas condensate derived from the MSWLF unit, whether it is a

new or existing MSWLF unit or lateral expansion, is designed with a composite liner and leachate collection system as described within Rule .1624 of this Section.

(b) Containers holding liquid wastes may not be placed in the MSWLF unit unless:

(i) The container is a small container similar in size to that normally found in household waste;

(ii) The container is designed to hold liquids for use other than storage; or

(iii) The waste is household waste.

(c) For the purpose of this Paragraph:

(i) Liquid waste means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), S.W. 846.

(ii) Gas Condensate means the liquid generated as a result of gas recovery processes at the MSWLF unit.

(10) Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit must record and retain at the facility, or an alternative location near the facility approved by the Division, in an operating record the following information as it becomes available:

(i) Inspection records, waste determination records, and training procedures required in Item (1) of this Rule;

(ii) Amounts by weight of solid waste received at the facility to include source of generation;

(iii) Gas monitoring results and any remediation plans required by Item (4) of this Rule;

(iv) Any demonstration, certification, finding, monitoring, testing, or analytical data required by Rules .1630 thru .1637 of this Section;

(v) Any monitoring, testing, or analytical data as required by Rule .1627 of this Section; and

(vi) Any cost estimates and financial assurance documentation required by Rule .1628 of this Section.

(b) All information contained in the operating record must be furnished upon request to the Division or be made available at all reasonable times for inspection by the Division.

(c) The owner or operator must maintain a copy of the operation plan required by Rule .1625 of this Section at the facility.

(11) Spreading and Compacting requirements.

(a) MSWLF units shall restrict solid waste into the smallest area feasible.

(b) Solid waste shall be compacted as densely as practical into cells.

(c) Appropriate methods such as fencing and diking shall be provided within the area to confine solid waste subject to be blown by the wind. At the conclusion of each day of operation, all windblown material resulting from the operation shall be collected and returned to the area by the owner or operator.

(12) Leachate management plan. The owner or operator of a MSWLF unit designed with a leachate collection system must establish and maintain a leachate management plan which, at a minimum, includes the following:

(a) Periodic maintenance of the leachate collection system;

(b) Maintaining records for the amounts of leachate generated;

(c) Semi-annual leachate quality sampling;

(d) Approval for final leachate disposal; and

(e) A contingency plan for extreme operational conditions.

Authority G.S. 130A-294.

15A NCAC 13B .1632 GROUND-WATER SAMPLING AND ANALYSIS REQUIREMENTS

(a) The ground-water monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells. The ground-water sampling and analysis plan shall be approved by the Division and the owner or operator shall place a copy of the approved plan in the operating record. The plan shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program shall include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples.

(c) The sampling procedures and frequency shall be protective of human health and the environment.

(d) Ground-water elevations shall be measured in each well immediately prior to purging, each time ground-water is sampled. The owner or operator shall determine the rate and direction of ground-water flow each time ~~ground-water~~ ground-water is sampled. Ground-water elevations in wells which monitor the same waste management area shall be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(1) In order to accurately determine ground-water elevations for each monitoring well, the wells shall have been ~~accurately surveyed by a North Carolina Registered Land Surveyor.~~surveyed. If required by G.S. 89C, a professional land surveyor shall survey the wells. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via a letter dated January 1, 2011, that the surveying pursuant to this Paragraph constitutes practicing surveying under G.S 89C.] The survey of the wells shall conform to at least the following levels of accuracy:

(A) The horizontal location to the nearest 0.1 ~~ft.~~ foot;

(B) The vertical control for the ground surface elevation to the nearest 0.01 ~~ft.~~foot; and

(C) The vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 ~~ft.~~ foot.

(2) In order to determine the rate of ground-water flow, the owner or operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.

(e) The owner or operator shall establish background ground-water quality in hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the MSWLF unit.

~~(f) The number of samples collected to establish ground-water quality data shall be consistent with the appropriate statistical procedures to be used.~~

~~(g) The owner or operator shall select one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.~~

~~(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.~~

~~(2) A parametric analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.~~

~~(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.~~

~~(4) A control chart approach that gives control limits for each constituent.~~

~~(5) Another statistical test method that meets the performance standards of this rule. The owner or operator shall submit a justification for an alternative test method to the Division for approval. The justification shall demonstrate that the alternative statistical test method meets the performance standards of this rule. If approved, the owner or operator shall place a copy of the justification for an alternative test method in the operating record.~~

~~(h) Any statistical method chosen to evaluate ground water monitoring data shall comply with the following performance standards, as appropriate:~~

~~(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator (or the Division) to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.~~

~~(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no~~

less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a prediction interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the MSWLF unit.

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground-water quality of each parameter or constituent at each monitoring well designated to monitor the quality of ground water passing the relevant point of compliance to the background value of that constituent, according to the statistical procedures and performance standards specified in this Rule.

(2) Within a reasonable period of time after completing sampling and analysis, the owner or operator shall determine whether there has been a statistically significant increase over background at each monitoring well.

(j) Within 14 days of completing the statistical analysis for the analytical data from ground-water samples, the owner or operator shall submit to the Division a report that includes all information from the sampling event; including field observations relating to the condition of the monitoring wells, field data, laboratory data, statistical analysis, sampling methodologies, quality assurance and quality control data, information on ground-water flow direction, calculations of ground-water flow rate, for each well any constituents that exceed ground-water standards or show a statistically significant increase over background levels, and any other pertinent information related to the sampling event.

Authority G.S. 130A-294.

15A NCAC 13B .1633 DETECTION MONITORING PROGRAM

(a) Detection monitoring is required at MSWLF units at all ground-water monitoring wells that are part of the detection monitoring system as established in the approved monitoring plan. At a minimum, the detection monitoring program shall include monitoring for the constituents listed in Appendix I of 40 CFR Part 258. "Appendix I Constituents for Detection Monitoring", Monitoring" (Appendix I),is incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment, Health, Environment and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Management, Raleigh, North Carolina at no cost.

(b) The monitoring frequency for all Appendix I detection monitoring constituents shall be at least semiannual during the life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed for the Appendix I constituents during the first semiannual sampling event. At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semiannual sampling events.

(c) If the owner or operator determines that there is a statistically significant increase over background an exceedance of the ground-water protection standards, as defined in Paragraph (g) or (h) of Rule.1634 for one or more of the constituents listed in Appendix I of this Rule at any monitoring well at the relevant point of compliance, the owner or operator:

(1) Shall, within 14 days of this finding, report to the Division and place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels;

(2) Shall establish an assessment monitoring program meeting the requirements of this Section within 90 days except as provided for in Subparagraph (3) of this Paragraph; Rule .1633(c)(3); and

(3) The owner or operator may May demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase exceedance, or the exceedance resulted from an error in sampling,

analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration shall be ~~certified by a Licensed Geologist or Professional Engineer and~~ approved by the Division. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated January 1, 2011, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S 89C and G.S 89E.] A copy of this report shall also be placed in the operating record. If a successful demonstration is made, documented, and approved by the Division, the owner or operator may continue detection monitoring. If after 90 days, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring program as required by this Section.

Authority G.S. 130A-294.

15A NCAC 13B .1634 ASSESSMENT MONITORING PROGRAM

(a) Assessment monitoring is required whenever ~~a statistically significant increase over background has been detected for~~ one or more of the constituents listed in Appendix I ~~or whenever a violation of the North Carolina ground-water quality standards (15A NCAC 2L, .0202) has occurred.~~ is detected in exceedance of the ground-water protection standards, as defined in Paragraph (g) or (h) of this Rule.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator shall sample and analyze the ground water for all constituents identified in Appendix II of 40 CFR Part 258. 40 CFR Part 258 – "Appendix II List of Hazardous Inorganic and Organic ~~Constituents",~~ Constituents" (Appendix II), is incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of ~~Environment, Health,~~ Environment and Natural Resources, Division of ~~Solid~~ Waste Management, ~~401 Oberlin Road,~~ Raleigh, North Carolina at no cost. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the ~~complete~~ Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the new constituents. The Division may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The Division may delete any of the Appendix II monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Division may specify an appropriate alternate frequency for repeated sampling and analysis for ~~the full set of~~ Appendix II constituents required by Paragraph (b) of this Rule, ~~Rule .1634(b),~~ during the active life and post-closure care of the unit considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;
(2) Hydraulic conductivity of the aquifer and unsaturated zone;
(3) Ground-water flow rates;
(4) Minimum distance of travel;
(5) Resource value of the aquifer; and
(6) Nature, fate, and transport of any detected constituents.

(d) After obtaining the results from the initial or subsequent sampling events required in Paragraph (b) of this Rule, the owner or operator shall:

(1) Within 14 days, submit a report to the Division and place a notice in the operating record identifying the Appendix II constituents that have been detected;
(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells of the approved detection monitoring system for the unit for all constituents listed in Appendix I and for those constituents in Appendix II that have been detected in response to Paragraph (b) of this Rule. ~~Rule .1634(b).~~ A report from each sampling event shall be submitted to the Division and placed in the facility operating record. At least one sample from each well (background and downgradient) shall be collected and analyzed during each of these sampling events;
(3) Establish and report to the Division background concentrations for any constituents detected pursuant to Paragraph (b) or (d)(2) of this Rule; and
(4) Obtain a determination from the Division to establish ground-water protection standards for all constituents detected pursuant to Paragraph (b) or (d) of this Rule. The ground-water protection standards shall be established in accordance with Paragraph ~~(h)~~ (g) or ~~(i)~~ (h) of this Rule.

(e) If the concentrations of all Appendix II constituents are shown to be at or below ~~background values, using the approved statistical procedures,~~ ground-water protection standards, for two consecutive sampling events, the owner or operator shall report this information to the Division, and the Division may give approval to the owner or operator to return to detection monitoring.

~~(f) If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the approved ground water protection standards, using the approved statistical procedures, the owner or operator shall continue assessment monitoring.~~

~~(g)~~(f) If one or more Appendix II constituents are detected ~~at statistically significant levels~~ above the approved ground-water protection standards in any sampling event, the owner or

operator, shall within 14 days of this finding, submit a report to the Division, place a notice in the operating record, and notify all appropriate local government officials.

(1) The owner or operator shall also:

(A) Characterize the nature and extent of the release by installing additional monitoring wells, as necessary;

(B) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with Paragraph (d)(2) of this Rule;

(C) Notify all persons who own land or reside on land that directly overlies any part of the plume of contamination if contaminants have migrated off-site; and

(D) Within 90 days, initiate an assessment of corrective measures as required under Rule .1635 of this Section; or

(2) The owner or operator may demonstrate that a source other than a MSWLF unit caused the ~~contamination, ~~exceedance of the ground-water protection standards, or the ~~statistically significant increase ~~exceedance resulted from error in sampling, analysis,~~ statistical evaluation,~~ or natural variation in ground-water quality. A report documenting this demonstration shall be ~~certified by a Licensed Geologist or Professional Engineer and~~ approved by the Division. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated January 1, 2011, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S 89C and G.S 89E.] A copy of the approved report shall also be placed in the operating record. If a successful demonstration is ~~made, ~~made and approval is given by the Division, the owner or operator ~~shall continue ~~may discontinue assessment monitoring, and may return to detection monitoring if the Appendix II constituents are at or below ~~background and approval is given by the Division.~~background. Until a successful demonstration is made, the owner or operator shall comply with Paragraph ~~(g)~~ (f) of this Rule including initiating an assessment of corrective measures.

~~(h)~~(g) The owner or operator shall obtain a determination from the Division on establishing a ground-water protection standard for each Appendix II constituent detected in the ~~ground water.~~ground-water. The ground-water protection standard shall be the most protective of the following:

(1) For constituents for which a maximum contamination level (MCL) has been promulgated under the Section 1412 of the Safe Drinking Water Act codified under 40 CFR Part 141, the MCL for that constituent;

(2) For constituents for which a water quality standard has been established under the North Carolina Rules Governing Public Water Systems, 15A NCAC 18C, the water quality standard for that constituent;

(3) For constituents for which a water quality standard has been established under the North Carolina Groundwater Classifications And Standards, 15A NCAC 2L, .0202, the water quality standard for that constituent;

(4) For constituents for which MCLs or water quality standards have not been promulgated, the background concentration for the constituent established from wells in accordance with Rule .1631(a)(1) of this Section; or

(5) For constituents for which the background level is higher than the MCL or water quality standard or health based levels identified under Paragraph ~~(i)~~ (h) of this Rule, the background concentration.

~~(i)~~(h) The Division may establish an alternative ground-water protection standard for constituents for which neither an MCL or water quality standard has not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with E.P.A. guidelines for assessing the health risks of environmental pollutants;

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) of 1 x 10-6;

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For the purposes of this Rule, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

~~(j)~~(i) In establishing ground-water protection standards under Paragraph ~~(i)~~ (h) of this Rule the Division may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ~~ground water.~~ ground-water.

Authority G.S. 130A-294.

15A NCAC 13B .1635 ASSESSMENT OF CORRECTIVE MEASURES

(a) Within 90 days of finding that any of the constituents listed in Appendix II ~~have been detected at a statistically significant level exceeding~~ exceeded the ground-water protection standards, the owner or operator shall initiate assessment of corrective action measures. Such an assessment ~~shall be completed within a reasonable period of time.~~ must be completed within 90 days.

(b) The owner or operator shall continue to monitor in accordance with the approved assessment monitoring program.

(c) The assessment of corrective measures shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under Rule .1636 of this Section, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State and Local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties. ~~"The~~ The owner or operator shall provide a public notice of the meeting at least 30 days prior to the meeting. The notice shall include the time, place, date, and purpose of the meeting required by this Paragraph. A copy of the public notice shall be forwarded to the Division at least five days prior to publication. The owner or operator shall mail a copy of the public notice to those persons requesting notification. Public notice shall include: a legal advertisement placed in ~~the~~ a newspaper or newspapers serving the county; and provision of a news release to at least one newspaper, one radio station, and one television station serving the county.

Authority G.S. 130A-294.

15A NCAC 13B .1637 IMPLEMENTATION OF THE CORRECTIVE ACTION PROGRAM

(a) Based on the approved schedule for initiation and completion of remedial activities, the owner or operator shall:

(1) Establish and implement a corrective action ground-water monitoring program that:

(A) At a minimum, meets the requirements of an assessment monitoring program under Rule ~~.1634;~~ 1634 of this Section;

(B) Indicates the effectiveness of the corrective action remedy; and

(C) Demonstrates compliance with ground-water protection standards pursuant to Paragraph (e) of this Rule. ~~Rule .1637(e).~~

(2) Implement the approved corrective action remedy; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:

(A) Time required to develop and implement a final remedy;

(B) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(C) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(D) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(E) Weather conditions that may cause hazardous constituents to migrate or be released;

(F) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(G) Other situations that may pose threats to human health or the environment.

(b) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Rule .1636(b) of this Section are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques, as approved by the Division, that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under Paragraph (c) of this Rule. ~~Rule .1637(c).~~

(c) If the owner or operator or the Division determines that compliance with requirements under Rule .1636(b) of this Section cannot be practically achieved with any currently available methods, the owner or operator shall:

(1) ~~Obtain certification of a Licensed Geologist or Professional Engineer and approval from the Division that~~ Submit a written report that documents that compliance with the

requirements under Rule .1636(b) of this Section cannot be practically achieved with any currently available ~~methods;~~ methods and gain approval from the Division. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated January 1, 2011, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S 89C and G.S 89E.];

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(A) Technically practicable; and

(B) Consistent with the overall objective of the remedy.

(4) Submit a report justifying the alternative measures to the Division for approval prior to implementing the alternative measures. Upon approval by the Division, this report shall be placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under Rule ~~.1636,~~ .1636 of this Section,or an interim measure required under Paragraph (a) of this Rule,~~Rule .1637(a),~~ shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to Rule .1636 of this Section shall be considered complete when:

(1) The owner or operator complies with the approved ground-water protection standards at all points within the plume of contamination that lie beyond the relevant point of compliance.

(2) Compliance with the approved ground-water protection standards has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded these standards for a period of three consecutive ~~years using the statistical procedures and performance standards in Rule.1632.~~ years.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (e) of this Rule.~~Rule .1637(e)~~. This report shall be signed by the owner or operator and by ~~a Licensed Geologist or Professional Engineer.~~ the preparer of the report. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated January 1, 2011, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S 89C and G.S 89E.]Upon approval by the Division, this report shall be placed in the operating record.

(g) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (e) of this Rule, ~~Rule .1637(e)~~, the owner or operator shall be released from the requirements for financial assurance for corrective action under Rule .1628(d) of this Section.

Authority G.S. 130A-294.

* *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to amend the rule cited as 15A NCAC 28 .0302.*

Proposed Effective Date: *January 1, 2011*

Public Hearing:
Date: *September 14, 2010*
Time: *2:00 p.m.*
Location: *3125 Poplarwood Court, Suite 160, Raleigh, NC 27604*

Reason for Proposed Action: *The rule amendment is needed to establish a fee for adult and youth pier fishing in a 24-hour period at the North Carolina Aquariums' ocean educational fishing piers. The first one will open in May 2011 in Nags Head.*

Procedure by which a person can object to the agency on a proposed rule: *Send written objections to David Griffin, Division Director, 3125 Poplarwood Court, Suite 160, Raleigh, NC 27604, fax (919) 981-5224, email david.griffin@ncaquariums.com.*

Comments may be submitted to: *David Griffin, Division Director, 3125 Poplarwood Court, Suite 160, Raleigh, NC 27604; phone (919) 877-5500; fax (919) 981-5224; email david.griffin@ncaquariums.com*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:
☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☒ **None**

CHAPTER 28 - NORTH CAROLINA AQUARIUMS

SECTION .0300 - UNAUTHORIZED USE OF FACILITIES: FEES

15A NCAC 28 .0302 FEE SCHEDULE

(a) The following schedule of fees is applicable to govern admission to the North Carolina Aquariums:

(1)	Roanoke Island:	
	Adult, 13 and over	$8.00
	Senior, 62 and over	$7.00
	Child, 3 through 12	$6.00
(2)	Fort Fisher:	
	Adult, 13 and over	$8.00
	Senior, 62 and over	$7.00
	Child, 3 through 12	$6.00
(3)	Pine Knoll Shores:	
	Adult, 13 and over	$8.00
	Senior, 62 and over	$7.00
	Child, 3 through 12	$6.00

(b) Free admission to the North Carolina Aquariums on Roanoke Island, at Pine Knoll Shores and at Fort Fisher is offered to the following groups:

(1) Aquarium Society Members;
(2) Preregistered North Carolina School groups;
(3) Association of Zoos and Aquariums' reciprocals; and
(4) Children under the age of three.

Free admission is offered on the following days: Martin Luther King, Jr. holiday and Veteran's Day on November 11.

(c) The following schedule of fees is applicable to govern admission for fishing on the educational fishing piers of the North Carolina Aquariums:

(1)	Daily Fishing Pass (maximum 24 hour period; two rods maximum; (Ages 13 and over)	$12.00 $2.00 for each rod over two)
(2)	Youth Fishing Pass (maximum 24 hour period; two rods maximum; (Ages 12 and under)	$6.00 $1.00 for each rod over two)

Authority G.S. 143B-289.41(b); 143B-289.44.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of CPA Examiners intends to adopt the rules cited as 21 NCAC 08C .0126; 08J .0109; 08N .0215 and .0409; amend the rules cited as 21 NCAC 08A .0301 and .0309; 08F .0101, .0103, .0105, .0302, .0401 and .0410; 08H .0101; 08J .0101, .0105, .0108 and .0111; 08K .0105; 08M .0105-.0106; 08N .0206-.0207, .0302, .0306-.0307, and .0402; and repeal the rule cited as 21 NCAC 08F .0304.*

Proposed Effective Date: *February 1, 2011*

Public Hearing:
Date: *October 21, 2010*
Time: *9:00 a.m.*
Location: *NC State Board of CPA Examiners, 1101 Oberlin Road, Raleigh, NC 27605*

Reason for Proposed Action: *The purpose of the rulemaking is to: adopt rules that reflect current hearing procedures, new procedures due to a statutory change and new accounting standards; amend rules by removing out of date language, inserting new language and changing language to reflect the current practice of public accounting; and repeal rules that the Board does not currently administer.*

Procedure by which a person can object to the agency on a proposed rule: *A person may make a written comment and or be present at the public hearing to make an oral objection to the rules.*

Comments may be submitted to: *Robert N. Brooks, NC State Board of CPA Examiners, P.O. Box 12827, Raleigh, NC 27605-2827*

Comment period ends: *October 21, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:
☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☒ **None**

SUBCHAPTER 08A - DEPARTMENTAL RULES

SECTION .0300 - DEFINITIONS

21 NCAC 08A .0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) shall apply when those defined terms are used in 21 NCAC 08.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 08:

(1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted ~~"Retired," "Inactive," or "Conditional"~~ "Retired" or "Inactive" status;

(2) "Agreed upon procedures" means a professional service whereby a CPA is engaged to issue a report of findings based on specific procedures performed on financial information prepared by a responsible party;

(3) "AICPA" means the American Institute of Certified Public Accountants;

(4) "Applicant" means a person who has applied to take the CPA examination or applied for a certificate of qualification;

(5) "Attest service or assurance service" means:

(A) any audit or engagement to be performed in accordance with the Statements on Auditing Standards, Statements on Generally Accepted Governmental Auditing Standards, and Public Company Accounting Oversight Board Auditing Standards;

(B) any review or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services;

(C) any compilation or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services; or

(D) any agreed-upon procedure or engagement to be performed in accordance with the Statements on Standards for Attestation Engagements;

(6) "Audit" means a professional service whereby a CPA is engaged to examine financial statements, items, accounts, or elements of a financial statement, prepared by management, in order to express an opinion on whether the financial statements, items, accounts, or elements of a financial statement are presented in conformity with generally accepted accounting principles or other comprehensive basis of accounting;

(7) "Calendar year" means the 12 months beginning January 1 and ending December 31;

(8) "Candidate" means a person whose application to take the CPA examination has been accepted and who may sit for the CPA examination;

(9) "Client" means a person or an entity who orally or in writing agrees with a licensee to receive any professional ~~services; a~~services performed or delivered in this State;

(10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;

(11) "Compilation" means a professional service whereby a CPA is engaged to present, in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the statements;

~~(12) "Conditional," when used to refer to the status of a person, describes a person who holds a North Carolina certificate of qualification under certain conditions as imposed by the Board, such as additional requirements for failure to complete the required CPE hours in a calendar year, for failure to comply with CPA firm registration, or for failure to comply with peer review reporting and or participation in peer review;~~

~~(13)~~(12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;

~~(14)~~(13) "CPA" means certified public accountant;

~~(15)~~(14) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership which uses "certified public accountant(s)" or "CPA(s)" in or with its name or offers to or renders any attest services in the public practice of accountancy;

~~(16)~~(15) "CPE" means continuing professional education;

~~(17)~~(16) "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation,

constructive comment, or any other penalty or condition;

~~(18)~~(17) "FASB" means the Financial Accounting Standards Board;

~~(19)~~(18) "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions the entity expects to exist and the course of action the entity expects to take;

~~(20)~~(19) "GASB" means the Governmental Accounting Standards Board;

~~(21)~~(20) "Inactive," when used to refer to the status of a person, describes one who has requested inactive status and been approved by the Board and who does not use the title "certified public accountant" nor does he or she allow anyone to refer to him or her as a "certified public accountant," and neither he nor she nor anyone else refers to him or her in any representation as described in 21 NCAC 08A .0308(b).

~~(22)~~(21) "IRS" means the Internal Revenue Service;

~~(23)~~(22) "Jurisdiction" means any state or territory of the United States or the District of Columbia;

~~(24)~~(23) "License year" means the 12 months beginning July 1 and ending June 30;

~~(25)~~(24) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;

~~(26)~~(25) "NASBA" means the National Association of State Boards of Accountancy;

~~(27)~~(26) "NCACPA" means the North Carolina Association of Certified Public Accountants;

~~(28)~~(27) "North Carolina office" means any office physically located in North Carolina;

~~(29)~~(28) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;

~~(30)~~(29) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;

~~(31)~~(30) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;

~~(32)~~(31) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;

~~(33)~~(32) "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who verifies to the Board that the applicant does not receive or intend to receive in the future any earned compensation for current personal services in any job whatsoever and will not return to active status. However, retired status does not preclude volunteer services for which the retired CPA receives no direct or indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA;

~~(34)~~(33) "Revenue Department" means the North Carolina Department of Revenue;

~~(35)~~(34) "Review" means a professional service whereby a CPA is engaged to perform procedures, limited to analytical procedures and inquiries, to obtain a reasonable basis for expressing limited assurance on whether any material modifications should be made to the financial statements for them to be in conformity with generally accepted accounting principles or other comprehensive basis of accounting;

~~(36)~~(35) "Reviewer" means a member of a review team including the review team captain;

~~(37)~~(36) "Suspension" means a revocation for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension;

~~(38)~~(37) "Trade name" means a name used to designate a business enterprise;

~~(39)~~(38) "Work papers" mean the CPA's records of the procedures applied, the tests performed, the information obtained, and the conclusions reached in attest services, tax, consulting, special report, or other engagement. Work papers include, but are not limited to, programs used to perform professional services, analyses, memoranda, letters of confirmation and representation, checklists, copies or abstracts of company documents, and schedules of commentaries prepared or obtained by the CPA. The forms include, but are not limited to, handwritten, typed, printed, word processed, photocopied, photographed, computerized data, or any other form of letters, words, pictures, sounds or symbols;

~~(40)~~(39) "Work product" means the end result of the engagement for the client which may include, but is not limited to a tax return, attest or assurance report, consulting report, and financial plan. The forms include, but are not limited to, handwritten, typed, word processed,

photocopied, photographed, computerized data, or in any other form of letters, words, pictures, sounds, or symbols.

(c) Any requirement to comply by a specific date to the Board that falls on a weekend or federal holiday shall be received as in compliance if postmarked by U.S. Postal Service ~~cancellation~~ cancellation, if received by a private delivery service by that date, or received in the Board office on the next business day.

Authority G.S. 93-1; 93-12(8c).

21 NCAC 08A .0309 CONCENTRATION IN ACCOUNTING

(a) A concentration in accounting shall include:

(1) at least 30 semester hours, or the equivalent in quarter hours, of undergraduate accountancy courses which shall include no more than six semester hours of accounting principles and no more than three semester hours of business law; or

(2) at least 20 semester hours or the equivalent in quarter hours, of graduate accounting courses that are open exclusively to graduate students; or

(3) a combination of undergraduate and graduate courses which would be equivalent to Subparagraph (1) or (2).

(b) In recognition of differences in the level of graduate and undergraduate courses, one semester (or quarter) hour of graduate study in accounting shall be considered the equivalent of one and one-half semester (or quarter) hours of undergraduate study in accounting.

(c) Up to four semester hours, or the equivalent in quarter hours, of graduate income tax courses completed in law schools may count toward the semester hour requirement of Paragraph (a) of this Rule.

(d) Where, in the Board's discretion, an accounting course duplicates another course previously taken, only the semester (or quarter) hours of one of the courses shall be counted in determining if the applicant has a concentration in accounting.

(e) Accounting courses include such courses as principles courses at the elementary, intermediate and advanced levels; managerial accounting; business law; cost accounting; fund accounting; auditing; and taxation. There are many college courses offered that would be helpful in the practice of accountancy, but are not included in the definition of a concentration in accounting. Such courses include business finance, business management, computer science, economics, writing skills, accounting internships, and CPA exam review.

~~(f) A candidate who has conditional credit prior to January 1, 2001, may continue to apply to sit for the examination as long as the conditional credit is valid. A candidate who no longer has valid conditional credit after January 1, 2001, shall be required to meet all education requirements in effect at the time of the candidates's subsequent application.~~

Authority G.S. 93-12(5).

SUBCHAPTER 08C - CONTESTED CASES

SECTION .0100 - PROCEDURE IN CONTESTED CASES

21 NCAC 08C .0126 HEARING EXHIBITS

(a) The Board staff shall serve upon the Respondent copies of documents it plans to offer as evidence at a contested case hearing at least 14 business days prior to the scheduled hearing.

(b) Respondent shall likewise serve upon the Board staff copies of documents Respondent plans to offer as evidence at the hearing at least 14 business days prior to the scheduled hearing.

(c) Additional exhibits may be introduced by the Board staff or Respondent and admitted into evidence at the hearing in the discretion of the presiding officer if the document(s) were not otherwise available to the party 14 business days prior to the hearing or the document(s) are offered in response to documents served by the other party.

(d) Respondents shall supply at the hearing 16 copies of any document(s) that is of this Rule not served upon the Board staff in advance as prescribed in Paragraph (b) of this Rule.

Authority G.S. 93-12; 150B-41.

SUBCHAPTER 08F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 08F .0101 TIME AND PLACE OF CPA EXAMINATIONS

(a) The Board shall ~~hold~~ offer the CPA examination ~~twice~~ through the examination vendor(s) at least eight months in a calendar year.

(b) The ~~dates~~ months ~~of~~ the CPA Examination is administered are determined by the examination vendor(s).

(c) The ~~Board~~ examination vendor(s) shall ~~announce~~ provide examination applicants with computer access to the ~~time and place for holding each~~ operating hours and locations of the testing centers for the CPA examination. ~~examination at least 60 days prior to the date thereof.~~

Authority G.S. 93-12(3); 93-12(4).

21 NCAC 08F .0103 FILING OF EXAMINATION APPLICATIONS AND FEES

(a) All applications for CPA examinations shall be filed with the Board, accompanied by the examination fee. The Board sets the fee for each examination at the amount that enables the Board to recover its actual costs of examination services. If a check or credit card authorization fails to clear the bank, the application shall be deemed incomplete and returned.

(b) The initial application filed to take the examination shall include supporting documentation demonstrating that all legal requirements have been met, such as:

(1) minimum legal age;

(2) education;

(3) experience, if required in order to qualify for the examination; and

(4) good moral character.

(5) Any person born outside the United States shall furnish to the Board office evidence of citizenship; evidence of resident alien status; or

(A) other bona fide evidence that the applicant is legally allowed to remain in the United States for the purposes of becoming a U.S. citizen; or

(B) a notarized affidavit of intention to become a U.S. citizen; or

(C) evidence that the applicant is a citizen of a foreign jurisdiction which extends to citizens of this state like or similar privileges to be examined.

(c) Official transcripts (originals – not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and posted to the transcript. However, no examination grades shall be released until an official transcript is filed confirming the information supplied in the college registrar's letter. ~~All applicants submitting transcripts from foreign schools for consideration of degree and of meeting accountancy course requirements shall have had the transcript(s) evaluated by Foreign Academic Credential Service, Inc. (FACS) or a comparable educational evaluation service. Applicants shall determine that their transcripts contain all information required by these Rules.~~

~~(d) If experience is required to qualify for examination, affidavits shall be prepared and signed by employers on forms supplied by the Board.~~

~~(e)~~(d) In order to document good moral character as required by G.S. ~~93-12(5) of this Rule,~~ 93-12(5), three certificates of good moral character signed by persons not related by blood or marriage to the applicant shall accompany the application.

~~(f)~~(e) No additional statements ~~and~~ or affidavits regarding ~~experience and~~ education shall be required for applications for re-examination.

~~(g)~~(f) An applicant of the shall include as part of any application for the CPA examination a statement of explanation and a certified copy final disposition if the applicant has been arrested, charged, convicted or found guilty of, received a prayer for judgment continued or pleaded *nolo contendere* to any criminal offense.

~~(h)~~(g) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

~~(i)~~(h) Two ~~recent~~ identical photographs shall accompany the application for the CPA ~~examination.~~ examination and the application for the CPA certificate. These photographs ~~shall have been taken within the last six months. The photographs~~ shall be of the applicant alone, 2x2 inches in size ~~size, with an image size from the bottom of the chin to the top of the head, including hair, of between 1 and 1 3/8 inches.~~ Photographs shall ~~be clear,~~ front view, full face, taken in normal street attire without a hat or dark glasses, ~~and~~ printed on thin paper with a plain light ~~background.~~ background and taken within the last six months. ~~They shall be capable of withstanding a mounting temperature of 225 degrees Fahrenheit (107 degrees Celsius). They~~ Photographs may be in black and white or in color. ~~Snapshots, most vending machine prints, and magazine or full length photographs are unacceptable.~~ Photographs retouched so that the applicant's appearance is changed are unacceptable. Applicants shall write their names on the back of their photos.

~~(j)~~(i) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

~~(k)~~(j) Candidates shall file initial and re-exam applications to sit for the CPA Examination on forms provided by the Board.

~~(l)~~(k) Examination fees will be valid for a six-month period from the date of the Notice To Schedule (NTS).

Authority G.S. 93-12(3); 93-12(4); 93-12(5); 93-12(7).

21 NCAC 08F .0105 CONDITIONING REQUIREMENTS

(a) Passing Grades. A candidate shall be required to pass all sections of the examination with a grade of 75 or higher on each section.

(b) Military Service. A candidate who is on active military service shall not have the time on active military service counted against Subparagraph ~~(d)(1)~~ (c)(1) of this Rule unless the candidate applies to take the examination during the active military service in which case each month a candidate sits shall be counted toward Subparagraph ~~(d)(1)~~ (c)(1) of this Rule.

~~(c) A candidate who has conditional credit prior to January 1, 1997, may continue to apply to sit for the examination as long as the conditional credit is valid. A candidate who no longer has valid conditional credit after January 1, 1997, shall be required to meet all education requirements in effect at the time of their subsequent application.~~

~~(d)~~(c) A candidate is subject to the following conditioning requirements:

(1) A candidate shall be required to obtain a passing grade on all sections of the examination within an 18-month period;

(2) A candidate may sit for any section of the examination individually;

(3) A candidate may sit for each section of the examination up to four times during a one-year period but not more than one time in a three-month testing window as defined by the examination vendors(s);

(4) A candidate shall receive credit on the passage of his or her section(s) of the examination; such credit(s) shall be valid for an 18-month period which begins on the date the section(s) passed is (are) ~~taken; and~~ taken.

~~(5) A candidate having earned conditional credits on the paper and pencil CPA Examination has until October 31, 2005, or 18 months after administration of the last paper and pencil~~

~~examination to pass the remaining sections(s) before the credits earned under the paper and pencil examination expire.~~

Authority G.S. 93-12(3); 93-12(5).

SECTION .0300 - EDUCATIONAL REQUIREMENTS FOR EXAMINATION

21 NCAC 08F .0302 EDUCATION AND WORK EXPERIENCE REQUIRED PRIOR TO CPA EXAM

(a) Under G.S. 93-12(5) ~~there are two ways~~ an applicant for the CPA examination can demonstrate the possession of sufficient education to become a ~~CPA:~~ CPA through

~~(1)~~ the possession of a bachelor's degree in any subject, from a regionally accredited college or university, that either includes or is supplemented by a concentration in accounting as defined in 21 NCAC ~~8A .0309 ; and~~ 08A .0309.

~~(2) compliance with the requirements set forth in 21 NCAC 8F .0304, which provides for special examinations in lieu of formal education.~~

(b) Applicants who intend to demonstrate their possession of sufficient education to become a CPA by showing that they possess a bachelor's degree shall submit official transcripts with their application to take the CPA examination. Official transcripts shall show the grades the applicant received on courses completed and shall also show degrees awarded. An official transcript bears the seal of the school and the signature of the registrar or assistant registrar.

(c) With regard to Paragraph (a)(1) of this Rule, the Board may approve an application to take the CPA examination prior to the receipt of a bachelor's degree, if:

(1) the concentration in accounting which shall be included in or supplement the bachelor's degree is already complete or is reasonably expected to be completed by the end of the school term within which the examination falls; and

(2) an applicant reasonably expects to receive the bachelor's degree within 120 days after~~ the last day of the examination.~~ the application is received by the Board. However, if the applicant fails to receive the degree within the specified time, the CPA examination grades shall not be released and if the applicant wishes to retake the examination, the applicant shall reapply.

~~(d) With regard to Paragraph (a)(2) of this Rule, the applicant shall complete the work experience that is required by all candidates for certification, and set forth in 21 NCAC 8F .0401, prior to the date the applicant applies for the CPA examination.~~

Authority G.S. 93-12(3); 93-12(5).

21 NCAC 08F .0304 WAIVER OF EDUCATION REQUIRED PRIOR TO EXAMINATION

~~The Board shall waive the education requirements specified in 21 NCAC 08F .0302(a)(1) upon receipt of proof acceptable to the Board that the applicant has scored:~~

~~(1) in the 50th percentile rank or higher on each part of either the Graduate Record Examination or the Graduate Management Admission Test; and~~

~~(2) the applicant has enrolled for an advanced degree at a regionally accredited school and, prior to filing an application with the Board, has satisfactorily completed ten semester hours, or the equivalent, of graduate courses, including six semester hours in graduate accounting courses.~~

Authority G.S. 93-12(5); 93-12(7).

SECTION .0400 - EXPERIENCE

21 NCAC 08F .0401 WORK EXPERIENCE REQUIRED OF CANDIDATES FOR CPA CERTIFICATION

(a) G.S. 93-12(5)c sets forth work experience alternatives, one of which is required of candidates applying for CPA certification. In connection with those requirements, the following provisions apply:

(1) The work experience shall be acquired prior to the date a candidate applies for certification.

(2) All experience which is required to be under the direct supervision of a CPA shall be under the direct supervision of a CPA on active status.

~~(3) A candidate who applied for the CPA examination under the special examination exception set out in G.S. 93-12(5), and further described in 21 NCAC 08F .0302(a)(2) and (d) shall meet the work experience requirement prior to applying to take the CPA examination.~~

(b) The following provisions apply to all candidates seeking to meet the work experience requirement of G.S. 93-12(5)c.3 by working in the field of accounting.

(1) One year of work experience is 52 weeks of full-time employment. The candidate is employed full-time when the candidate is expected by the employer to work for the employer at least 30 hours each week for an indefinite period or for a set period of at least one year. Any other work is working part-time.

(2) All weeks of actual full-time employment are added to all full-time equivalent weeks in order to calculate how much work experience a candidate has acquired. Dividing that number by 52 results in the years of work experience the candidate has acquired.

(3) Full-time-equivalent weeks are determined by the number of actual part-time hours the

candidate has worked. Actual part-time hours do not include hours paid for sick leave, vacation leave, attending continuing education courses or other time not spent directly performing accounting services. For each calendar week during which the candidate worked actual part-time hours of 30 hours or more, the candidate receives one full-time-equivalent week. The actual part-time hours worked in the remaining calendar weeks are added together and divided by 30. The resulting number is the additional number of full-time-equivalent weeks to which the candidate is entitled.

(4) The candidate shall submit experience affidavits on a form provided by the Board from all of the relevant employers; provided that when such experience was not acquired while employed with a CPA firm, the candidate shall also submit details of the work experience and supervision on a form provided by the Board. Experience affidavits for part-time work shall contain a record of the actual part-time hours the candidate has worked for each week of part-time employment. Both the experience affidavit and the form for additional detail shall be certified by the employer's office supervisor or an owner of the firm who is a certificate holder.

(c) 21 NCAC 08F .0409 applies to teaching experience acquired pursuant to G.S. 93-12(5)c.2 and 4.

Authority G.S. 93-12(3); 93-12(5).

21 NCAC 08F .0410 EDUCATION REQUIRED OF CANDIDATES FOR CPA CERTIFICATION

(a) G.S. 93-12(5)a sets forth the education required of candidates applying for CPA certification. The 150 semester hours required shall include a concentration in accounting, as defined by 21 NCAC 08A .0309, and other courses as required by the Board as follows: 24 semester hours of coursework which shall include one three semester hour course from at least eight of the following 10 fields of study:

(1) communications;
(2) computer technology;
(3) economics;
(4) ethics;
(5) finance;
(6) humanities/social science;
(7) international environment;
(8) law;
(9) management; or
(10) statistics.

(b) Anyone applying for CPA certification who holds a Master's or more advanced degree in accounting, tax law, economics, finance, business administration, or a law degree ~~with an emphasis in taxation or accounting~~ from an accredited college or university or the equivalent thereof shall be in compliance with the above.

Authority G.S. 93-12(5).

SUBCHAPTER 08H - RECIPROCITY

21 NCAC 08H .0101 RECIPROCAL CERTIFICATES

(a) A person from another jurisdiction who desires to offer or render professional services as a CPA to his or her employer or a client in this ~~state~~ State shall meet all the requirements imposed on an applicant under G.S. 93-12(5) or the requirements of G.S. 93-12(6).

(b) The fee for a reciprocal certificate shall be the maximum amount allowed by G.S. 93-12(7a).

(c) An applicant for a reciprocal certificate shall meet the following requirements:

(1) The applicant has the legal authority to use the CPA title and to practice public accountancy in a jurisdiction.
(2) The applicant has received a passing score on each part of the Uniform CPA Examination.

~~(d) An applicant for change in status, reissuance, or reinstatement of a reciprocal certificate that was inactive, forfeited, or retired more than 10 years before the date of reapplication, must comply with all current requirements for a reciprocal certificate.~~

Authority G.S. 93-12(6); 93-12(7a).

SUBCHAPTER 08J - RENEWALS AND REGISTRATIONS

21 NCAC 08J .0101 ANNUAL RENEWAL OF CERTIFICATE, FORFEITURE, AND REAPPLICATION

(a) All active CPAs shall renew their certificates annually by the first day of July. The fee for such renewal is the maximum amount allowed by statute.

(b) To renew a certificate a CPA shall submit to the Board:

(1) a properly completed certificate renewal application form;
(2) a properly completed CPE report, as required by 21 NCAC 08G .0406(a); and
(3) the annual renewal fee.

(c) Upon failure of a CPA to comply with any applicable part of Paragraph (b) of this Rule by July 1, the Board shall send notice of such failure in the form of a demand letter to the CPA at the most recent mailing address the Board has on file. Completed renewal application packages shall be postmarked with proper postage not later than 30 days after the mailing date of the demand letter, unless that date falls on a weekend, in which case the renewal package must be postmarked or received in the Board office on the next business day. For renewal packages sent via the U.S. Postal Service, only a U.S. Postal Service cancellation shall be considered as the postmark. If the renewal package is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark. Subsequent failure of the CPA to comply with any applicable part of Paragraph (b) of this Rule within 30 days after such notice is mailed automatically results in forfeiture of the CPA's certificate, as required by G.S. 93-12(15).

(d) Upon forfeiture of a certificate, the certificate holder is no longer a CPA and the Board shall send notice of such forfeiture to the certificate holder by certified mail to the most recent mailing address the Board has on file. The certificate holder shall return the certificate to the Board office within 15 days after receipt of notice of forfeiture or, if the certificate has been destroyed or lost, shall submit an affidavit, on a form supplied by the Board, within 15 days of receipt of such notice that the certificate has been destroyed or has been lost and shall be returned to the Board if found.
(e) A person who has forfeited a certificate pursuant to G.S. 93-12(15) for failure to renew his or her certificate may apply for reissuance under 21 NCAC 08J ~~.0006.~~ .0106.
(f) If a check or credit card authorization for the annual renewal fee fails to clear the bank, the annual renewal shall be deemed incomplete and returned.
(g) Any active CPA serving in the armed forces of the United States and to whom an extension of time to file a tax return is granted pursuant to G.S. 105-249.2, is granted the same extension of time to comply with the requirements of Paragraphs (a) and (b) of this Rule.

Authority G.S. 93-12(7a); 93-12(8); 93-12(8a); 93-112(8b); 93-12(15).

21 NCAC 08J .0105 RETIRED AND INACTIVE STATUS: CHANGE OF STATUS
(a) A CPA may apply to the Board for change of status to retired status or inactive status provided the CPA meets the description of the appropriate status as defined in 21 NCAC 08A .0301. Application for any status change may be made on the annual certificate renewal form or another form provided by the Board.
(b) A CPA who does not meet the description of inactive or retired as defined in 21 NCAC 08A .0301 may not be or remain on inactive or retired status.
(c) A CPA on retired status may change to active status by:
(1) paying the certificate renewal fee for the license year in which the application for change of status is received; ~~and~~
(2) furnishing the Board with evidence of satisfactory completion of 40 hours of acceptable CPE courses during the ~~12 month~~ 12-month period immediately preceding the application for change of status. Eight of the required hours must be credits derived from non-self study CPE and eight of the required hours must be from a course or examination in North Carolina accountancy statutes and rules (including the Code of Professional Ethics and Conduct contained therein) as set forth in 21 NCAC 08G ~~.0401(a).~~ .0401(a); and
(3) three certificates of moral character and endorsements as to the eligibility signed by CPAs holding valid certificates granted by any state or territory of the United States or the District of Columbia.
(d) A CPA on retired status may request change to inactive status by application to the Board.
(e) Any individual on inactive status may change to active status by complying with the requirements of 21 NCAC 08J ~~.0006(c).~~ .0106(c).

Authority G.S. 93-12(8); 93-12(8b).

21 NCAC 08J .0108 CPA FIRM REGISTRATION
(a) All CPA firms shall register with the Board within 30 days after opening a North Carolina office or beginning a new CPA firm unless they are a professional corporation, professional limited liability company, or registered limited liability partnership, in which case they shall register prior to formation pursuant to 21 NCAC 08K .0104 and .0301.
(b) In addition to the registration required by Paragraph (a) of this Rule, all CPA firms shall renew annually by January 31 with the Board upon forms provided by the Board.
(c) The information provided by the registration shall include:
(1) Either an application for exemption from peer review, a request to be deemed in compliance with peer review or registration for peer review, pursuant to 21 NCAC 08M .0105;
(2) For all CPA firms not exempt from the peer review program, with the registration immediately following its review, the information required by 21 NCAC 08M .0106(a);
(3) For all North Carolina offices, an office registration form indicating the name of the office supervisor, the location of the office and its telephone number;
(4) For all partnerships or registered limited liability partnerships, a list of all resident and nonresident partners of the partnership;
(5) For all professional limited liability companies, the information set forth in 21 NCAC 08K .0104(d);
(6) For all incorporated CPA firms, the information set forth in 21 NCAC 08K .0104(d);
(7) For all CPA firms, the appropriate registration fees as set forth in 21 NCAC 08J .0110; and
(8) For all new CPA firms, the percentage of ownership held individually by each non-CPA owner who has five percent or more of ownership:
(A) in the new CPA firm; and
(B) at the year-end in each CPA firm in which that owner was an owner during the preceding two years.
(9) For all changes in ownership of a CPA firm, the percentage of ownership held individually by each owner who has five percent or more of ownership.
(d) All information provided for registration with the Board shall pertain to events of and action taken during the year preceding the year of registration. The last day of the preceding calendar year is the ~~"year end".~~ "year end."
(e) With regard to Paragraph (c)(3) of this Rule, one representative of a CPA firm may file all documents with the

Board on behalf of the CPA firm's offices in North Carolina. However, responsibility for compliance with this Rule shall remain with each office supervisor.

(f) With regard to Paragraph (c)(4) or (c)(5) of this Rule, one annual listing by a representative of the partnership, registered limited liability partnership, or professional limited liability company shall satisfy the requirement for all owners of the CPA firm. However, each owner shall remain responsible for compliance with this Rule. The absence of a filing under Paragraph (c)(4) or (c)(5) of this Rule shall be construed to mean that no partnership, registered limited liability partnership, or professional limited liability company exists.

(g) Notice that a CPA firm has dissolved or any change in the information required by Paragraph (c)(3) of this Rule shall be delivered to the Board's office within 30 days after the change or dissolution occurs. A professional corporation or professional limited liability company which is dissolving shall deliver the Articles of Dissolution to the Board's office within 30 days of filing with the Office of the Secretary of State.

(h) Upon written petition by a CPA firm, the Board may grant the CPA firm a conditional registration for a period of 60 days or less, if the CPA firm shows that circumstances beyond its control prohibited it from registering with the Board, completing a peer review or notifying the Board of change or dissolution pursuant to Paragraphs (a), (b), (c), and (g) of this Rule. The Board may grant a second extension under continued extenuating circumstances.

(i) A complete registration, as required by 21 NCAC 08J .0108(b) and (c), shall be postmarked with proper postage or received in the Board office not later than the last day of January unless that date falls on a weekend or federal holiday, in which case that day shall be the next business day. Only a U.S. Postal Service cancellation shall be considered as the postmark. If a registration is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark.

Authority G.S. 55B-10; 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(8a); 93-12(8c).

21 NCAC 08J .0109 CPA FIRM PRACTICE PRIVILEGE NOTIFICATION

A CPA firm whose principal place of business is outside this State and which has no office in this State and exercises the practice privilege afforded under G.S. 93-10 shall provide notice without fee to the Board if the CPA firm offers to perform or performs any of the services in G.S. 93-10(c)(3) for a client(s) in this State. Such one time notification shall be made on a form supplied by the Board.

Authority G.S. 93-10.

21 NCAC 08J .0111 COMPLIANCE WITH CPA FIRM REGISTRATION

If a CPA firm fails to comply with any part of 21 NCAC 08J ~~.0108,~~ .0108 or 08J ~~.0110~~ .0110, the Board may take disciplinary action against the CPA firm's members. Such discipline may include:

(1) ~~a conditional license upon such conditions as the Board may deem appropriate~~ one hundred dollars ($100.00) civil penalty for non-compliance of less than 60 days;

(2) ~~a conditional license and one hundred dollar ($100.00)~~ two hundred dollars ($200.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days;

(3) ~~a suspension of each member's CPA certificate for a period of not less than 30 days~~ five hundred dollars ($500.00) civil penalty for each member for non-compliance in excess of 120 days.

Authority G.S. 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(8c); 93-12(9).

SUBCHAPTER 08K - PROFESSIONAL CORPORATIONS AND PROFESSIONAL LIMITED LIABILITY COMPANIES

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 08K .0105 SUPPLEMENTAL REPORTS

(a) The Board may request in writing such supplemental reports as it deems appropriate from any professional corporations or professional limited liability companies registered with the Board pursuant to G.S. 55B, 57C, and these rules. The professional corporation or professional limited liability company shall file such reports with the ~~Board=s~~ Board's office within 30 days from the date it received the request.

(b) In addition to the supplemental reports required by 21 NCAC 08J .0108(g), professional corporations or professional limited liability companies registered with the Board pursuant to G.S. 55B and 57C shall file a certified copy of all amendments to the articles of incorporation or articles of organization prior to the effective date of each amendment. ~~They shall also file a copy of any amendment to the by laws, certified to be a true copy by the secretary or an assistant secretary of the corporation or professional limited liability company, prior to adoption of the amendment.~~

Authority G.S. 55B-11; 57C-1; 57C-2; 93-12(3).

SUBCHAPTER 08M - STATE QUALITY REVIEW PROGRAM

SECTION .0100- GENERAL SQR REQUIREMENTS

21 NCAC 08M .0105 PEER REVIEW REQUIREMENTS

(a) A CPA or CPA firm providing any of the following services to the public shall participate in a peer review program:

(1) audits;

(2) reviews of financial statements;

(3) compilations of financial statements; and

(4) agreed-upon procedures.

(b) A CPA or CPA firm not providing any of the services listed in Paragraph (a) of this Rule is exempt from peer review until the issuance of the first report provided to a client.
(c) A CPA, a new CPA firm or a CPA firm exempt from peer review now providing any of the services in Paragraph (a) of this Rule shall furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation ~~their first peer review report, the letter of comments, the letter of response, and any work papers~~ required for the peer review program within 24 months of the issuance of the first report provided to a client.
(d) Participation in and completion of one of the following peer review programs is required:

(1) AICPA Center for Public Company Audit Firms;
(2) AICPA Peer Review Program; or
(3) Any other peer review program found to be substantially equivalent to Subparagraph (1) or (2) of this Paragraph in advance by the Board.

(e) CPA firms shall not rearrange their structure or act in any manner with the intent to avoid participation in peer review.
(f) A CPA firm which does not have offices in North Carolina and which has ~~not~~ provided any services as listed in ~~Paragraph (a) of this Rule~~ G.S. 93-10(c)(3) to North Carolina clients is ~~not~~ required to participate in a peer review program.
(g) Subsequent peer reviews of a CPA firm are due three years and six months from the year end of the 12 month period of the first peer review unless granted an extension by the peer review program.

Authority G.S. 93-12(7b); 93-12(8c).

21 NCAC 08M .0106 COMPLIANCE
(a) A CPA firm registered for peer review shall provide to the Board the following:

(1) Peer review due date;
(2) Year end date;
(3) Final Letter of Acceptance from peer review program within 60 days of the date of the letter; and
(4) A package to include the Peer Review Report, ~~Letter of Comments,~~ Letter of Response and Final Letter of Acceptance for all ~~adverse~~ failed and second ~~modified~~ passed with deficiencies reports issued by a peer review program within 60 days of the date of the Final Letter of Acceptance.

(b) A peer review is not complete until the Final Letter of Acceptance is issued by the peer review program with the new due date.
(c) If a CPA firm fails to comply with 21 NCAC 08M .0105(c), (d), or (g), the Board may take disciplinary action against the CPA firm's members which may include:

(1) ~~a conditional license and~~ one hundred dollar~~s~~ ($100.00) civil penalty upon conditions as the Board may deem appropriate for non-compliance of less than 60 days;
(2) ~~a conditional license and~~ two hundred fifty dollar~~s~~ ($250.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days; and
(3) a suspension of each member's CPA certificate for a period of not less than 30 days and a civil penalty of five hundred dollars ($500.00) for non-compliance in excess of 120 days.

Authority G.S. 93-12(7b); 93-12(8c).

SUBCHAPTER 08N - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0200 - RULES APPLICABLE TO ALL CPAs

21 NCAC 08N .0206 COOPERATION WITH BOARD INQUIRY
A CPA shall fully cooperate with the Board in connection with any inquiry it shall make. Full cooperation includes fully responding in a timely manner to all inquiries of the Board or representatives of the Board and claiming Board correspondence from the U.S. Postal ~~Service.~~ Service, private delivery service or personal delivery.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0207 VIOLATION OF TAX LAWS
A CPA shall not knowingly violate any state or federal tax laws or regulations in handling the CPA's personal business affairs, or the business affairs of an employer or client, or the business affairs of any company owned by the CPA.

Authority G.S. 93-12(9).

21 NCAC 08N .0215 INTERNATIONAL FINANCIAL ACCOUNTING STANDARDS
(a) International Financial Accounting Standards. A CPA shall not express an opinion that financial statements are presented in accordance with international financial accounting standards if such statements contain any departure from an accounting standard which has a material effect on the statements, taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading.
(b) International Financial Accounting Standards consist of the following:

(1) International Financial Reporting Standards (IFRS) issued after 2001
(2) International Accounting Standards (IAS) issued before 2001
(3) Interpretations originated from the International Financial Reporting Interpretations Committee (IFRIC) issued after 2001
(4) Standing Interpretations Committee (SIC) issued before 2001

(c) Departures. In such cases the CPA's report must describe the departure, the approximate effect thereof, if practicable, and the reasons why compliance with the standard would result in a misleading statement.

(d) Copies of Standards. Copies of International Financial Accounting Standards may be inspected in the office of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the International Accounting Standards Board, IASC Foundation Publications Department, 30 Cannon Street, London, EC4M6XH, United Kingdom. They are available at cost, which is approximately thirty-four dollars ($34.00) in paperback form or three hundred eighty-three dollars ($383.00) in loose-leaf subscription form.

Authority G.S. 55-12; 57C-2-01; 93-12(9).

SECTION .0300 - RULES APPLICABLE TO ALL CPAS WHO USE THE CPA TITLE IN OFFERING OR RENDERING PRODUCTS OR SERVICES TO CLIENTS

21 NCAC 08N .0302 FORMS OF PRACTICE

(a) Authorized Forms of Practice. A CPA who uses CPA in or with the name of the business or offers or renders attest or assurance services in the public practice of accountancy to clients shall do so only through a registered sole proprietorship, partnership, Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Ownership. A CPA firm may have an ownership of up to 49 percent by non-CPAs. A CPA firm shall have ownership of at least 51 percent and be controlled in law and fact by holders of valid CPA certificates who have the unrestricted privilege to use the CPA title and to practice public accountancy in a jurisdiction and at least one of whom shall be licensed by this Board.

(c) CPA Firm Registration Required. A CPA shall not offer or render professional services through a CPA firm which is in violation of the registration requirements of 21 NCAC 08J .0108, 08J .0110, or 08M ~~.0101.~~ .0105.

(d) Supervision of CPA Firms. Every North Carolina office of a CPA firm registered in North Carolina shall be actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

(e) CPA Firm Requirements for CPA Ownership. A CPA firm and its designated supervising CPA shall be held accountable for the following in regard to a CPA owner:

(1) A CPA owner shall be a natural person or a general partnership or a limited liability partnership directly owned by natural persons.
(2) A CPA owner shall actively participate in the business of the CPA firm.
(3) A CPA owner who, prior to January 1, 2006, is not actively participating in the CPA firm may continue as an owner until such time as his or her ownership is terminated.

(f) CPA Firm Requirements for Non-CPA Ownership. A CPA firm and its designated supervising CPA partner shall be held accountable for the following in regard to a non-CPA owner:

(1) a non-CPA owner shall be a natural person or a general partnership or limited liability partnership directly owned by natural persons;
(2) a non-CPA owner shall actively participate in the business of the firm or an affiliated entity as his or her principal occupation;
(3) a non-CPA owner shall comply with all applicable accountancy statutes and the administrative code;
(4) a non-CPA owner shall be of good moral character and shall be dismissed and disqualified from ownership for any conduct that, if committed by a licensee, would result in a discipline pursuant to G.S. 93-12(9);
(5) a non-CPA owner shall report his or her name, home address, phone number, social security number and Federal Tax ID number (if any) on the CPA firm's registration; and
(6) a non-CPA owner's name may not be used in the name of the CPA firm or held out to clients or the public that implies the non-CPA owner is a CPA.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0306 ADVERTISING OR OTHER FORMS OF SOLICITATION

(a) Deceptive Advertising. A CPA shall not seek to obtain clients by advertising or using other forms of solicitation in a manner that is deceptive.

(b) Specialty Designations. A CPA may advertise the nature of services provided to clients but the CPA shall not advertise or indicate a specialty designation or other title unless the CPA has met the requirements of the granting organization for the separate title or specialty designation and the individual is currently on active status and in good standing with the granting organization for the separate title or specialty designation.

(c) The CPA firm shall offer to perform or ~~advertise~~ perform professional services only in the exact name of the CPA firm as registered with the Board. The exact CPA firm name as registered with the Board shall be used on the following documents:

(1) Letterhead;
(2) contracts;
(3) engagement letters;
(4) tax returns; and
(5) all professional services reports.

(d) The CPA firm may advertise professional services using the exact name of the CPA firm, a portion of the CPA firm name, initials or acronyms derived from the exact CPA firm name as registered with the Board.

~~(d)~~(e) Any CPA or CPA firm offering to or performing professional services via the ~~internet~~ Internet shall include the following information on the ~~internet:~~ Internet:

(1) CPA business or CPA firm ~~name;~~ name as registered with the Board;
(2) principal place of business;
(3) business phone; and
(4) North Carolina certificate number and North Carolina as state of certification.

~~(e)~~(f) The use of the phrase "certified public accountant(s)" or "CPA(s)" in the name of any business entity on letterhead,

professional services reports, business cards, brochures, building signage, office signs, telephone directories, contracts, engagement letters, tax returns, Internet directories or any other advertisements or forms or solicitation is prohibited except for registered CPA firms.

Authority G.S. 55-B; 57C-2-01; 93-12(9).

21 NCAC 08N .0307 CPA FIRM NAMES

(a) Deceptive Names Prohibited. A CPA or CPA firm shall not trade upon the CPA title through use of any name that would have the capacity or tendency to deceive. The name or initials of one or more ~~former~~ members of ~~the~~ a new CPA firm, as defined in 21 NCAC 08A .0301, ~~may~~ shall be included in the CPA firm name. The name of former members and the initials of former members that are currently in the CPA firm name and the name of current members and the initials of current members may be included in a new CPA firm name. The ~~name~~ name, the portion of the name, the initials of the name or the acronym derived from the name of a firm association or firm network that includes names that were not previous CPA members or are not current CPA members of the CPA firm and the name or initials of a non-CPA ~~owner~~ member in a CPA firm name is prohibited.

(b) Style of Practice. It is considered misleading if a CPA firm practices under a name or style which would tend to imply the existence of a partnership or registered limited liability partnership or a professional corporation or professional limited liability company of more than one CPA shareholder or CPA member or an association when in fact there is no partnership nor is there more than one CPA shareholder or CPA member of a CPA firm. For example, no CPA firm having just one CPA ~~owner~~ member may have as a part of its name the words "associates," "group," "firm," or "company" or their abbreviations. It is also considered misleading if a CPA renders non-attest professional services through a non-CPA firm using a name that implies any non-licensees are CPAs.

(c) Any CPA firm that has continuously used an assumed name approved by the Board prior to April 1, 1999, may continue to use the assumed name. ~~name, so long as the CPA firm is owned only by the individual practitioner, partners, or shareholders who obtained Board approval for the assumed name.~~ A CPA firm (or a successor firm by sale, merger, or operation of law) using the name, or a portion of a name, or the initials of the name, or the acronym derived from the name of a firm association or firm network that was approved by the Board prior to April 1, 1999 may continue to use that name so long as that use is not deceptive. A CPA firm (or a successor firm by sale, merger, or operation of law) may continue to use the surname of a retired or deceased partner or shareholder in the CPA firm's name so long as that use is not deceptive.

Authority G.S. 55B-12; 57C-2-01; 93-12-(9).

SECTION .0400 - RULES APPLICABLE TO CPAS PERFORMING ATTEST SERVICES

21 NCAC 08N .0402 INDEPENDENCE

(a) A CPA, or the CPA's firm, who is performing an engagement in which the CPA, or the CPA's firm, will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and appearance.

(b) Independence shall be considered to be impaired if, during the period of the professional engagement, a covered person:

(1) ~~had~~ Had or was committed to acquire any direct or material indirect financial interest in the ~~client;~~ client.

(2) ~~was~~ Was a trustee of any trust or executor or administrator of any estate ~~that~~ if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client; and

(A) The covered person (individually or with others) had the authority to make investment decisions for the trust or estate; or

(B) The trust or estate owned or was committed to acquire more than 10 percent of the client's outstanding equity securities or other ownership ~~interests~~ interests; or

(C) ~~the~~ The value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or ~~estate;~~ estate.

(3) ~~had~~ Had a joint ~~or~~ closely held investment that was material to the covered ~~person; or~~ person.

(4) Except as specifically permitted in the AICPA Professional Standards Code of Professional Conduct and Bylaws had any loan to or from the client or any officer or director of the client, or any individual owning 10 percent or more of the client's outstanding equity securities or other ownership interests.

(c) Independence shall be considered to be impaired if during the period of the professional engagement, a shareholder, a member, a partner or professional employee of the firm, his or her immediate family, close relatives, or any group of such persons acting together owned more than five percent of a client's outstanding equity securities or other ownership interests.

(d) Independence shall be considered to be impaired if, during the period covered by the financial statements, or during the period of the professional engagement, a shareholder, a member, a partner or professional employee of the firm was simultaneously associated with the client as a:

(1) Director, officer, employee, or in any capacity equivalent to that of a member of ~~management of the client;~~ management;

(2) Promoter, underwriter, or voting ~~trustee of the client;~~ trustee; or

(3) Trustee for any pension or profit-sharing trust of the client.

(e) ~~"Covered person" is:~~ "Covered" person is

(1) ~~A person~~ An individual on the attest engagement team;

(2) ~~A person~~ An individual in a position to influence the attest engagement;

(3) A partner or manager who provides nonattest services to the attest client beginning once he or she provides 10 hours of nonattest services to the client within any fiscal year and ending on the later of the date:
   (A) the firm signs the report on the financial statements for the fiscal year during which those services were provided; or
   (B) he or she no longer expects to provide 10 or more hours of nonattest services to the attest client on a recurring basis;
(4) A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;
(5) The firm, including the firm's employee benefit plans; or
(6) An entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles (GAAP) for consolidation purposes) by any of the individuals or entities described in ~~Paragraphs (a) through (e) of this Rule~~ Subparagraphs (1) through (5) of this Paragraph or by two or more such individuals or entities if they act together;

(f) The impairments of independence listed in this Rule are not intended to be all-inclusive.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0409 GOVERNMENT AUDITING STANDARDS

(a) Standards for Government Audits. A CPA shall not render audit services to a government entity or entity that receives government awards and is required to receive an audit in accordance with Government Auditing Standards unless the CPA has complied with the applicable Generally Accepted Government Auditing Standards.

(b) Government Auditing Standards. The Government Auditing Standards issued by the United States Government Accountability Office, including subsequent amendments and additions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered Generally Accepted Government Auditing Standards for the purpose of Paragraph (a) of this Rule.

(c) Departure. Departures from the standards listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the standards.

(d) Copies of the Standards. Copies of the Government Auditing Standards may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the Government Printing Office, Washington, D.C. 20402-0001. They are available at a cost, which is approximately twelve dollars and fifty cents ($12.50) in paperback form.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

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CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Licensing Board for General Contractors intends to amend the rules cited as 21 NCAC 12 .0202, .0701-.0702, and .0818.*

Proposed Effective Date: *June 1, 2011*

Public Hearing:
Date: *October 13, 2010*
Time: *10:00 a.m.*
Location: *5400 Creedmoor Road, Raleigh, NC 27612*

Reason for Proposed Action:
21 NCAC 12 .0202 – *Proposes to add two additional specialty contractor classifications.*
21 NCAC 12 .0701 – *Proposes changes to the composition of the Review Committee which investigates charges of improper practice by a general contractor.*
21 NCAC 12 .0702 – *Proposes changes to the composition of the Review Committee which investigates the unlawful practice of general contracting.*
21 NCAC 12 .0818 – *Clarifies who may request a hearing before the Board.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to these rules by contacting Mark D. Selph, Secretary Treasurer, P.O. Box 17187, Raleigh, NC 27619.*

Comments may be submitted to: *Mark D. Selph, P.O. Box 17187, Raleigh, NC 27619; phone (919) 571-4183; fax (919) 571-4703*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:
☐ **State**

☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☒ **None**

SECTION .0200 - LICENSING REQUIREMENTS

21 NCAC 12 .0202 CLASSIFICATION

(a) A general contractor must be certified in one of five classifications. These classifications are:

(1) Building Contractor. This classification covers all building construction activity including but not limited to: commercial, industrial, institutional, and all residential building construction; parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs, gutters, and water and wastewater systems which are ancillary to the aforementioned structures and improvements; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos).

(2) Residential Contractor. This classification covers all construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements; and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos).

(3) Highway Contractor. This classification covers all highway construction activity including but not limited to: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. Includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).

(4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(b)(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(b)(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).

(5) Specialty Contractor. This classification covers all construction operation and performance of contract work outlined as follows:

(A) H(Grading and Excavating). Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. Also includes clearing and grubbing, and erosion control activities.

(B) S(Boring and Tunneling). Covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.

(C) PU(Communications). Covers the installation of the following:

(i) All types of pole lines, and aerial and underground distribution cable for telephone systems;

(ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;

(iii) Underground conduit and communication cable including fiber optic cable; and

(iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.

(D) S(Concrete Construction). Covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.

(E) PU(Electrical-Ahead of Point of Delivery). Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.

(F) PU(Fuel Distribution). Covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. Includes all excavating, trenching and backfilling in connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.

(G) PU(Water Lines and Sewer Lines). Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. Includes pavement patching, backfill and erosion control as part of such construction.

(H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on water and wastewater systems, water and wastewater treatment facilities and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. Covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.

(I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.

(J) S(Interior Construction). Covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with non-toxic substances.

(K) S(Marine Construction). Covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. Does not include structures required on docks, slips and piers.

(L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:

(i) Brick, concrete block, gypsum partition tile, pumice block or other

lightweight and facsimile units and products common to the masonry industry;

(ii) Installation of fire clay products and refractory construction; and

(iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.

(M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:

(i) The clearing and filling of rights-of-way;

(ii) Shaping, compacting, setting and stabilizing of road beds;

(iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and

(iv) Construction and repair of tool sheds and platforms.

(N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.

(O) S(Metal Erection). Covers:

(i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and

(ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.

(P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:

(i) Excavation and grading;

(ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and

(iii) Installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.

(Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.

(R) S(Wind Turbine). Covers the construction, installation and repair of small-scale and utility-scale wind turbines, wind generators and wind power units. Includes assembly of blades, generator, turbine structures and towers. Also includes ancillary foundation work, field fabrication of metal equipment and structural support components.

(S) S(Photovoltaic). Covers the fabrication, construction, installation, and repair of photovoltaic cell panels

and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

Authority G.S. 87-1; 87-4; 87-10.

SECTION .0700 - BOARD DISCIPLINARY PROCEDURES

21 NCAC 12 .0701 IMPROPER PRACTICE

(a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination.

(1) A charge, properly filed, shall be initially referred to the review committee.

(2) The review committee shall be a committee made up of the following individuals:

(A) one member of the Board, and

(B) ~~the legal counsel of the Board,~~ the Secretary-Treasurer or his designee, and

(C) ~~the Secretary-Treasurer.~~ either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph.

(3) The review committee shall determine prior to a full-scale hearing, whether or not a charge is unfounded or trivial. The decision of the review committee shall be final.

(4) Once a charge is referred to the review committee, a written notice of and detailed explanation of the charge shall be forwarded to the person or corporation against whom the charge is made and a response is requested of the person or corporation so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given by first class mail to the last known address of the person or corporation.

(5) If the respondent denies the charge brought against him, then, the review committee may direct that a field investigation be performed by an investigator retained by the Board.

(6) After all preliminary evidence has been received by the review committee, it shall make a threshold determination of the charges brought. From the evidence, it shall recommend to the Board that:

(A) The charge be dismissed as unfounded or trivial;

(B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the specific act or acts admitted by him to have been violated and, also, not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or

(C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11. Prior to the matter being heard and determined by the Board, it may be resolved by consent order approved by the review committee.

(7) Notice of the threshold determination of the review committee shall be given to the party against whom the charges have been brought and the party preferring the charge within ten days of the review committee's decision. Though it is not forbidden to do so, the review committee shall not be required to notify the parties of the reasons of the review committee in making its threshold determination.

(c) Board Determination. The Board may choose to hold a hearing on the merits of any disputed charge. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge in light of the requirements of G.S. 87-11.

Authority G.S. 87-11; 150B-3; 150B-38.

21 NCAC 12 .0702 UNLAWFUL PRACTICE

(a) Preferring Charges. Any person who believes that any person or corporation is in violation of the acts specified in G.S. 87-13 may prefer charges against that person or corporation. The charges are to be filed with the Secretary-Treasurer of the Board at the Board's office in Rule .0101 of this Chapter.

(b) Preliminary or Threshhold Determination.

(1) A charge of unlawful practice, properly filed, is referred to the review committee.

(2) The review committee is a committee made up of the following individuals:

(A) one member of the Board, and

(B) ~~the legal counsel of the Board,~~ the Secretary-Treasurer or his designee, and

(C) ~~the Secretary-Treasurer~~ either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph.

(3) The review committee is specifically delegated with the sole responsibility of determining on behalf of the Board whether there is probable cause to believe that a party against whom a charge has been brought in fact has violated the provisions of G.S. 87-13.

(4) With or without notifying any of the parties involved, the review committee shall investigate the charge to determine whether there is probable cause to believe that G.S. 87-13 has been violated.

(5) After all preliminary evidence has been received by the review committee, it makes its determination and acts in the following manner:

(A) If probable cause is found, the decision along with the reasons for the decision and any evidence accumulated by the review committee is immediately forwarded to Board counsel for appropriate action.

(B) If no probable cause is found, the party preferring charges is so notified.

Authority G.S. 87-1; 87-13.

SECTION .0800 - CONTESTED CASES

21 NCAC 12 .0818 REQUEST FOR HEARING

(a) Any time an ~~individual~~ aggrieved party believes their rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing pursuant to Rule .0817 of this Section, that individual may file a formal request for a hearing.

(b) Before an ~~individual~~ aggrieved party may file a request he must first exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the ~~individual~~ aggrieved party shall submit a request to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request shall contain the following information:

(1) Name and address of the Petitioner,

(2) A concise statement of the action taken by the Board which is challenged,

(3) A concise statement of the way in which the Petitioner has been aggrieved, and

(4) A clear and specific statement of request for a hearing.

(d) A request for administrative hearing must be submitted to the Board's office within 60 days of receipt of notice of the action taken by the Board which is challenged. The request will be acknowledged promptly and, if Petitioner is a person aggrieved, a hearing will be scheduled.

Authority G.S. 87-11 (b); 150B-11; 150B-38.

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CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Massage and Bodywork Therapy intends to amend the rule cited as 21 NCAC 30 .0630.*

Proposed Effective Date: *February 1, 2011*

Public Hearing:
Date: *October 21, 2010*
Time: *11:00 a.m.*
Location: *Wachovia Capitol Center, 13th Floor Conference Room, 150 Fayetteville Street, Raleigh, NC*

Reason for Proposed Action: *This amendment is being submitted to clarify the Massage and Bodywork Therapy Practice Act.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to this proposed amendment by submitting a written statement to Charles P. Wilkins at PO Box 2539, Raleigh, NC 27602 postmark on or before December 5, 2010.*

Comments may be submitted to: *Charles P. Wilkins, PO Box 2539, Raleigh, NC 27602, phone (919)833-2752, fax (919)833-1059, email cwilkins@bws-law.com*

Comment period ends: *December 5, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:
☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**

☒ **None**

SECTION .0600 - MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0630 SCHOOL CATALOG

An approved school shall publish a catalog or bulletin that is certified by an official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

(1) School name, location address, and phone number;
(2) Volume number and date of publication;
(3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions;
(4) Names and titles of all instructional and key administrative staff;
(5) Statement of school mission, philosophy, and educational program objectives;
(6) School history and identification of all licenses, approvals or accreditations that the school maintains;
(7) Definition of measurement of program, whether in clock hours or credit hours;
(8) Course descriptions, including number of hours for each course;
(9) Graduation requirements, including type of credential issued upon graduation;
(10) Requirements for licensure, certification or registration of therapists in the state, province, or country in which the school operates;
(11) Standards for admission, description of the school's admissions process, and requirement of a signed Student Enrollment Agreement;
(12) School calendar, including beginning and ending dates of all programs, all holidays and days off;
(13) Length of time required for completion of the program;
(14) Program tuition and all associated costs, including textbooks, supplies, and other expenses.
(15) Refund policy;
(16) Description of facilities and learning resources;
(17) Student services;
(18) Policy regarding prohibition of compensation to student for performing massage and bodywork therapy; and
(19) Academic policies, including the following:
  (a) Grading system;
  (b) Standards of satisfactory academic progress;
  (c) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;
  (d) Transfer of credit from other institutions;
  (e) Attendance requirements, make-up work, tardiness, leave of absence;
  (f) Standards of conduct, including a sexual harassment policy; and
  (g) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.
(20) Statement pursuant to G.S. 90-629.1, that the North Carolina Board of Massage and Bodywork Therapy may deny a license to practice massage and bodywork therapy if an applicant has a criminal record or there is other evidence that indicates the applicant lacks good moral character.

Authority G.S. 90-626(9); 90-631.

TITLE 25 – OFFICE OF STATE PERSONNEL

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 01N .0601-.0605.*

Proposed Effective Date: *January 1, 2011*

Public Hearing:
Date: *September 14, 2010*
Time: *10:00 a.m.*
Location: *Office of State Personnel, Administration Building, 3rd floor, 121 West Jones Street, Raleigh, NC 27603*

Reason for Proposed Action: *This policy is in compliance with The Patient Protection and Affordable Care Act (H.R. 3590) which was signed into law on March 22, 2010.*
This policy provides guidelines that will assist agencies in the development of work/life balance initiatives to support the wellness and health of employees of North Carolina State Government. Work/life balance initiatives have proven to be effective recruitment and retention strategies as agencies compete for a diverse workforce to deliver efficient services to the citizens of North Carolina.
Research has shown that lactation support is beneficial to the working, nursing mother and her child as well as to employers by decreasing medical expenses; reducing absenteeism; increasing employee retention; and improving morale in the workplace.

Procedure by which a person can object to the agency on a proposed rule: *A person may object to these proposed rules by one of the following methods: 1. A written letter to Peggy Oliver,*

HR Police Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. 2. An email to peggy.oliver@osp.nc.gov. 3. A telephone call to Peggy Oliver at (919)807-4832.

Comments may be submitted to: *Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone(919)807-4832, fax (919)715-9750, email peggy.oliver@osp.nc.gov*

Comment period ends: *October 15, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

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

☒ **State**
☐ **Local**
☐ **Substantial Economic Impact (**≥$3,000,000**)**
☐ **None**

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01N - WORKPLACE ENVIRONMENT AND HEALTH

SECTION .0600 – LACTATION SUPPORT

25 NCAC 01N .0601 PURPOSE
The purpose of this Rule is to provide guidelines that will assist agencies in the development of a worklife balance initiative which supports nursing mothers working in North Carolina State Government.

Authority G.S. 126-4.

25 NCAC 01N .0602 POLICY
It is the policy of the State to assist working mothers who are nursing children during their transition back to work following the birth of a child by providing lactation support. A lactation support program allows a nursing mother to express breast milk periodically during the work day.

Authority G.S. 126-4.

25 NCAC 01N .0603 OFFICE OF STATE PERSONNEL RESPONSIBILITY
The Office of State Personnel will designate a program coordinator to assist agencies with questions regarding this Rule.

Authority G.S. 126-4.

25 NCAC 01N .0604 AGENCY RESPONSIBILITIES
State agencies shall provide space, privacy, and time for nursing mothers to express breast milk by doing the following:

(1) Providing private space that is not in a restroom or other common area. The space should have a door that can be secured or locked, adequate lighting and seating, and electrical outlets for pumping equipment.
(2) Providing time to express breast milk. The agency shall provide time to express breast milk. The agency may require the employee to use the regularly scheduled paid break time. If time is needed beyond the regularly scheduled paid break times, the agency shall make reasonable efforts to allow employees to use paid leave or unpaid time for this purpose.

Authority G.S. 126-4.

25 NCAC 01N .0605 EMPLOYEE RESPONSIBILITY
The employee shall be responsible for storage of the expressed breast milk

Authority G.S. 126-4.

Note from the Codifier: *The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.*
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

BUILDING CODE COUNCIL

Rule-making Agency: *NC Building Code Council*

Rule Citation: *2009 NC Fuel Code Section 406.7 Purging of Gas Piping*

Effective Date: *July 23, 2010*

Date Approved by the Rules Review Commission: *July 15, 2010*

Reason for Action: *This amendment is in response to an inadequate performance procedure prescribed in the NC Fuel Gas Code. Subsequent to an investigation by the US Chemical Safety Board following an explosion at the ConAgra Plant in the spring of 2009, it was determined that the procedure allowing a gas line to be purged within a building could lead to another accident before the permanent rule is completed. In short, the Code allows a technician to determine the amount of Natural or LP gas within a building by sense of smell. The new language requires equipment to detect the dangerous concentration of gas within the enclosed space. The odorant added to the gas was intended to determine the presence, not the concentration of the gas.*

2009 NC Fire Code
Section 406.7, Purging of Gas Piping. (090915 Item B-6, 100309 Item D-6, 100615 Item C-14)

406.7 Purging. Purging of 2 ½ inch nominal pipe size or larger ~~piping~~ shall comply with Sections 406.7.1 through 406.7.4.

406.7.1 Removal from service. Where gas piping is to be opened for servicing, addition, or modification, the section to be worked on shall be turned off from the gas supply at the nearest convenient point, and the line pressure vented to the outdoors.~~, or to ventilated areas of sufficient size to prevent accumulation of flammable mixtures.~~ The remaining gas in this section of pipe shall be displaced with an inert gas as required by Table 406.7.1.

Exception: If the line pressure cannot be vented to the outdoors; the building and all effected spaces shall be evacuated of personnel not involved with purging the gas lines, quantities of flammable gas shall not exceed 25% of the lower explosive limit (*1.0% fuel / air mixture for natural gas or 0.6% fuel / air mixture for LP gas)* as measured by a combustible gas detector, eliminate all ignition sources and provide adequate ventilation to prevent accumulation of flammable gases.

TABLE 406.7.1
***SIZE AND* LENGTH OF PIPING REQUIRING PURGING WITH**
INERT GAS FOR SERVICING OR MODIFICATION

NOMINAL PIPE SIZE (Inches)	LENGTH OF PIPING REQUIRING PURGING
$2^1/_2$	> 50 feet
3	> 30 feet
4	> 15 feet
6	> 10 feet
8 or larger	Any length

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

406.7.2 Placing in operation. Where piping full of air is placed in operation, the air in the piping shall be displaced with fuel gas, except where such piping is required by Table 406.7.2 to be purged with an inert gas prior to introduction of fuel gas. The air can be safely displaced with fuel gas provided that a moderately rapid and continuous flow of fuel gas is introduced at one end of the line and air is vented out at the other end. The fuel gas flow shall be continued without interruption until the vented gas is free of air. The point of discharge shall not be left unattended during purging. After purging, the vent shall then be closed. Where required by Table 406.7.2, the air in the piping shall first be displaced with an inert gas, and the inert gas shall then be displaced with fuel gas.

TABLE 406.7.2
SIZE AND LENGTH OF PIPING REQUIRING PURGING WITH
INERT GAS BEFORE PLACING IN OPERATION

NOMINAL PIPE SIZE (Inches)	LENGTH OF PIPING REQUIRING PURGING
3	> 30 feet
4	> 15 feet
6	> 10 feet
8 or larger	Any length

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

406.7.3 Discharge of purged gases. The open end of piping systems being purged shall not discharge into confined spaces or areas where ~~quantities of flammable gas can exceed 25% of the lower explosive limit as measured by a combustible gas detector.~~ there are sources of ignition unless precautions are taken to perform this operation in a safe manner.~~by ventilation of the space, control of purging rate and elimination of hazardous conditions~~ All potential sources of ignition shall be identified and eliminated or controlled. Precautions shall be taken to

maintain the concentration of the flammable gas below 25% of the lower explosive limits (*1.0% fuel / air mixture for natural gas or 0.6% fuel / air mixture for LP gas) such as adequate ventilation and control of purging rate*.~~*and other measures as appropriate for the elimination of all hazardous conditions.*~~ *The point of discharge shall not be left unattended during purging.*

406.7.4 Placing appliances and equipment in operation. After the piping system has been placed in operation, all appliances and equipment shall be purged and then placed in operation, as necessary.

406.7.5 Personnel Training. Personnel performing purging operation shall be trained to the hazards associated with purging and shall not rely on odor when monitoring the concentration of combustible gas.

The effective date of this Temporary Rule is July 23, 2010.
The Statutory authority for Rule-making is G.S. 143-136; 143-138.

This Section contains information for the meeting of the Rules Review Commission on Thursday, June 17, 2010 9:00 a.m. at 1711 New Hope Church Road, RRC Commission 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 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate	**Appointed by House**
Jim R. Funderburk - 1st Vice Chair	Jennie J. Hayman - Chairman
David Twiddy - 2nd Vice Chair	John B. Lewis
Ralph A. Walker	Clarence E. Horton, Jr.
Jerry R. Crisp	Daniel F. McLawhorn
Jeffrey P. Gray	Curtis Venable

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

August 19, 2010 September 16, 2010
October 21, 2010 November 18, 2010

RULES REVIEW COMMISSION
July 15, 2010
MINUTES

The Rules Review Commission met on Thursday, July 15, 2010, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Clarence Horton, John Lewis, Dan McLawhorn, David Twiddy, Curtis Venable and Ralph Walker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers, Julie Edwards and Dana Vojtko.

The following people were among those attending the meeting:

Nancy Hemphill	Medical Board
Nahale Kalfas	Board of Examiners for Speech and Language Pathologists and Audiologists
John Randall	Board of Examiners for Speech and Language Pathologists and Audiologists
Barry Gupton	Building Code Council
Steven McKeand	Board of Registration for Foresters
Anca Grozav	Office of State Budget and Management
Dedra Alston	DHHS/Division of Child Development
Anna Clark	DHHS/Division of Child Development
Eric David	Board of Pharmacy
Lisa Johnson	Social Services Commission
Nancy Pate	Department of Environment and Natural Resources
Sara Koch	Board of Registration for Foresters
Larry Such	Board of Registration for Foresters
David McLeod	Department of Agriculture and Consumer Services
Laura Leslie	WUNC (radio)
Steve Dirksen	Board of Funeral Service

APPROVAL OF MINUTES

The meeting was called to order at 9:03 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the June 17, 2010 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

02 NCAC 34 .0331, .1103 – Structural Pest Control Commission. No rewritten rules have been submitted and no action was taken.

02 NCAC 48A .1205, .1209 – Board of Agriculture. The Commission approved the rewritten rules submitted by the agency.

02 NCAC 52B .0502, .0603 – Board of Agriculture. The Commission approved the rewritten rules submitted by the agency.

10A NCAC 09 .0102, .0511, .2510 – Child Care Commission. The Commission approved the rewritten rules submitted by the agency.

15A NCAC 18A .2633 – Commission for Public Health. The agency requested that this rule be held over to next month's meeting, therefore no action was taken.

21 NCAC 14B .0605 – Board of Cosmetic Art Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14I .0401 – Board of Cosmetic Art Examiners. No rewritten rule has been submitted and no action was taken.

21 NCAC 62 .0404 – Board of Environmental Health Specialist Examiners. The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules.

Alcoholic Beverage Control Commission
04 NCAC 02R .0102 and .0402 were approved unanimously.

04 NCAC 02R .1305 was returned to the agency at the agency's request.

Board of Funeral Services
Prior to the review of the rules from the Board of Funeral Service, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because Charles McDarris of his new law firm (Bailey & Dixon) occasionally represents the Board during its administrative hearings.

All repeals were approved unanimously.

Commission for Mental Health
10A NCAC 27E .0301 - The Commission objected to this rule based on lack of statutory authority and ambiguity. In (b), there is no authority cited for this agency to create another agency and grant it the authority to adopt rules (establish policy). It is also not clear who, if anyone, is required to have NCI training.

10A NCAC 27E .0302 - The Commission objected to this rule based on lack of statutory authority and ambiguity. In (5), there is no authority cited for the agency to create a committee and give it exclusive authority to certify training. Even if there is authority it is not clear what standards the committee will use in certifying trainers. There is also no authority cited for the agency to create an agency and give that agency the authority to adopt rules (establish guidelines and policies). In (6), it is not clear what the qualifications are for NCI (North Carolina Interventions). The only things listed are parts of a curriculum and it is not clear how that is a qualification. There is no authority cited for the agency to grant others exclusive authority to certify instructors. In (9), it is not clear what standards the Curriculum Review Commission is to use in approving techniques. It is also not clear what populations are referred to.

10A NCAC 27E .0303 - The Commission objected to this rule based on lack of statutory authority and ambiguity. In (1), there is no authority cited for the agency to create an agency and give it authority to adopt rules (establish policies and procedures). There is the same issue in (3) with "develop guidelines." In (4), it is not clear what is meant by "direct the certification." In (5), it is not clear what is meant by "maintain inter rater reliability." In (7), it is not clear what records are to be maintained. In (9), there is no authority for the committee to adopt rules (enact guidelines).

10A NCAC 27E .0304 - The Commission objected to this rule based on ambiguity. Since apparently this is a new program providing for the certification of Instructor Trainers, it is not clear how the committee that certifies them can be made up of people already certified. In (12), it is not clear what is meant by "licensed clinicians."

Social Services Commission
10A NCAC 70K was approved unanimously.

Coastal Resources Commission
All permanent rules were approved unanimously.

Board of Registration for Foresters
All permanent rules were approved with the exceptions as set out below:

The first motion for these rules, which was to object to Rule .0115 on the basis of lack of statutory authority and ambiguity, object to Rule .0125 on the basis of lack of statutory authority and lack of necessity and to approve the remaining rules, failed. Commissioners Crisp, Funderburk, Gray and Venable voted in favor of the motion. Commissioners Horton, Lewis, McLawhorn, Twiddy and Walker voted against the motion.

The second motion for these rules, which was to object to Rule .0115 on the basis of ambiguity, object to Rule .0125 on the basis of lack of statutory authority and lack of necessity and to approve the remaining rules, passed. Commissioners Gray, Horton, Lewis, McLawhorn, Twiddy and Walker voted in favor of the motion. Commissioners Crisp, Funderburk and Venable voted against the motion.

21 NCAC 20 .0115 - The Commission objected to this rule based on ambiguity. In (4), it is not clear what "Forestry Best Management Practices" must be practiced.

21 NCAC 20 .0125 - The Commission objected to Rule .0125 based on lack of statutory authority and lack of necessity. There is no authority cited for the provisions in (b) and (c) delegating to the Chairman the authority to grant and deny rule-making petitions. G.S. 150B-20 gives that authority to the agency and does not provide for the delegation to anyone. Most of the paragraphs would be unnecessary as repeating the statute if directed to the agency.

Medical Board
Prior to the review of the rules from the Medical Board, Commissioner Lewis recused himself and did not participate in any discussion or vote concerning these rules because he is a public member of the NC Medical Board.

All permanent rules and repeals were approved unanimously.

Board of Funeral Service
Prior to the review of the rules from the Board of Funeral Service, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because Charles McDarris of his new law firm (Bailey & Dixon) occasionally represents the Board during its administrative hearings.

21 NCAC 34A .0203 - The Commission objected to this rule based on lack of statutory authority and necessity. The statement found in lines 8 – 10 “provided, however, that such suspension [of an agency’s right to expend its funds found in G.S. 93B-2(d)] shall be lifted and such escrow shall terminate immediately upon deposit of the delinquent report … requested” is either unnecessary or outside its authority to proclaim. If such statement is a correct interpretation or implementation of the law and the suspension of the board’s authority to spend its money is ended when the board puts the report in the mail, then it is unnecessary for the board to say this. The right to spend its own money and implement its own budget does not directly affect the rights or obligations of either the board’s regulated licensees and applicants or the general public. It affects only the operation of the board. Such a rule is unnecessary. This portion of the rule is also the board’s own legal interpretation regarding the operation of G.S. 93B-2. The board has cited no authority to issue such a legal interpretation. If the board happened to be wrong in its interpretation of when the suspension is lifted, it would be outside the board’s authority to overrule other state law that governs when the suspension is lifted. Note that if the board

stated only that it would start operating according to its budget and expending board funds when it put the report in the U.S. mail, that would be within its authority.

21 NCAC 34B .0311 – The Commission objected to this rule based on ambiguity. The provisions in (b) concerning the requirements for continuing education (CE), renewal fees and application for and termination of "active military status" are unclear, if not actually confusing and contradictory. The provisions in (b) appear to be an attempt to allow a licensed individual who is serving active military duty time an exemption from certain license renewal deadlines and requirements including CE requirements. In (b)(2) the second sentence specifies that continuing education is not required for any year during which the applicant is on active military status. However the next sentence appears to contradict that by stating that time spent on active military status "shall apply to the total years ['hours'?] of continuing education required …." [Current CE requirements are five hours for each calendar year licensed.] One possible interpretation is that the time spent on active military status "shall apply" by being subtracted from the total CE required. At any rate the requirement or relaxation of the requirement is unclear. In (b)(3) it is not clear when someone entitled to "active military status" but who has not yet applied for it or received it, loses the protection of (b)(2) and its provision that renewal fees or applications are not required during the period of active military status (line 22). The first sentence of (b)(3) states that active military status terminates at the earlier of either when the person returns to practice or six months after severance from active military duty. The next sentence provides a grace period of six months after severance from active military duty to request active military status. But then the next sentence in the rule, lines 28 – 31, states that someone who fails to renew before the termination of active military status suffers a lapsed license and no waiver of CE requirements, renewal fees or reinstatement fees. It is unclear if these penalty provisions would apply to someone who was an "active military person[nel]" but had not yet been placed on active military status by the board, had returned from military service and was still entitled to apply for and receive active military status. Adding to the clarity issues in (b)(3) is the problem that there are three different topics within this sub-paragraph, termination of active military status, application deadline for active military status, and deadline and penalty for failure to renew the license when returning from active military status. They are bundled together when they should be separate and are not arranged in any logical order.

21 NCAC 34D .0203 – The Commission objected to this rule based on failure to comply with the Administrative Procedure Act. The agency has not made the requested technical changes in violation of G.S. 150B-21.10.

Board of Pharmacy
21 NCAC 46 .1614 was approved unanimously.

Board of Examiners for Speech and Language Pathologists and Audiologists
Prior to the review of the rule from the Board of Examiners for Speech and Language Pathologists and Audiologists, Commissioner McLawhorn recused himself and did not participate in any discussion or vote concerning this rule because his sister is a licensee of the Board.

21 NCAC 64 .0219 - The Commission objected to this rule based on ambiguity. In (d) it is unclear what is meant or required by being "competent" in the use and operation of telepractice equipment. It is unclear what standards are meant or required to determine whether a licensee is competent. It is unclear who is to determine the competency of the staff, the licensee or the board.

Board of Community Colleges
All permanent rules were approved unanimously.

State Personnel Commission
All permanent rules were approved unanimously.

TEMPORARY RULES

Building Code Council
The temporary rule from the Building Code Council was approved unanimously.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commissioners reviewed the proposed rule about withdrawal of letters subjecting a rule to legislative review. Changes were made to the proposed rule based on comments by the Commission members. The rule is being published in the NC Register Volume 25 Issue 3.

The meeting adjourned at 10:27 a.m.

The next scheduled meeting of the Commission is Thursday, August 19 at 9:00 a.m.

Respectfully Submitted,

_____

Dana Vojtko
Publications Coordinator

LIST OF APPROVED PERMANENT RULES
July 15, 2010 Meeting

AGRICULTURE, BOARD OF	
Fees	02 NCAC 48A .1205
Collected Plant Certificate	02 NCAC 48A .1209
Health Regulations for Poultry Exhibitions	02 NCAC 52B .0502
Entry of Avian Species into the State of North Carolina	02 NCAC 52B .0603
ALCOHOLIC BEVERAGE CONTROL COMMISSION	
Location and Address	04 NCAC 02R .0102
Petition for Adoption of Rules	04 NCAC 02R .0402
FUNERAL SERVICE, BOARD OF	
Name and Address	04 NCAC 04 .0101
Purpose	04 NCAC 04 .0102
Structure	04 NCAC 04 .0103
Merger	04 NCAC 04 .0303
Surplus or Reserve Account	04 NCAC 04 .0304
Bonding	04 NCAC 04 .0305
Definitions	04 NCAC 04 .0601
Notice of N.C. Mutual Burial Association Commission	04 NCAC 04 .0602
Notice to Members of Domestic Mutual Burial Association	04 NCAC 04 .0603
Conduct of Public Meeting	04 NCAC 04 .0604
Approval of Assumption	04 NCAC 04 .0605
Authority to Continue Issuance of Policies	04 NCAC 04 .0606
Issuance of Policies in Excess of Two Hundred Dollars	04 NCAC 04 .0607
Requirements of Companies Writing Policies	04 NCAC 04 .0608
CHILD CARE COMMISSION	
Definitions	10A NCAC 09 .0102
Activities for Children Two Years of Age	10A NCAC 09 .0511
Staff Qualifications	10A NCAC 09 .2510
SOCIAL SERVICES COMMISSION	
Personnel	10A NCAC 70K .0201
COASTAL RESOURCES COMMISSION	
Application of Erosion Rate Setback Factors	15A NCAC 07H .0104
Use Standards	15A NCAC 07H .0208

COSMETIC ART EXAMINERS, BOARD OF

Cosmetologist License Fee and Staggered License Renewal S...	21	NCAC 14B	.0605

FORESTERS, BOARD OF REGISTRATION FOR

Qualifications for Registration	21	NCAC 20	.0103
Examinations	21	NCAC 20	.0104
Registration Fees	21	NCAC 20	.0106
Delinquent Fees	21	NCAC 20	.0108
Registration Card	21	NCAC 20	.0109
Reciprocity	21	NCAC 20	.0117
Handling of Complaints	21	NCAC 20	.0122
Continuing Education	21	NCAC 20	.0123
Compliance with Annual Reports Requirements	21	NCAC 20	.0124
Declaratory Rulings: Availability	21	NCAC 20	.0126

MEDICAL BOARD

Definitions	21	NCAC 32B	.0101
Discarding Application Material	21	NCAC 32B	.0102
Criminal Background Check	21	NCAC 32B	.0104
Federation Credential Verification Service Profile	21	NCAC 32B	.0105
Data Bank Reports	21	NCAC 32B	.0106
Medical Education	21	NCAC 32B	.0301
ECFMG Certification	21	NCAC 32B	.0302
Application Forms	21	NCAC 32B	.0304
Examination Basis for Endorsement	21	NCAC 32B	.0305
Letters of Recommendation	21	NCAC 32B	.0306
Certified Photograph and Certification of Graduation	21	NCAC 32B	.0307
Fee	21	NCAC 32B	.0308
Personal Interview	21	NCAC 32B	.0309
Endorsement Relations	21	NCAC 32B	.0311
Routine Inquiries	21	NCAC 32B	.0312
Graduate Medical Education and Training	21	NCAC 32B	.0313
Passing Exam Score	21	NCAC 32B	.0314
Ten-Year Qualification	21	NCAC 32B	.0315
Credentials	21	NCAC 32B	.0401
Temporary License Fee	21	NCAC 32B	.0402
Application Form	21	NCAC 32B	.0501
Certification of Graduation	21	NCAC 32B	.0502
Certified Photograph	21	NCAC 32B	.0503
Letters of Recommendation	21	NCAC 32B	.0504
Appointment Letter	21	NCAC 32B	.0505
Fee	21	NCAC 32B	.0506
ECFMG Certification	21	NCAC 32B	.0507
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Certified Photograph	21	NCAC 32B	.0603

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This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at http://www.ncoah.com/hearings.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby
Randall May
A. B. Elkins II
Joe Webster

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STATE OF NORTH CAROLINA	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
COUNTY OF HYDE	**10 CPS 0419**

BENJAMIN C. SIMMONS III **PRECISION CUSTOM FARMING, LLC** **Petitioner,** **v.** **NC DMV,** **Respondent.**	**FINAL DECISION** **ORDER OF DISMISSAL**

THIS MATTER comes before the Undersigned upon the Motion to Dismiss for Lack of Personal and Subject Matter Jurisdiction filed on behalf of the North Carolina Department of Crime Control and Public Safety, State Highway Patrol Division, Motor Carrier Enforcement Section. Although Petitioner filed his Petition against "NC DMV," the North Carolina Department of Crime Control and Public Safety, State Highway Patrol Division, Motor Carrier Enforcement Section is the proper Respondent in this matter.

STANDARD OF REVIEW

Dismissal is appropriate when the face of the complaint clearly reveals the existence of a meritorious affirmative defense. *See* Brooks v. City of Winston-Salem, 85 F.3d 178 (4th Cir. 1996). When reviewing a motion to dismiss, the court construes the allegations brought forth in the complaint in the light most favorable to the pleader (in this instance the Petitioner). *See* Scheuer v. Rhodes, 416 U.S. 232 (1974). The burden of establishing the validity of a motion to dismiss resides with the movant. Further, when reviewing a *pro se* complaint, the court examines carefully the plaintiff's (Petitioner's) factual allegations, no matter how inartfully pleaded, to determine whether they could provide a basis for relief. *See* Haines v. Kerner, 404 U.S. 519-21 (1972).

When reviewing a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), a trial court may consider and weigh matters outside the pleadings. *See* Department of Transportation v. Blue, 147 N.C. App. 596, 556 S.E.2d 609 (2001).

APPLICABLE LAW

Effective October 1, 2009, N.C. Gen. Stat. § 20-178.1(c) states, in relevant part: "[a]ny person who is dissatisfied with the decision of the Secretary and who has paid the penalty in full within 30 days of the notice of decision, as required by subsection (b) of this section, may, within 60 days of the decision, bring an action for refund of the penalty against the Department in the Superior Court of Wake County or in the superior court of the county in which the civil penalty was assessed."

BASED UPON the record of this case, the Undersigned makes the following:

FINDINGS OF FACT

1. On October 22, 2009, Respondent issued Petitioner Citation No. 3170379-6 pursuant to N.C. Gen. Stat. § 20-118.

2. On October 27, 2009, Petitioner filed a written protest.

3. On November 30, 2009, Respondent upheld the citation and notified Petitioner of his appeal rights to the Office of Administrative Hearings, which was an incorrect notification.

4. On February 1, 2010, Petitioner filed a Petition for a Contested Case Hearing in the Office of Administrative Hearings and paid the filing fee. On February 5, 2010, Respondent notified Petitioner in writing that the November 30, 2009 letter was sent in error and correctly advised Petitioner of his appeal rights, including where to file his appeal.

5. Respondent filed a Motion to Dismiss on February 18, 2010 and Renewed Motion to Dismiss on March 11, 2010. Having been given ample time, the Petitioner has nonetheless not filed a response to Respondent's motion.

BASED ON the foregoing findings of fact and applicable law and standard of review, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. In order to hear the disputes of a Petitioner against an agency, courts must be those with jurisdiction and authority to properly hear those claims. Administrative tribunals only have such authority as is properly conferred upon them by the Legislature. State ex rel. Utilities Comm'n v. Carolina Utility Customers Ass'n, Inc., 336 N.C. 657, 446 S.E.2d 332 (1994); Meads v. N.C. Dep't of Agriculture, 349 N.C. 656, 509 S.E.2d 165 (1998). In accordance with N.C. Gen. Stat. § 20-178.1(c) the Office of Administrative Hearings does not have jurisdiction over this matter.

2. The claims in Petitioner's Petition are subject to dismissal pursuant to North Carolina General Statutes §§ 150B-33, 150B-36, and Rule 12(b) of the North Carolina Rules of Civil Procedure; as well as the Rules of the North Carolina Office of Administrative Hearings, because the Office of Administrative Hearings lacks jurisdiction to hear and render relief regarding Petitioner's claims.

BASED ON the above Findings of Fact and Conclusions of Law, the Undersigned issues the following:

FINAL DECISION

NOW, THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the findings of fact and conclusions of law noted above. It is hereby **ORDERED** that Respondents' Motion to Dismiss is granted. It is hereby **ORDERED** that this contested case be **DISMISSED with prejudice.**

NOTICE

Pursuant to the provisions of NORTH CAROLINA GENERAL STATUTES Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. N.C. GEN. STAT. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Pursuant to N.C. GEN. STAT. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This is a Final Decision pursuant to N.C. GEN. STAT. § 150B-36(c).

IT IS SO ORDERED.

This the 29th day of June, 2010.

Augustus B. Elkins II
Administrative Law Judge

A copy of the foregoing was mailed to:

Benjamin C Simmons III
Precision Custom Farming LLC
PO Box 39
Fairfield, NC 27826
PETITIONER

Jess McKeel
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 30th day of June, 2010.

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

Filed

STATE OF NORTH CAROLINA	2010 JUN -7 PM 3:22	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF WAKE	Office of Administrative Hearings	08 OSP 0991
Gwendolyn E White Petitioner, v. NC DHHS Department of Information Resource Management (DIRM) Privacy and Security Office Respondent.	)	**DECISION**

This matter came before Administrative Law Judge Joe L. Webster, on November 16, 17, 18, 19, 20, 2009 and January 4, 5, 6, 7, 8, 25, 26, 27, 2010 in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Gwendolyn E White, *pro se*
3001 -106 Trimblestone Lane
Building 12, Box 234
Raleigh, NC 27616

For Respondent: Dorothy Powers
Special Deputy Attorney General
Kathryn Thomas
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 126, et. seq.
N.C. Gen. Stat. § 150B-23, et. seq.
25 N.C.A.C. 01j.1101
25 N.C.A.C. 01j.1205

WITNESSES

For Petitioner:
Petitioner, Gwendolyn E. White
Kimberly Richards
Pyreddy Reddy
Karen Tomczak
Christine Midgette
David Bynum Rankin
Joe Forte
Kimberly Miller
Shinita Wrenwick
Janice Warren
Brenda Richardson
Joann Robertson
George Atanasoff
Samantha Seawright
Clifford Jones
Sammy Leach
Bob Moran
Artem Kazantsev
Michael Webb
Charles Lane
Jared Murphy
Horace Palmer
Pearla Alston
Tory Russo
Scott Gardner
Sherri Brooks
Dale Suggs
John Lavender
Jason Smith
Wanda Mandeville
Dan Stewart

Respondent did not call any witnesses.

EXHIBITS

Exhibits 1- 28 and 29 -117 were admitted on behalf of Petitioner. ("P Ex #")
Exhibits 1- 22 and 24 -39 were admitted on behalf of Respondent. ("R Ex #")

PRELIMINARY ISSUES

(Petitioner's Motion to Continue Case)

By order of the Court dated October 2, 2009, all parties were properly noticed for the hearing to commence on November 16, 2009. The Administrative Assistant for the undersigned also sent an email to Petitioner on October 30, 2009 advising her that "your attorney would need to file a notice of appearance in the case if he is to represent you for the hearing beginning November 16, 2009. Petitioner was also advised that "the parties will need to be ready to go forward with the hearing as scheduled..." Attorney Romallus Murphy faxed a letter addressed to attorneys for the Respondent with a copy to Petitioner and OAH dated November 12, 2009 and file stamped with OAH November 13, 2009, indicating Mr. Murphy could not enter the case unless the trial date was continued to 2010. On November 16, 2009, Attorney Murphy made a limited in court appearance for the purpose of continuing the case. He advised that he had just recently been contacted by Petitioner and upon seeing the complexity of the issues, considering the probable length of the hearing (he had been advised the case might last three weeks) and considering his own schedule, he would need to continue the case in order to represent Petitioner. The undersigned inquired whether Mr. Murphy was available to represent Petitioner for one week and he advised he had matters scheduled for the present week. The Motion to continue was denied. The undersigned considered the age of the case, the fact that the case had been previously continued, it being originally scheduled for hearing on August 27, 2008. On August 12, 2008, the Honorable R. Randall May having entered an order staying the proceedings of OAH for a period not to exceed six months pending an investigation, ruling and final determination by the Civil Rights Division of OAH. An Amended scheduling order was entered by the undersigned on March 24, 2009 for the hearing on the merits of this case for May 1—May 22, 2009. Also, other attorneys had made general or limited appearances on Petitioner's behalf and later withdrew (Motion to Withdraw by Robert Crawford on April 29, 2009 and Motion to Withdraw by Daniel Patrick McNally on October 9, 2009, Motion to Withdraw by Kimberly Richards on November 17, 2009, and Notice of Limited Appearance by Janet I. Pueschel to continue case from January 4, 2010 setting [the second week of the hearing], which was also denied by the undersigned on December 22, 2010). The Court also considered the fact that numerous witnesses had been subpoenaed for the November 16, 2009 hearing date. Moreover, counsel for Petitioner voiced strong opposition to the motion to continue and she represented to the Court that she had prepared twice for the hearing. Also, the Court considered his own hearings calendar and other responsibilities for the coming months.

(Subject Matter Jurisdiction and Evidentiary issues)

On November 16, 2009, Respondent's Attorney, Dorothy Powers made a timely Motion in Limine prior to the beginning of testimony and renewed her Motion in Limine at the end of the testimony herein. Specifically Ms. Powers contends that Respondent failed to comply with the Policy of the Office of State Personnel Commission (R Ex 19), the internal DHHS agency policy (R Ex 18) and Rule set forth at 25 N.C.A.C. 01J. 1101 and 25 N.C.A.C. 01J. 1205 as a prerequisite to appealing an Unlawful workplace harassment or retaliation claim. The Policies

require an employee to file a written complaint with the Agency within 30 days of the alleged offensive conduct. The essence of Respondent counsel's argument is that the Office of Administrative Hearings lacks subject matter jurisdiction to hear any of Petitioner's allegations of unlawful workplace harassment if those allegations arise from incidents occurring more than 30 days prior to the filing of her official complaint on January 29, 2009 (since she had not previously complained in writing). Moreover, Respondent's counsel argues that testimony or other evidence about incidents arising after January 29, 2009 should not be admitted into evidence for any purpose.

While the undersigned finds that much of Petitioner's complaint contained alleged incidents which occurred more than 30 days before her complaint was filed, the Respondent was on notice of complaints alleged by Respondent whether in the official complaint or ascertained in the official investigation. The undersigned finds that in the interest of justice, including judicial economy, all claims set forth in the January 25, 2008 Formal Request (R Ex 5), January 29, 2008 Official Complaint (R Ex 7), March 12, 2008 Signature of Confidentiality Agreement Investigation Document (P Ex 30) and any additional claims reported thereafter in writing by Petitioner to Respondent as of the March 25, 2008 document constituting agency action. Respondent's decision not to investigate new allegations coming to its attention during the investigation process for whatever reasons should not be construed in such a manner as to preclude the Court from hearing evidence on those matters. The testimony heard by the undersigned during the 13 days of the hearing are being considered by the Court, either as evidence of Petitioner's unlawful workplace harassment claims or as "evidence of the habit or routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses" (N.C. Gen. Stat. § 8C-1, Rule 406 (2010). For the record, purposes of finality and the interest of justice, the undersigned has made findings of fact and legal conclusions with respect to the merits of each alleged unlawful workplace incident. While there are good policy reasons for the rule requiring employees to report in writing to the employing agency complaints within 30 days of the alleged harassing action or retaliation as required by Policy and Rule, the interest of justice and judicial economy requires that Petitioner's claims heard over a period of 13 days be fully considered by the Court pursuant to the Rules promulgated by N.C. Gen. Stat Chap. 150B, N.C. Administrative Code and North Carolina Rules of Evidence.

ISSUE

Whether Petitioner met her burden of proof that she was subjected to unlawful work place harassment based on her race, gender or religion which created a hostile work environment?

FINDINGS OF FACT

BASED UPON 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 Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ 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 witnesses, any interests, 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.

1. At all times relevant herein, Petitioner ("Petitioner") Gwendolyn E. White was employed with Respondent, the North Carolina Department of Health and Human Services ("DHHS"), Division of Information Resource Management ("DIRM") in the Privacy and Security Office ("PSO") in a time-limited full-time position, and was subject to the provisions of the State Personnel Act. (R Ex 2) Petitioner was employed with the Respondent from May 7, 2007 until September 30, 2008. Petitioner is a black female. (T Vol 1, pp 213-214, Vol 2, p 453, Vol 3, p 675; R Ex 2, 17)

2. Respondent posted a posting for two time limited, full time Networking Specialists positions. The working title of the positions was Policy Writer. Mr. Suggs created the posting with Pyreddy Reddy. The posting was for vacancy numbers 4410-4140-1106-089 and 4410-4140-1106-090. The posting indicated that the positions were time limited for two years. Policy writers write the policies and standards for the entire department. (T Vol 1, pp 134, Vol 2, p 236, Vol 3, pp 670-673, Vol 11, pp 2496-2497; R Ex 1) The project was expected to last until March 2009. The time frame was dependent upon the amount of work the staff would be able to perform in a certain time. The dates to finalize the project kept changing because different reasons, including project responsibilities, issues at the division, not hiring the correct employees, or a delay in getting the employees hired. (T Vol 1, pp 133-134, Vol 9, 1996

3. Petitioner filed an Application for Employment (PD-107) for one of the Networking Specialists/Policy Writer positions. (T Vol 5, pp 1004-1005; R Ex. 21)

4. Dale Suggs, Pyreddy Reddy and Chris Turpin interviewed Petitioner. At the time of her interview, Mr. Suggs and the other interviewers knew that Petitioner was a black female. Mr. Suggs made the recommendation to hire Petitioner. (T Vol 3, p 675, Vol 6, p1196, Vol 11, p 2493)

5. When Mr. Suggs interviewed Petitioner for the position, he told her the position was going to last approximately 18 months. Mr. Suggs, Mr. Reddy, and Mr. Turpin made clear that the positions were time limited. (T Vol 11, p 2496)

6. Petitioner was offered and accepted a time limited Networking Specialists/ Policy Writer position on May 2, 2007 at an annual salary of $70,939. Her effective date of employment was May 7, 2007. (T Vol 1, p 203, Vol 3, p 674; R Ex 2, 3)

7. In addition to Petitioner, Mr. Suggs also interviewed and recommended hiring Samantha Seawright. Both Petitioner and Ms. Seawright were hired as Networking Specialists/ Policy

Writers. The creation of the standards involved four subject matter experts ("SMEs"). The SME's each developed their standards. The SMEs put the information on paper. The policy writers were to develop a document out of the SMEs' ideas. The policy writers, Petitioner and Ms. Seawright were to "polish" the standards and to give them a very good grammatical review for sentence structure. The SMEs did not have to worry about making the standards professional, as that is what the policy writers did. (T Vol 11, pp 2497-2498)

8. Petitioner, Samantha Seawright, Horace Palmer and John Lavender all started working on the security project the same day. (T Vol 9, p 1784)

9. At the time of Petitioner's hire, May 7, 2007, Dale Suggs was the project manager and Petitioner's supervisor. Effective August 1, 2007, Jared Murphy became the project manager and Petitioner's supervisor. (T Vol 1, p 135, Vol 3, pp 675-676)

10. There was discussion about the necessity to have a policy writer or a technical writer remain after the project, but Mr. Suggs never said that it would be either Petitioner or Samantha Seawright. If they had gotten to that point where a policy writer or a technical writer was necessary, there would have been a new position created and posted. Petitioner and Samantha Seawright could have competed for it just like anyone else. (T Vol 11, p 2523) All personnel of the DIRM project were notified that the time limited appointments would end on September 30, 2008. (T. Vol. 1, pp 157-158, 162, 213, T. Vol. 3, p 564). (Resp. Ex. 17)

11. The PSO security project team was comprised of all males with the exception of Petitioner, Samantha Seawright, and Sherri Brooks, the privacy officer. Out of twenty or twenty one employees, three were female. The reason why it was predominantly male is because they were dealing with IT. Statistically, there are more males in IT, just like there are more female teachers. Out of all the applications for the positions that Mr. Murphy hired, about 85 to 90 percent of them were males. There were very few females. Women were not excluded; women did not apply for these positions. (T Vol 1, pp 180-181, Vol 7, p 1460, Vol 9, pp 1880-1881)

12. Mr. Murphy offered a networking specialist and analyst position to two women, in addition to Petitioner and Samantha Seawright and they declined. (T Vol 9, pp 1880-1881, 1946)

13. All employees coming into state government are required to serve a probationary appointment. The probationary period runs from three months to nine months. During the probationary appointment period, the employee is an employee at will and can be disciplined or dismissed without warning or without a reason. Once an employee satisfactorily completes the probationary period at nine months, they become a permanent status employee, which gives them the right to appeal certain management decisions within the agency. At 24 months, an employee becomes a career status employee, which gives them the right to grieve certain management decisions to the State Personnel Commission through the Office of Administrative Hearings. (T Vol 9, pp 1954-1955, Vol 10, 2192-2193; R Ex 20)

14. A time limited permanent appointment is an appointment that has a limited duration. A time limited permanent appointment is distinguished from a temporary appointment by the longer length of time, and from a regular permanent appointment by its limited duration. (T Vol 10, pp 2192-2194, 2230: R Ex 20)

15. A time limited appointment exists until the end of a project. In a time limited scenario, there is a time limit as to how long the position is going to be funded. The funding is not recurring; it is not funded by the General Assembly beyond the time limited period. The positions usually last between 24 and 36 months. However, if the project ends earlier than expected, the appointment is cancelled. Time limited employees are also required to serve a probationary period of three to nine months. At the ninth month they would become a permanent status employee in a time limited position if they meet the performance expectations. (T Vol 1, pp 136-137, Vol 7, pp 1420-1422, Vol 9, pp 1954-1955, Vol 9, p 1996, Vol 10 pp 2192-2193, Vol 11, p 2565; R Ex 20)

16. Individuals receiving initial appointments in state government must first in q time-limited probationary appointment before being eligible for a time limited permanent appointment. (T Vol 10, p 2193; R Ex 20)

17. When Jared Murphy became the project manager, some people that he offered a position to declined to take the position because the positions were time limited. (T Vol 9, p 1946)

18. When Petitioner was hired, she was in a probationary period for a period of up to nine months, just like any new employee. Once Petitioner completed that period, she became a permanent employee, but was still in a time limited position. (T Vol 2, pp 312, 342, Vol 9, pp1954-1955, Vol 10, p 2230)

19. On April 22, 2008, Petitioner timely filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings ("OAH") alleging Unlawful Workplace Harassment and Hostile Work Environment. In the Petition, Petitioner alleges discrimination based on race, creed, and sex. Petitioner's appeal was based upon an adverse decision by Respondent finding it could not substantiate that unlawful workplace harassment had occurred. (R Ex 14) Petitioner did not check the space on the form Petition claiming discrimination based on religion. (R Ex 15)

20. Karen Tomczak is DIRM's Director and also the DHHS's Chief Information Officer. She is responsible for all IT staff in DHHS including those that are located at DIRM as well as those positions that are out in DHHS's business divisions. She oversees a staff of between 400 and 500 employees depending on the number of contractors employed at a certain time. Ms. Tomczak has Bachelor of Science degree in computer science and has an IT background in programming, analysis, and project management with the State for over 23 years. (T Vol 1, pp 183, 201- 202). Ms. Tomczak signed Petitioner's employment offer letter. (T Vol 1, pp 203, Vol 3, p 674; R Ex 2)

21. Ms. Tomczak has an informal policy regarding what employees should do if they have problems and they need help at work. It is an open door policy. If individuals have issues or

concerns, they should escalate it to their manager and up the chain to the appropriate management, and then to Ms.Tomczak. Employees have come to Ms. Tomczak's open door and asked to speak with her. (T Vol 1, pp 205-206, Vol 10, p 2147)

22. Ms. Tomczak came to know Petitioner as a result of Petitioner's an unlawful workplace harassment complaint. Prior to her official complaint, Petitioner never went to Ms. Tomczak to complain about anything. (T Vol 1, pp 204-206)

23. Ms. Tomczak initiated an investigation of Petitioner's Unlawful Workplace Harassment complaint. She selected a team composed of two senior managers. This team included one person, Charles Lane, who had been in the department for a number of years, had experience with the administrative processes, and was experienced in doing workplace harassment investigations. Ms. Tomczak also assigned Wanda Mandeville, another senior manager within the division, to work with Mr. Lane. Mr. Lane and Ms. Mandeville were to investigate Petitioner's allegations and to also make a recommendation to Ms. Tomczak. (T Vol 1, pp 204-205, Vol 8, pp 1716, 1750-1751, Vol 12, p 2608)

24. Ms. Tomczak testified directly and forthrightly. The undersigned finds Karen Tomszak to be a credible witness.

25. Pyreddy Reddy is the Chief Information Security Officer for DHHS. DHHS consists of 31 divisions and offices. He is responsible for the entire department, not just one division. His office is responsible for six functions: privacy, security, business continuity planning, disaster recovery testing, IT policies and HIPAA. He also manages the Privacy and Security Office. He has been in this position since 2001. (T Vol 1, pp 126-127, 131)

26. Mr. Reddy was born in India and is of the Roman Catholic. He has lived in the United States since 1984 and is a US citizen. He has a Bachelor's degree in commerce and accounting. He has a Masters degree in Business Administration and has additional certifications as a certified information security manager. (T Vol 1, pp 127-128)

27. Petitioner labels Mr. Reddy as " Indonesian (Army)." (P Ex 33) The undersigned finds as a fact that Pyreddy Reddy is not Indonesian. He is Indian.

28. Petitioner did not go to Mr. Reddy in reference to her unlawful workplace harassment allegations until she filed a formal complaint on or about January 28, 2008. Prior to her formal complaint, Petitioner never went to Mr. Reddy to complain that she was being sexually harassed or harassed based on her race. Prior to her formal complaint, Petitioner never complained to Mr. Reddy about her working relationship with other people on the staff; that she felt her relationship with other people on the staff interfered with her ability to do her work; that her health was being adversely affected by working on the security project; or that other staff were making statements that made her uncomfortable. (T Vol 1, pp 86-89, 111, 142-143)

29. All the managers at DIRM had an open door policy. (T Vol 7, pp 1445, Vol 8, p1619, Vol 11, p 2313)

30. As the Chief Information Security Officer for DHHS, Mr. Reddy has an open door policy. He gives his cell phone number and his home telephone number to all staff in the event they cannot contact him at work. He has told his staff "[e]ven if it's night, just call me." Mr.Reddy tells his staff if he is busy, they should schedule a meeting on his calendar. His calendar is open to all staff. It is an online calendar, which the security project team and other staff members have access to. (T Vol 1, pp 93-94, 137-138, Vol 9, p 1986, Vol 11, pp 2313, 2420)

31. Pyreddy Reddy told staff that if there were any issues within the security project, they should first try to resolve it with the project manager. The employees in the PSO all were well aware of the chain of command of reporting if they had a problem. The first person to go to was either Jared Murphy or Dale Suggs. If the project managers, Dale Suggs or Jared Murphy, could not resolve the issues or if the issue itself is about the project manager, then staff should to escalate the matter to Mr. Reddy. If someone has an issue with Mr. Reddy and cannot resolve the issue, they are expected to go to his supervisor, Karen Tomczak. (T Vol 1, pp 93-94, 138, Vol 11, pp 2141-2142)

32. In accordance with Mr. Reddy's open door policy, staff went to him with various problems or issues. These issues included complaints that a manager is not performing the way they're supposed to; a staff member wanting to do it this way and another wanting to do it their way. Staff members made complaints to Mr. Reddy by coming to see him, scheduling a meeting on his calendar or by calling him at night. Petitioner never contacted Mr. Reddy by any of those means. (T Vol 1, pp 141-142, Vol 4, p 925, Vol 10, p 2147)

33. Pyreddy Reddy was not aware that Petitioner alleged that Samantha Seawright called her a bitch and gave her the finger until he read it in Petitioner's complaint. (T Vol 1, p 140, Vol 6, p 1184)

34. Prior to her Official Complaint in January 2008, Petitioner never went to Mr. Reddy with reports of conflict or complaints that she had with any staff on the security project. She never told Mr. Reddy that she felt her relationship with other staff interfered with her ability to do her work. She never complained that she was being sexually or racially harassed. She never complained that her health was being adversely affected by working on the security project. Petitioner never complained that other staff was making statements that made her uncomfortable. (T Vol 1, pp 141-143)

35. On Sunday evening, March 16, 2008, Petitioner attempted to send Pyreddy Reddy an e-mail from her home computer. Mr. Reddy never received the e-mail because Petitioner sent it to the wrong address. She sent it to pyreddy.reddy@ncmil.net. The correct address is @nc**mail**.net. (Emphasis added). In this e-mail, Petitioner attempts to notify Mr. Reddy of her conversation with Mr. Murphy regarding the potty training of his son. Even though that incident allegedly occurred either on January 10 or 11, 2008 or February 8, 2008 according to her daily calendar, she

does not attempt to notify Mr. Reddy of it until Sunday March 16, 2008. This is so, even though the very day prior to the alleged incident (if it occurred on February 8), she received a letter from Mr. Reddy telling her to notify him immediately if any problems or issues should arise. (T Vol 6, pp 1158-1160; R Ex 4, 10, 12; P Ex 6, 35)

36. Petitioner never reported to Mr. Reddy that Samantha Seawright allegedly exposed her breast in a meeting with Jared Smith. (T Vol p 155)

37. In her March 16, 2008 attempt to e-mail Mr. Reddy, Petitioner failed to describe the incident where Samantha Seawright allegedly exposed her breast in meeting with Petitioner and Jared Murphy. This incident allegedly occurred on March 4, 2008, less than 2 weeks before Petitioner's attempt to notify Mr. Reddy of issues that were of concern to her. Instead, she reported a situation which occurred one or two months prior (potty training) and an insignificant issue where Jared Murphy allegedly told Sammy leach to watch who he associates with. (R Ex 4, 10, 12; P Ex 6, 35)

38. Mr. Reddy testified directly and forthrightly. The undersigned finds Pyreddy Reddy to be a credible witness.

39. Dale Suggs is a white male. (T Vol 11, pp 2492, 2493) Petitioner labels Mr. Suggs as "white male (Army)." (P Ex 33)

40. Mr. Suggs has a Bachelor's degree in Computer Information Systems and a Master's degree in Information Technology Management. He is currently a network security specialist in the Privacy and Security Office directly under Mr. Reddy. He handles mostly audits, including state and federal audits, between state auditors and the IRS, and the Social Security Administration. He began working for the State in June 2006. Prior to working with the State, he worked for the United States Army for four years as a Department of the Army civilian. Prior to that, he was on active military duty as an Apache helicopter pilot with the Army and retired December 31, 2001. Additionally since January 2002, Mr. Suggs is a professor with Campbell University teaching computer science and information technology and security. (T Vol 11, pp 2493-2495)

41. Shortly after Dale Suggs began working with the State, the HIPAA security project manager, Ed Carter resigned from that position. Mr. Reddy asked Mr. Suggs to take over as the project manager. As such, Mr. Suggs was involved in the project before the additional staff was hired. (T Vol 11, p 2494)

42. Mr. Suggs testified directly and forthrightly. The undersigned finds Dale Suggs to be a credible witness.

43. 51. Jared Murphy is a black male. (T Vol 9, p 1911) Petitioner labeled Mr. Murphy as "black man (USAF)." (P Ex 33). He was Petitioner's direct supervisor.

44. Jared Murphy graduated from North Carolina State University with a degree in Business Administration with a concentration in management information systems. He was also enrolled in the Air Force ROTC program, and upon graduation was commissioned to the Air Force. He has completed three graduate classes and is working towards a Master's degree in science in information technology with a concentration in project management. (T Vol 9, p 1912)

45. Mr. Murphy has several certifications, including a Project Management Professional ("PMP"). This certification is given by the Project Management Institute, which is the one of the leading organizations of project management in the world. To become PMP certified, Mr. Murphy met the education and experience requirements, and passed a written and a computerized test. To retain this certification, he has to participate in continuing education. Mr. Murphy also has a certification as a computer hardware technician; a Network PLUS certification for dealing with networks, Internet workings, computers talking to other computers; an Information Technology Infrastructure Library ("ITIL") certification which relates to how IT gives service to customers. He is also a Microsoft Certified Professional ("MCP"), which certifies him to work on American software and work on Windows machines. (T Vol 9, pp 1912-1913)

46. Mr. Murphy testified about his observations of Petitioner and other co-workers in the work place. He testified that in addition to Petitioner's long standing conflicts with Samantha Seawright (white female), Petitioner made complaints about several other employees including, but not limited to, Dale Suggs (white male), Elijah Chapman (black male), Horace Palmer (black male), Bob Moran (white male), Sammy Leach (black male), and Jared Murphy (black male). Yet she continued to act friendly with all and engaged in personal conversations. She, on a number of occasions, said to Jared Murphy "Thanks, boss, for another good week." (T Vol 9, p 1984; R Ex 35, ¶ 55)

47. Mr. Murphy considered the issues between Samantha Seawright and Petitioner resolved because he had separated them into different offices. Mr. Murphy considered Petitioner's claim that her files were being altered resolved because he segregated the documents, and implemented permission restrictions so that only certain people could access certain documents. Mr. Murphy considered the issue of Horace Palmer calling Petitioner "baby" resolved because he told Mr. Palmer that he could not say that and also issued a documented counseling to Mr. Palmer. Because Mr. Murphy felt he had resolved these issues, he felt they were not significant enough for him to go up his chain of command to Pyreddy Reddy. (T Vol 9, pp 1916, 1925)

48. Regarding the eight or nine incidents that Petitioner brought to Mr. Murphy's attention, he did not feel any of them were significant enough to bring to the attention of Pyreddy Reddy. (T Vol 9, p 1933)

49. Petitioner never asked Mr. Murphy to go to Pyreddy Reddy regarding any of these incidents. Mr. Murphy never told Petitioner that he was taking everything to Mr. Reddy. Mr. Murphy did not do anything to make Petitioner believe that he was telling Mr. Reddy about all of her complaints. (T Vol 9, p 1933)

50. Petitioner never asked Mr. Murphy how to file a formal complaint. (T Vol 9, p 1934)

51. Jared Murphy, as a manager, was described by Samantha Seawright as being very understanding. He was very willing to work with everybody. All anyone had to do was keep him updated, let him know what they were doing and get their work done. Horace Palmer described Jared Murphy as being a good manager and a charismatic person that tried to get things done through his personality. Mr. Palmer further testified that in the beginning of the project, Mr. Murphy said, "as long as you get your work done, that's all I care about." (T Vol 7, pp 1444-1445, Vol 8, p1625, Vol 10, p 2134)

52. Mr. Murphy did not report Petitioner's complaints to Pyreddy Reddy earlier because he felt that the matters were resolved based on his conversations with Petitioner. In hindsight, Mr. Murphy would have handled Petitioner's complaints differently. He would have documented things a lot more. Mr. Murphy did not document as much as he now wishes he did because Petitioner said things in passing. When Petitioner asked Mr. Murphy if things were being handled, to him that meant that they would go forward and that the issue was resolved. In hindsight, Mr. Murphy would have brought Pyreddy Reddy in little bit more just to give him a heads up so that's he would not be blindsided as he was when Petitioner filed her complaint. This is not to be understood as a finding that Mr. Murphy did something wrong by not bringing Petitioner's complaints up his chain of command. The undersigned finds as a fact that Mr. Murphy acted appropriately in trying to resolve Petitioner's complaints by himself and in concluding that they were resolved after his interventions. (T Vol 9, pp 1877-1878, 1992-1993)

53. Petitioner alleges that Jared Murphy told her Pyreddy Reddy is from Indonesia and "Women submit to him." Petitioner alleges that Mr. Murphy said, "I've told you several times that a woman should be seen in this department and not heard." Petitioner also alleges that Mr. Murphy told her that typically women in Mr. Reddy's culture walk either beside or behind a man. Petitioner's allegation that Jared Murphy told her this is nonsensical. First of all, Mr. Reddy's culture is that he is Roman Catholic and was raised as such. Second, Mr. Reddy's direct supervisor, Director of DIRM, Karen Tomczak, is a female. Ms. Tomczak holds the highest possible position at DIRM and Mr. Reddy reports to her. Finally, Mr. Reddy works closely with and relies heavily upon Sherri Brooks, a female and an attorney. As such, Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy said these things to Petitioner (T Vol 3, p 529, Vol 9, pp 1820, 1853, 1913-1914: R Ex 4; P Ex 77)

54. 62. Petitioner alleges that in August 2007, Jared Murphy stated "you are like my wife; I can hear you when you walk because your legs rub together." One day Petitioner was walking down the hall and stopped short of Mr. Murphy's office and then poked her head in. Before he could see her, Mr. Murphy said, "Come on in, Gwen." Petitioner said "How did you know it was me?" Mr. Murphy said, "I can tell by the way you walk." The preponderance of the evidence shows that when anyone on the team went to lunch or to the bathroom, they had to pass by Mr. Murphy's door. Petitioner has a distinctive walk that Mr. Murphy could recognize when his office door was open. Mr. Murphy could also recognize Artem Kazantsev's walk because he walked hard. There was another gentleman who Mr. Murphy could tell was walking by because

he walked with a limp. There were three females who walked very daintily, softly, and very quickly. There was a big, tall gentleman who walked very hard. Mr. Murphy could tell everybody who went by because everybody went by his office to get to the elevator or the bathroom. Petitioner would stop short of his office. There was nobody else on that hall that would stop at Mr. Murphy's office except for Petitioner and Artem Kazantev. Mr. Murphy could tell when it was either of them. Mr. Murphy could identify Petitioner by her walk. Petitioner did not prove by a preponderance of the evidence that Mr. Murphy said "you are like my wife; I can hear you when you walk because your legs rub together." Mr. Murphy testified that said absolutely nothing about Petitioner's legs rubbing together. It never dawned on Mr. Murphy that what he heard was Petitioner's legs rubbing together until he read what he considers the ridiculous statement in Petitioner's complaint. He never compared Petitioner to his wife, because he can't hear his wife when she walks. (T Vol 9, pp 1820-1821 The Court finds as a fact and as a matter of law that assuming arguendo Mr. Murphy said these words to Petitioner, while Petitioner may have found this subjectively offensive, in the context of Mr. Murphy responding to Petitioner's question about how he knew it was she; the comment is not unlawful workplace harassment within the meaning of the statutes, rules or policies. (T Vol 9, pp 1820-1821, 1942; P Ex 77)

55. Petitioner alleges that from August 2007 through November 2007, Jared Murphy stated "a woman should be seen and not heard." Mr. Murphy denies he made this statement to Petitioner. Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy said this. (T Vol 9, pp 1820, 1937; P Ex 77)

56. Petitioner alleges that from September 2007 through January 2008, Jared Murphy told her "you are a black woman and no black woman should ever tell a white man he can't write." Mr. Murphy denies that he made this statement. Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy said this. (T Vol 3, p 528, Vol 9, pp 1840, 1937; P Ex 77)

57. Petitioner alleges that from November 2007 through December 2007, Jared Murphy stated "a women's place is behind her man." Petitioner denies making this statement. Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy said this. (T Vol 9, pp 1820, 1913-1914; P Ex 77)

58. Petitioner alleges that on November 5, 6, and 7, 2007, Jared Murphy stated "no woman should be on the pulpit." Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy said this. (T Vol 3, p 529, Vol 9, p1937; R Ex 4; P Ex 77)

59. Petitioner alleges that in November 2007 and December 2007, Jared Murphy told Petitioner about Proverbs 31, which she claims describes submission of women. Mr. Murphy's reading of Proverbs 31 is that a wife is virtuous and it does not address submission. Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy made a statement about women being submissive. (T Vol 9, pp 1840, 1913-1914; P Ex 77)

60. Petitioner alleges that in November 2007 and December 2007, Jared Murphy pointed to Petitioner's breasts and referred to something pointy. Mr. Murphy denies this allegation. Petitioner has not met her burden of proof by a preponderance of the evidence that this occurred. (T Vol 6, pp 1206, 1207, Vol 9, pp1941-1942; P Ex 77)

61. Petitioner alleges that in December 2007 and January 2008, Jared Murphy used the "N" word. She testified that it occurred twice, but was not directed toward her. It was directed to someone on the other end of Mr. Murphy's cell phone. Petitioner did not report this up the chain of command. Mr. Murphy denies using the "N" word Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy used the "N" word. (T Vol 4, pp 834-835, Vol 9, pp1820-1821, 1937; P Ex 77)

62. Petitioner alleges that in January 2008, Jared Murphy told her "you are a black woman and no black woman should ever tell a white man (28 years old) he can't write." Mr. Murphy denies he made this statement. Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy said this.
(T Vol 9, pp 1840-1841; P Ex 77)

63. In Petitioner's Exhibit 35, Petitioner alleges that on January 10th or 11th, 2008, Jared Murphy told Petitioner he was trying to potty train his son, and told her "his son takes his out (penis), then he takes his out, and they both use the bathroom." However, Petitioner also recounts this alleged incident as having occurred on February 8, 2008 in her daily calendar/journal and in her attempted e-mail Pyreddy Reddy on March 16, 2008. (P Ex 35; R Ex 4, 12)

64. Petitioner and Mr. Murphy talked about their kids often. One day they were talking about their kids and Mr. Murphy brought up that he potty trained his son. Mr. Murphy's son was four years old. Mr. Murphy was overseas in Japan and in his absence, his ex-wife had not been able to potty train their son. When Mr. Murphy returned home he was able to potty train his son in two weeks. He told Petitioner that he just took his son with him and showed him how to do it. Mr. Murphy was proud of his accomplishment as a dad, his first thing coming back. He thought: "Hurrah, I got my son potty trained." (T Vol 9, pp 1974-1975)

65. Mr. Murphy denies that he told Petitioner that "his son takes his out (penis), then he takes his out, and they both use the bathroom." Mr. Murphy said something to the effect "I demonstrated to him how to do it." (T Vol 9, p 1975)

66. Petitioner did not prove by a preponderance of the evidence that Mr. Murphy used the word "penis." (T Vol 4, p 888) The undersigned finds as a fact that even if Mr. Murphy did use the word "penis" in the context alleged by Petitioner, it did not amount to unlawful workplace harassment which created an hostile work environment within the meaning of the statutes, rule or policies.

67. When Mr. Murphy had this conversation with Petitioner about how he helped potty train his son, she did not tell him she was offended by it, nor did she act like she was offended by it. A

reasonable person would not find this conversation to be objectively offensive, and the undersigned finds as a matter of fact and as a matter of law that the use of the word penis in the context alleged by Petitioner does not constitute unlawful workplace harassment within the meaning of the statute, rule or policies (T Vol 9, p 1975)

68. Petitioner alleges that Jared Murphy told her that he likes a woman who is well dressed with short hair and dark skin and that she was offended by this statement. (Evidently because she believes this describes herself.) Petitioner never indicated she was offended by this conversation. This conversation took place during lunch among Petitioner, Mr. Murphy, and Mr. Murphy's wife. They were talking about how Mr. Murphy and his wife are not what they each would have chosen as their perfect match. Mr. Murphy's wife is light skinned, with long hair, not his prototype. Also, Mr. Murphy is not his wife's perfect prototype. A reasonable person in Petitioner's shoes would not take this conversation to mean that Mr. Murphy was coming on to her or was indicating that he was attracted to her. The meaning of the conversation is that a person's soul mate often does not come in the package the person expects it to. A reasonable person would not find this conversation offensive. This is especially so in light of the fact that Mr. Murphy's wife was present during this conversation. (T Vol 4, pp 789-790, Vol 6, p1208, Vol 9, p 1977) This allegation by Petitioner does not constitute unlawful workplace harassment within the meaning of the statute, rule or policies.

69. Petitioner thinks Mr. Murphy was coming on to her. The undersigned finds as a fact that Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Murphy has ever tried to come on to Petitioner (T Vol 4, p 789, Vol 9, p 1978)

70. Mr. Murphy has strong women in his life including his wife and his mother. His wife is very strong willed. Petitioner has commented that Mr. Murphy's wife is a firecracker. Mr. Murphy's mother is in charge of all the education for the Air Force in the Washington, D.C. metropolitan area. Every Air Force colonel and general goes through Mr. Murphy's mother for education. (T Vol 9, pp 1913-1914)

71. Jared Murphy talked about his wife at work a lot. He testified that he is very much in love with his wife and spoke of her all the time. (T Vol 7, p 1447)

72. 82. Mr. Murphy did sometimes make appropriate comments about Petitioner's appearance. He would say she had a nice outfit on or, he liked the colors. Petitioner was the only person on the team who always wore suits. Mr. Murphy also likes to dress up. He would comment to Petitioner "[t]hat's a nice suit" or, "[w]here did you get that?" They talked about where Petitioner bought her clothes and whether or not they were tailored. Mr. Murphy used to get tailored suits when he was in Japan. Petitioner never told Mr. Murphy that she was offended by him making comments about her attire. One time, Elijah Chapman, a black male employee was wearing a hot pink sweater and Petitioner commented that he was too dark to wear that shade of color and that she would not wear it because of her skin tone. Petitioner complimented Mr. Murphy and others on their ties. Everybody complemented each other. A reasonable person would not find conversations, compliments, and discussions about clothes and attire objectively

offensive. The undersigned finds as a matter of fact and as a matter of law that Mr. Murphy's compliments in the context that they were made did not constitute unlawful workplace harassment within the meaning of the statute, rules or policies. (T Vol 4, pp 801-802, Vol 7, pp1446-1447, 1504-1505, Vol 9, pp1944-1945, Vol 8, pp1650-1651, Vol 9, pp1976, 1995, Vol 10, pp 2022, 2131, 2176)

73. Petitioner never complained to Mr. Murphy about his own behavior or his language. (T Vol 9, p 1934)

74. Petitioner never complained to Mr. Murphy about anything that he did offended her (T Vol 9, p 1934)

75. Mr. Murphy testified directly and forthrightly. The undersigned finds Jared Murphy to be a credible witness.

76. Sherri Brooks is a black female. (T Vol 7, p 2366) Petitioner alleges "Note: Sherri has stated before: 'she can pass . . . for an Indonesian female easily . . . , and that was probably one of the reasons she was hired', she compliment (sic) Pyreddy's Indonesian style/tradition." (T Vol 6, p 1195; P Ex 33) Ms. Brooks did not tell Petitioner that she thought she could pass for Indonesian. Ms. Brooks does not know how Indonesian people look. Ms. Brooks knows that Pyreddy Reddy is not Indonesian. (T Vol 11, pp 2423-2424) Ms. Brooks graduated from Duke University in 1990 and graduated from North Carolina Central School of Law in 1995. She is a member of the North Carolina Bar. (T Vol 11, p 2411)

77. Initially, Ms. Brooks started her legal career with Legal Services. She worked there for about four years. She then came to State government and worked with the Human Relations Commission where she did fair housing litigation, involving discrimination claims. She worked there for almost for five years before moving to DHHS as a privacy officer. (T Vol 11, pp 2412-2413)

78. At all times relevant herein, Ms. Brooks was employed as the DHHS privacy officer. Her position does not require that she be an attorney. As the DHHS privacy officer, Ms. Brooks resolves privacy incidents across the department. A privacy incident can be as minor as a misdirected e-mail or it can be confidential data that was intended to be sent inside the department, but went public. (T pp 2366, 2412) A security incident is more geared toward equipment, such as, a stolen laptop. A security incident could also be a privacy incident. (T Vol 11, p 2412)

79. Petitioner told Sherri Brooks that the men in the department were making comments that she felt were unprofessional and inappropriate in the workplace. Ms. Brooks told Petitioner that she thought the comments were unprofessional, but did not think that they rose to the level of harassment. Ms. Brooks believes that sometimes people say or do things that the listener takes as harassing, but to the reasonable person is not harassment. (T Vol 11, pp 2380, 2391, 2393, 2395, 2400; P Ex 48)

80. Ms. Brooks never got the feeling from Petitioner that she was intimidated by the men in the department or feared them in any way. Ms. Brooks thought they seemed to be very close. (T Vol 11, p 2431; P Ex 48)

81. Petitioner spoke with Ms. Brooks as a friend. At no point in time did Ms. Brooks ever feel that things regarding Petitioner were getting out of hand, and that maybe she should have informed Mr. Reddy. (T Vol 11, pp 2405-2406; P Ex 48)

82. Ms. Brooks felt like Petitioner was coming to her as the only other black female in the PSO and they were just having a girlfriend to girlfriend conversations. Ms. Brooks never felt that Petitioner felt harassed. If Ms. Brooks felt that Petitioner was harassed, she would have gone to Pyreddy or to HR. (T Vol 11; p 2422)

83. Contrary to Petitioner's allegation, Ms. Brooks did not tell Petitioner she was Pyreddy's right hand. (T Vol 5, pp 1050 -1051, Vol 11, p 2426)

84. Contrary to Petitioner's allegation, Ms. Brooks did not tell Petitioner that management, including Pyreddy, Reddy, HR, DIRM, and all management, senior management, were handling her concerns very privately. (T Vol 5, pp 1050-1051, Vol 11, p 2426)

85. Contrary to Petitioner's allegation, Ms. Brooks did not tell Petitioner to speak only with her and Jared Murphy. (T Vol 11, p 2426)

86. Contrary to Petitioner's allegation, Ms. Brooks did not tell Petitioner to tape conversations with her coworkers. (T Vol 3, pp 682-683, Vol 11, p 2426)

87. Contrary to Petitioner's allegation, Ms. Brooks did not tell Petitioner that the previous policy writers had their work compromised. (T Vol 11, p 2426)

88. Ms. Brooks never forwarded or said anything to Pyreddy Reddy about Petitioner's complaints of unprofessional and inappropriate comments in the workplace. (T Vol 11, p 2399; P Ex 48)

89. Ms. Brooks told Petitioner over and over again to go to Pyreddy Reddy if she felt she had problems or concerns in the workplace. (T Vol 11, p 2405; P Ex 48)

90. Ms. Brooks was surprised by Petitioner's complaint and the fact that it had escalated to the point that it had. Ms. Brooks never got the feeling from Petitioner that she was offended. Ms. Brooks got the feeling that Petitioner thought that only the men in the department were unprofessional and inappropriate because that is what Petitioner told her. (T Vol 11, p 2400; P Ex 48)

91. Ms. Brooks did not think Petitioner had standing to file a complaint. She did not know Petitioner had filed it until she submitted it. Ms. Brooks thought Petitioner should have given Pyreddy Reddy a chance to act before filing a complaint. (T Vol 11, pp 2406, 2409; P Ex 48, 71)

92. 102. Petitioner told Ms. Brooks that Jared Murphy told her that Dale Suggs wanted to fire her. Ms. Brooks told Petitioner, "Dale can't fire you. Dale is not your supervisor." Ms. Brooks further informed Petitioner that even Jared Murphy couldn't fire her. Mr. Murphy could only recommend that she be fired. Pyreddy Reddy was the only person that could fire Petitioner. Ms. Brooks asked Petitioner if she thought that Pyreddy Reddy was satisfied with her work. Petitioner said yes and Ms. Brooks said "You need to go to Pyreddy." Ms. Brooks believes the reason Petitioner filed her complaint is because she thought she was going to be fired by Dale Suggs on that day. (T Vol 11, pp 2403, pp 2405, 2417, 2420, 2430; P Ex 48, 71)

93. Ms. Brooks doesn't understand why Petitioner would not take her advice and go to Pyreddy Reddy. Ms. Brooks couldn't understand this because Pyreddy Reddy always gave his phone numbers out to his staff in meetings and encouraged people to call or see him directly. Petitioner later told Ms. Brooks that she wished she had gone to Mr. Reddy earlier. (T Vol 11, pp 2420-2421; P Ex 48)

94. After Petitioner filed her complaint, and after the team met with the investigators, Charles Lane and Wanda Mandeville, there was a particular incident that bothered Ms. Brooks. There were five or six male employees in the office beside Ms. Brooks. Ms. Brooks had gone to the bathroom and came back to her office and sat down. Petitioner had come by and stuck her head in Ms. Brooks' office. Ms. Brooks said to herself "I know she's not going to go in the office with all of them in there" because the door was closed. Petitioner knocked on the door and she went in. Ms. Brooks wanted to see if the door was closed, so she got up and looked. The door was closed. Ms. Brooks thought to herself, if she had been harassed by someone, everyone would know. She definitely would not go in a room with some of the people that she was claiming have harassed her, which is what Petitioner did. (T Vol 12, pp 2631- 2632)

95. Sherri Brooks never gave Petitioner any legal advice; any advice regarding how to create an unlawful workplace harassment claim; or advice about pulling general statutes. (T Vol 5, pp 1051, Vol 11, 2371, 2426; P Ex 48)

96. Samantha Seawright and Sherri Brooks had a large amount of contact with each other. When Ms. Brooks first started at DHHS, she did not have a lot of prior experience working with HIPAA. At that time, Ms. Seawright had a large knowledge base and knew more about HIPAA than Ms. Brooks. Ms. Seawright and Ms. Brooks worked together almost exclusively and became good friends. (T Vol 11, pp 2414-2415, 2427)

97. When Ms. Brooks was going to move to South Carolina with her family, Samantha Seawright was instrumental in helping them find somewhere to live when they moved. Ms. Seawright's family lived a couple of highway exits away from where Ms. Brooks was going to move. (T Vol 11, p 2425)

98. Sherri Brooks and Samantha Seawright worked together for a long period of time. They were very good friends. Contrary to Petitioner's allegation, Sherri Brooks did not tell Petitioner that Samantha Seawright had problems working with black people. (T Vol 11, pp 2425, 2440-2442)

99. Contrary to Petitioner's allegation, Ms. Brooks did not tell Petitioner that Samantha Seawright is a racist. Contrary to Petitioner's allegation, Ms. Brooks did not tell Petitioner that Samantha Seawright did not want to be around black people. (T Vol 11, pp 2415, 2416, 2425, 2440-2442; P Ex 33)

100. Ms. Brooks testified directly and forthrightly. The undersigned finds Sherri Brooks to be a credible witness. The credibility of her testimony is bolstered by the fact that she was a confidante of Petitioner, and had absolutely no reason to lie about what advice she gave to Petitioner, how she perceived the work place events, or whether Petitioner was truthful in some of her opinions about whether Petitioner was being harassed in the workplace.

101. Samantha Seawright is a white female. (T Vol 7, pp 1432, Vol 9, 1784) Ms. Seawright was hired at the PSO as a network specialist, with the working title of a policy writer or a technical writer. Her job responsibilities were to assist with the security project in getting the security standards in line with the IPS, and if they so chose, the Institute of Standards ("ISO") and National Institute of Standards ("NIST"). (T Vol 7, pp 1382, 1432-1434)

102. Ms. Seawright started at the PSO on May 7, 2008, the same day as Petitioner. (T Vol 2, p 454)

103. Ms. Seawright has a Bachelor's degree in psychology from the University of South Carolina. She is currently working on her Master's degree in Public Health. She has worked most of her career, approximately 15 years in the health care industry. She worked the last 11 years primarily on HIPAA and regulatory compliance. Ms. Seawright has a lot of experience with HIPAA. Prior to working at the PSO, Ms. Seawright worked for the Division of Mental Health as the privacy officer for over 14 mental health facilities throughout North Carolina. There, she dealt with privacy regulations, security regulations, substance abuse regulations, North Carolina identity theft regulations, as well as communicable diseases and some other state regulations. (T Vol 7, pp 1432-1433, Vol 11, 2385)

104. When Ms. Seawright worked at the Division of Mental Health with privacy issues, she worked closely with Sherri Brook and Pyreddy Reddy on and off in the security project through those years as well. (T Vol 7, p 1434)

105. Petitioner and Samantha Seawright were assigned an office to share. Within the first week, Petitioner complained to Jared Murphy and Dale Suggs that she didn't feel comfortable being in the office with Ms. Seawright. Petitioner alleges that on May 10, 2007 at 9:23am, Samantha Seawright asked Petitioner if she wanted to purchase a microwave, coffee maker, hang

pictures, and decorate the office with her. Petitioner said no and, according to Petitioner, Ms. Seawright gave her the finger 3 times in rapid succession and called her a bitch. The next day Samantha Seawright went to Mr. Murphy and Mr. Suggs and complained about Petitioner. Mr. Murphy and Mr. Suggs brought Petitioner and Ms. Seawright together. Each had allegations against the other. Mr. Murphy and Mr. Suggs asked both Petitioner and Ms. Seawright to be adults and treat each other with respect. Petitioner and Ms. Seawright were asked if they felt that they could continue working in the same office. Petitioner said yes. Ms. Seawright said no. Because Petitioner was the one who said that she felt that she could work with Ms. Seawright and not be bothered by her, Petitioner was given the option to either stay in the office that she was in or to move. Petitioner chose to stay in that office. Samantha Seawright was moved to an office around the corner. (T Vol 2, pp 454-455, Vol 3, 512, 525-526, 705, Vol 7, 1383, 1385, 1387, 1434-1435, Vol 9, 1914-1915, Vol 11, 2456; R Ex 4; P Ex 4 (page 2), P Ex 35)

106. Samantha Seawright denied calling Petitioner a bitch and giving her the finger three times. (T Vol 3, pp 705, Vol 7, 1384, Vol 11, 2456, 2498; R Ex 4; Ex 35, 77)

107. Assuming *arguendo* that Ms. Seawright did engage in the above alleged conduct, the undersigned finds as a fact that it was not based on Petitioner's race or gender and therefore is not racial or gender harassment.

108. Petitioner and Samantha Seawright shared an office for 2 weeks and a day. The undersigned finds as a fact that management's prompt response to Petitioner's and Ms. Seawright's complaints about each other was an appropriate and adequate remedy to the complaints. (T Vol 2, pp 456, Vol 3, 707). Petitioner and Respondent were both warned that they must work together and they were given separate offices.

109. Petitioner alleges that at the new employee orientation on May 11, 2007, she told Sharon Prince, the HR instructor about her problems with Samantha Seawright. The undersigned takes official notice that Petitioner subpoenaed Ms. Prince to attend this Contested Case Hearing. The subpoena was served on Ms. Prince. Petitioner did not call Ms. Prince as a witness. (T Vol 2, pp 455, Vol 3, 527)

110. Shortly after beginning work at the PSO, Ms. Seawright told Petitioner that she had come from the Division of Mental Health and that it was a rough work environment. Petitioner told Ms. Seawright a little bit about where she had come from. Petitioner said something about people not really liking her, her being a whistle-blower, and something about getting people fired. (T Vol 7, pp 1435-1436)

111. When Samantha Seawright was moved to another office, away from Petitioner, Jared Murphy considered the matters between Petitioner and Samantha Seawright resolved. However it was not resolved and about once a month one of them would talk to Mr. Murphy and Mr. Suggs about the other. Mr. Murphy and Mr. Suggs would sit down with both or just one, depending on what happened, and reiterated that they needed to act like adults. After these meetings, Mr.

Murphy considered the issues resolved. However, he also realized that Petitioner's and Ms. Seawright's personalities were like water and oil. They did not mix. (T Vol 9, pp 1915-1916)

112. After a conversation with Pyreddy Reddy in 2008, Mr. Murphy completely segregated their duties so that they didn't have to talk to each other about absolutely anything. After segregating their duties, Mr. Murphy felt that the problems were resolved. Mr. Murphy did not feel that there was an issue other than a conflict of personalities. There was nothing that was brought to his attention that he needed to intervene in. (T Vol 9, pp 1927 -1928)

113. At the times when Petitioner and Ms. Seawright were not getting along, Jared Murphy attributed approximately 60 percent of the fault to Ms. Seawright. (T Vol 9, p 1947)

114. Before Mr. Suggs became aware that Petitioner was not being truthful about her files being compromised, he thought that Samantha Seawright was the cause of the problems between her and Petitioner. (T Vol 11, pp 2506- 2507)

115. Samantha Seawright did say to Petitioner she was in a bitchy mood" or something of that nature. This occurred at a time when Ms. Seawright did not feel well soon after surgery and Petitioner approached her when she was in a lot of pain. Ms. Seawright testified that Petitioner had used the word "bitch" directed toward her the week prior. (T Vol 7 pp 1388, 1394)

116. Ms. Seawright did her best not to talk to Petitioner most of the time because every time she spoke with Petitioner, her words were twisted around and they ended up being completely blown out of proportion. Ms. Seawright made it a point not to talk to Petitioner and asked repeatedly that any communication that she had with Petitioner be by e-mail only. (T Vol 7, p 1394)

117. Petitioner alleges "management has allowed Ms. Seawright to repeatedly work at home, come in late, work irregular hours, and make up time, while black employees, like her were not allowed to do so." Petitioner also alleges "[u]nfair make-up work time/leave or written-off sick or work time (e.g., more time than 4 plus hours where an employee can stay late until 7pm-9pm or come in early, even work on a Saturday) at management discretion." (T Vol 6, p 1225; P Ex 77, 6th page; R Ex 5,3rd page)

118. There were many days that Samantha Seawright would come in very, very early in the morning and leave very, very late in the afternoon, which were nontraditional hours. Ms. Seawright worked those hours because of doctor's appointments or matters of the sort. Management allowed her to work these hours so she could get her work done on time. (T Vol 9, p 1993)

119. Petitioner was allowed to make up missed time. Petitioner never asked to be allowed to work weekends, nor did she ask for permission to work from home or irregular hours. (T Vol 6, p 1225)

120. Petitioner has presented no evidence that black employees were not allowed to use flexible work hours. Samantha Seawright was not favored by being allowed to work different hours. Mr. Murphy gave everybody the option instead of taking two hours of leave for a doctor's appointment, to come in an hour early, and to leave an hour late. He told his employees that they owe the State 40 hours. (T Vol 9, pp 1941, 1978)

121. Petitioner alleges that in 2007 and 2008, Samantha Seawright had "approximately negative vacation and sick" leave. Petitioner has presented no evidence regarding this matter and, therefore, has not met her burden of proof. However, even assuming *arguendo* that Petitioner met her burdens of production and persuasion, and though Petitioner may have found Ms. Seawright's alleged negative vacation and sick leave subjectively offensive, it would not be objectively offensive to a reasonable person. (T Vol 9, p 1978; R Ex 4; P Ex 35, 77)

122. Petitioner has presented no evidence to corroborate that Mr. Murphy allowing Ms. Seawright to work at home was racially motivated. Further, while Petitioner may have found her co-workers permission to work at home, come in late, work irregular hours, and make up time subjectively offensive to her, without supporting evidence of a racial or gender animus, it would not be objectively offensive to a reasonable person and does not amount to unlawful workplace harassment within the meaning of the applicable statutes, rules or policies.

123. Petitioner alleges that on March 4, 2008 Samantha Seawright exposed her breast to Jared Murphy and Petitioner. Petitioner alleges "11:00 to 11:30 am Meeting with Jared, Sam, and Gwen" ... "Sam [sic] blouse was 'open' in front (very low cut) and I asked her to pull it up because you could see 'breast'... Sam stated: 'Jared's wife has some just like mine.'" Petitioner further alleges that "[w]hen she bent over, you could see the nipples on the front of her blouse. (T Vol 3, pp 527, Vol 5, 1095, Vol 7, 1448, Vol 12, 2675; R Ex 4, P Ex 35, 77)

124. Petitioner testified that she was not offended by the exposure of Ms. Seawright's breast, but rather found it inappropriate. (T Vol 6, pp 1134-1135)

125. Petitioner did not report to Pyreddy Reddy that Samantha Seawright allegedly exposed her breast in a meeting with Petitioner and Jared Murphy. This was after Mr. Reddy sent Petitioner a letter three weeks earlier on February 7, 2008 telling her ... "if any problems or issues arise . . . please report to me immediately." (T Vol 1, pp 155; R Ex 10)

126. Petitioner did not tell her attorney, Kimberly Richards that Ms. Seawright allegedly exposed her breast in a meeting. Had Petitioner told Ms. Richards, Ms. Richards would have included it in Petitioner's Prehearing Statement ("PHS"). Petitioner had the opportunity to review the PHS before it was filed. Petitioner did not tell Ms. Richards about the breast incident so she could include it in the PHS. The PHS was filed on June 16, 2008, over three months after the incident allegedly occurred. The first time Ms. Richards heard the allegation of an exposed breast was at the Contested Case Hearing. (T Vol 1, pp 47-48, 59; R Ex 16; P Ex 62, 6/15/08)

127. Petitioner did not tell the unlawful workplace harassment investigators, Charles Lane and Wanda Mandeville, that Samantha Seawright allegedly exposed her breast during a meeting with Jared Murphy. (T Vol 12, pp 2675)

128. Petitioner did not report this to anyone, including Pyreddy Reddy, who less than 30 days prior to the alleged incident told her to report any problems to him immediately; the unlawful workplace harassment investigators, with whom she met within 2 days after the alleged incident; or her own attorney. Most significantly, Samantha Seawright was not at work on March 4, 2008 as evidenced by her time sheet. (T Vol 7, pp 1448-1449; R Ex 13, 10, 38)

129. The undersigned finds by a preponderance of the evidence that Petitioner has not met her burden of proof that this occurred, and if in fact it did occur, it does not constitute unlawful workplace harassment within the meaning of the applicable statutes, rules or policies.

130. Ms. Seawright testified directly and forthrightly. The undersigned finds Samantha Seawright to be a credible witness.

131. Jason Smith worked at the PSO on the security project as a security analyst. In May 2008, Mr. Smith became a network security specialist. (T Vol 12, pp 2591)

132. Mr. Smith was a Subject Matter Expert ("SME") and worked with Petitioner on the Administrative Standards. They had a working relationship in which Mr. Smith would create the template of a file for a standard, and then Petitioner would review it for editing content. Then, they would create separate files. Petitioner and Mr. Smith saved them separately with documentation dictating whose file was whose. (T Vol 12, pp 2592-2593, 2603)

133. Mr. Smith does not remember Elijah Chapman yelling out, "Free at last, free at last." Mr. Smith did not hear Horace Palmer call her "baby" or "chocolate," or "thick thigh." He never heard any of the employees used the word "nigger," "KKK" or "cracker." Mr. Smith never heard anyone say that a woman should be seen and not heard, or that a black woman should ever tell a white man he can't write. Mr. Smith never heard Dale Suggs say that he wanted Petitioner fired." He also testified that he did not ever hear anyone complaining about the fact of how Petitioner reviewed their work. (T Vol 12, pp 2603-2605.)

134. Mr. Smith testified directly and forthrightly. The undersigned finds Jason Smith to be a credible witness.

135. John Lavender was employed by the North Carolina DHHS, DIRM, PSO in a time limited position as a technical writer. He started on May 7, 2008, the same day as Petitioner. (T Vol 2, pp 454, Vol 11, 2565). Mr. Lavender is a white male. (R Ex. 33, ¶ 2)

136. Petitioner testified that he rarely ever hears cursing in the office. (T Vol. 11, p 2552). Upon being asked by Petitioner whether Mr. Lavender office was a Christian oriented office he testified that he wasn't aware that religion had any place in the workplace and that "we were not

labeled as Christian." Mr. Lavender testified that "well, the only place that I ever saw signs of religion were in your office with that crucifix that was over on your desk on the left side. And I never knew if that belonged to you or it was leftover or what." (T Vol. 11, pp 2552-2553)

137. Mr. Lavender testified that he never changed her files and was not aware of who changed her files. (T Vol 11, p 2554). He testified that in September 07 Ms. White would direct him to the document's location on the computer and he would print it and make changes that he thought necessary on the hard copy. The first time she gave him a standard to proof, he read it on a hard copy and then made changed on a tracked version on the computer. "Her accusation that I changed or deleted her files is a lie and an insult." "Ms. White went off talking down to him; that Ms. White was typically condescending toward him. (T Vol 11, pp Mr. Lavender further testified that Ms. White was hypersensitive. (T Vol 11, pp 2566-2569).

138. Mr. Lavender affirmed in his affidavit (R Ex 33) that if anyone has created a hostile work environment at DIRM, it is Gwen White." You have never once experienced unpleasantness in the workplace before you encountered her. She was the one that manufactured these race and sex discrimination issues. Without her DIRM would be a pleasant place to work, free of harassment and hostility." (T Vol 11, p 2570)

139. Mr. Lavender testified that he was frustrated because he did not understand why the sheriff had to be sent to his home to deliver a subpoena and why he was sitting in Court since his dealings with Petitioner were extremely limited. (T Vol. 11, p 2555). Mr. Lavender also testified that there was some friction between him and Petitioner and that he would never visit her office unless he had to. The friction arose because "initially – I believe during our first meeting—you referred to me as an illiterate hick. And I found that hard to swallow." (T Vol 11, p 2556) He testified further that "the only racially insensitive remarks that I ever heard, or insensitive remarks for that matter, came from you." (T Vol 11, p 2257)

140. In spite of his expressed anger about having been subpoenaed to Court to testify, the undersigned finds that Mr. Lavender testified directly and forthrightly and finds him to be a credible witness.

141. Scott Gardner is a network security specialist at DIRM. Pyreddy Reddy is his supervisor. He is a Caucasian male. (R Ex. 29, ¶ 2). As a network security specialist, Mr. Gardner ensures the security posture of DHHS's state network and ensures that there is vulnerability management for the network and the systems that reside in DHHS. (T Vol. 10, p 2273) (Vol 11, p 2313)

142. Mr. Gardner started "IT" work professionally with Branch Bank in 1993. He has approximately 17 years of IT experience, 12 years of it being in "IT" security. He has worked as a contractor with Lockheed Martin and IBM, where he did security work, including network security and information security. He has worked for the State of North Carolina for approximately 4 years. (T Vol 10, pp 2284-2285)

143. In December 2007 or early January 2008, Petitioner spoke with Scott Gardner about issues with her computer and issues she had with people. She said that people were calling her black cat and baby. Petitioner was crying and said she was keeping a journal. Mr. Gardner asked Petitioner what she was going to do and why didn't she go to HR. Mr. Gardner told Petitioner she should go to HR. Petitioner said she was waiting to go to HR; that she was talking with her sister or her friends and they advised her to wait. Mr. Gardner told Petitioner that if it was really an issue, she should let people know so that they could do something about it. He also told Petitioner that going to Pyreddy Reddy was the right thing to do. Mr. Gardner told Petitioner, "If you want anything done about it, you need to see management and Human Resources." Petitioner said that she was thinking about it, and hadn't done it yet. (T Vol 10, pp 2294-2296, Vol 11, 2323, Vol 12, 2330-2331

144. Mr. Gardner was confused about why Petitioner was telling him all this. Petitioner had never spoken with Mr. Gardner about personal issues. Petitioner and Mr. Gardner did not have the type of relationship where she would confide in him about her problems. He didn't understand why she didn't go through the proper channels if her issues were that serious. The conversation made Mr. Gardner me very uncomfortable, and he went to see Mr. Reddy after that. Other than this one meeting in January 2008, where she was crying and she told him about her problems, Petitioner had never went to Mr. Gardner with problems of a personal nature. He had no idea why she picked him out of everybody to tell her problems to. That is why he was uncomfortable about it. (T Vol 10, pp 2295-2297, Vol 11, 2323)

145. Mr. Reddy told Mr. Gardner that from then on he should always have someone else in the room with him when he sees Petitioner. (T Vol 10, pp 2294-2296, Vol 11, 2324)

146. When Petitioner was working at the PSO, Scott Gardner had contact with Petitioner approximately twice a week, either to provide support for her laptop or network support. Petitioner never told Mr. Gardner about her issues which she alleges started the first week in May 2007. She did not go to him with these issues until January 2008. (T Vol 10, p 2297)

147. Mr. Gardner has never gone to lunch with Petitioner and does not consider her to be his friend. (T Vol 12, pp 2323-2324)

148. Petitioner also alleges that Scott Gardner removed Brenda Richardson's desktop from her office to search for and erase the January 28, 2008 e-mail from Samantha Seawright to Brenda Richardson. Mr. Gardner did not remove Ms. Richardson's computer, nor was he ever asked to. Mr. Gardner did not erase the e-mail in question as he doesn't have rights to do that. ITS, the State's Information Technology Service, an agency that is completely separate from DHHS, is the only agency that has rights to e-mails. They store it the way they want to so that can manipulate it as necessary. All the e-mails reside on its servers. Even if an e-mail is erased locally, it still resides on the server unless ITS deletes it. No one within DHHS has the rights to erase an e-mail. (T Vol 10, pp 2294, Vol 11, 2320-2321, 2327, 2357-2358)

149. Mr. Gardner testified directly and forthrightly. The undersigned finds Scott Gardner to be a credible witness.

150. The PSO staff work on laptops, as opposed to desktops or floor model computers because most staff work in the field. As with any technology, the computers sometime break. Computer problems have been encountered across the board in the Privacy and Security Office. There have been times when the entire State was not able to get on the Internet. Sometimes there was no access to the servers. There were various issues with the laptops and with Microsoft Windows. (T Vol 1, pp 139, Vol 9, 1808, 1843)

151. The laptop that Petitioner was using was old like most of the other laptops in the office. Everybody had computer issues. Three or four of the laptops fully crashed and had to be restored or replaced, including Jared Murphy's. Out of the 18 laptops in the office, at least half were replaced at some point for some reason. Petitioner did not have more problems with her laptop than anyone else. (T Vol 9, pp 1808, 1842-1844, 1917, Vol 10, 2292, 2314)

152. The laptops at the PSO were less than desirable and had numerous issues. They didn't have enough memory. They were slow to load. If any additional software was loaded, the computers would lock up in a minute. (T Vol 7, pp 1436-1437)

153. Petitioner had various problems with her computer. Many of Petitioner's computer problems were related to her lack of understanding of computers. (T Vol 10, pp 2286-2287, Vol 11, 2329)

154. One time when Petitioner complained about her computer, Jared Murphy told her to restart her computer. She did, and then it was fine. It was a hiccup in the operating system which she thought was someone else doing something to it. Sometimes a computer can lock itself up. Restarting the computer closes everything out and essentially makes the file think that the computer is starting from scratch, which it is. (T Vol 9, pp 1950-1951; R Ex 35)

155. Everyone was assigned a number of passwords: one for the file server and one for their user account. If they used Novell Services, they had one for that as well. So everyone had 2 to 3 passwords. Petitioner had a lot of trouble with her passwords. Everyone is required to change their password at least every 90 days. Petitioner would change her password much more often than the 90 days. No one else in the workplace had as much trouble with passwords as Petitioner. (T Vol 10, pp 2286-2287, 2299, Vol 11, 2314-2315)

156. Petitioner alleged that there were some icons on her computer that were moving. Scott Gardner investigated this issue. He determined that it was normal behavior of the operating system. Her icons were set for auto-arrange and if she had moved them around, the next time she logged in, it would go back to its default position. When Mr. Gardner told Petitioner this, she seemed shocked by his explanation. (T Vol 10, pp 2288, Vol 11, 2315, 2320)

157. Another time, Scott Gardner investigated Petitioner's complaint that there was an icon in the lower right-hand corner of her computer screen. Petitioner thought that it meant somebody was remoting to her computer. That icon indicated a normal network communication was taking place with her computer to other network services, indicating that it was communicating with the server. There is an icon in the bottom right-hand corner of Windows to show connection to the network. It has a little yellow dot that keeps scrolling back and forth. That means is that there is connectivity to the network. Petitioner saw the icon and thought it meant that somebody was remoting into her computer. The connectivity icon is something that would be on her computer every time she was connected to the network. Petitioner, all of a sudden and out of the blue, started complaining about the icon. When someone remotes into a computer, typically the screen will not show anything regarding the remoting. (T Vol 9, pp 1951-1952, 2013, Vol 10, 2288-2289, Vol 11, 2320; R Ex 35)

158. During the first two or three weeks of her employment, Petitioner complained that her files were being changed. Jared Murphy and Dale Suggs looked into it and they never saw anything. They looked again and again. Petitioner always said that somebody had changed her files. Dale Suggs sent out an e-mail that: "Nobody change anybody else's files." If changes to Petitioner's files occurred early in the project, it was not with a malicious intent. Everybody used a shared drive. Early in the project, everyone had access to everything on the shared drive. People were all working on the same type of documents. (T Vol 9, pp 1797-1798)

159. During the time that Dale Suggs was the project manager (May 2007 until July 31, 2007), Petitioner complained to him that her files were being altered. Mr. Suggs looked into it to determine whether, in fact, it was happening. At that point, all he could really do was ask questions and talk to people. From asking questions and talking with people, Mr. Suggs was not unable to determine that anyone did actually go in Petitioner's files and change them. Mr. Suggs sent out e-mails telling people to stop going into other people's files. (T Vol 11, pp 2499-2500, 2530; P Ex 17)

160. After Jared Murphy took over as the project manager on August 1, 2007, Mr. Suggs still looked at the standards at Mr. Reddy's request. Mr. Suggs assured that the standards went out professionally by making sure the spelling, grammar, and punctuation were correct. (T Vol 11, p 2495)

161. Samantha Seawright did not alter any of Petitioner's files, other than accidently one time. Ms. Seawright immediately called Petitioner and told her what happened. Ms. Seawright also immediately called the network guys so that they could restore the file immediately. Ms. Seawright followed this up with an e-mail titled: "Ok- so I admit I took a big ole idiot pill today." The e-mail stated, "Joe is going to restore the files tomorrow when he picks up the tape, but it was only the signature files that I accidentally deleted-- not your final documents. So your stuff is still there. . . I told Joe you were going to kick my rear end if those files we're back out there .... lol ...I'm sorry - I swear I didn't mean to do it !!!!!!!" In no way, shape or form did Ms. Seawright ever tamper with any of Petitioner's files other than that one time which occurred accidentally. (T Vol 7, pp 1414-1415; P Ex 59, 7th page)

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162. Samantha Seawright also called Jared Murphy and told him that she accidently deleted one of Petitioner's files. She wanted to let Mr. Murphy know because of the tension that existed between Petitioner and Ms. Seawright. (T Vol 7, p 1417)

163. At any one given time, two to three people could either be working on or involved in a specific document. In addition to the subject matter experts ("SMEs"), and the policy writers, there was also a technical writer, John Lavender, who would also go into the documents and make sure that the policy writers were in line with different things. There is a certain chronology that was followed in drafting and finalizing specific standards. The subject matter experts would write the draft and then the policy writers would go in and massage it. Early on, John Lavender, the technical writer, would also look at it, and then all three of them would start on the next draft with those revisions. There were several different revisions of the same documents. (T Vol 9, pp 1919-1920)

164. Petitioner made complaints to Mr. Murphy that her documents were being changed here and there. Many people were working on the same documents. In an attempt to resolve Petitioner's complaints, Mr. Murphy ended up segregating documents, and implementing permission restrictions so that only certain people could access certain documents. Petitioner was the only person that had ever suggested that documents were being improperly changed. (T Vol 9, p 1916; R Ex 39)

165. While everyone had issues with their computers, Petitioner was the only person that alleged that her files were being improperly changed or altered. (T Vol 9, pp 1916, 1920)

166. The new permission restrictions went into effect on September 19, 2007. At that time, certain rights were given to certain people. For example, only Petitioner, the administrators, and the managers, had access to Petitioner's folder. For Samantha Seawright, only she, the administrators and the managers had access to her folder; no one else had access to it. The managers that had access were Dale Suggs, Jared Murphy and Pyreddy Reddy. Samantha Seawright did not have access to Petitioner's documents. At that point, Mr. Murphy considered the matter resolved because there was no way that Petitioner's file could be improperly accessed. (T Vol 9, pp 1798, 1805, 1917-1918, 1921, 1950, Vol 11, 2317-2318; R Ex 35, 39)

167. Jason Smith, as the SME, was the content owner of the documents that Petitioner proofed. Mr. Smith was responsible for the work product. (T Vol 9, p 1949; R Ex 35)

168. Jared Murphy had the final responsibility for the files and documents related to the project. As Petitioner's supervisor, Mr. Murphy could go into Petitioner's documents and make changes if he wanted to. However, he never went into in her files to make changes. (T Vol 9, pp 1947- 1949)

169. Mr. Suggs, as the project manager from May 2007 until the end of July 2007, did not change, alter or delete Petitioner's files. After Mr. Suggs was no longer the project manager, he did not go into Petitioner's files and alter or delete them. (T Vol 11, pp 2499-2500)

170. Samantha Seawright got tired of Petitioner constantly questioning her professionalism. Ms. Seawright realized that Petitioner had been accusing her of altering, deleting and sabotaging Petitioner's work, and saying things that were not true. Samantha Seawright felt that Petitioner treated her terribly wrong. Ms. Seawright was doing her very best to keep her mouth shut and just smile if she saw Petitioner. Petitioner continued accusing Ms. Seawright and others of sabotaging her work. The computer forensics person on staff would have been able to detect who was conducting such activity if this was going on. (T Vol 7, p 1423)

171. Around the Thanksgiving 2007 time frame, Jason Smith approached Petitioner with a standard where there was a sentence in it that Petitioner said was not her sentence. Petitioner said it was not hers after Mr. Smith had reviewed it. In fact, it was a sentence that Petitioner had created. At that one point, Petitioner mentioned to Mr. Smith that sabotage might have changed it. That is the only time Petitioner made any comment to Mr. Smith regarding alleged sabotage of Petitioner's files. Other than that, Petitioner never spoke with Jason Smith in reference to her files on the server being altered, changed or deleted. In light of the fact that Jason Smith was Petitioner's SME and they worked closely together on the standards, the undersigned finds it suspect that other than this one occasion, Petitioner never complained to Jason Smith about the alleged sabotage of her files. (T Vol 12, pp 2594, 2602)

172. Petitioner alleges that Jared Murphy told her that Dale Suggs, John Lavender and Samantha Smith were making changes to her documents. (T Vol 3, p 571; R Ex 4, (calendar date of August 3, 2007)

173. Contrary to Petitioner's allegation, the undersigned finds as a fact that Jared Murphy did not tell Petitioner that he, Dale Suggs, John Lavender, and Samantha Seawright were making changes to Petitioner's files. (T Vol 9, pp 1947- 1948, 1993)

174. As the project manager and Petitioner's supervisor, Mr. Murphy could go into Petitioner's documents and make changes if he wanted to. However, the undersigned finds that Petitioner did not carry her burden of proof by a preponderance of the evidence that Jared Murphy changed, deleted, alter or sabotaged Petitioner's files in any way. (T Vol 9, pp 1947- 1948)

175. The undersigned finds that Petitioner did not carry her burden of proof by a preponderance of the evidence that Dale Suggs deleted, altered or sabotaged Petitioner's files in any way. (T Vol 11, pp 2499-2500)

176. The undersigned finds that Petitioner did not prove by a preponderance of the evidence that John Lavender deleted, altered or sabotaged Petitioner's files in any way.(T Vol 11, pp 2554, 2566, 2568)

177. The undersigned finds that Petitioner did not prove by a preponderance of the evidence that Samantha Seawright changed, altered, deleted or tampered with Petitioner's files or documents, other than the one time described above. (T Vol 7, pp 1414-1415)

178. The undersigned finds as fact that Petitioner is not a computer expert and has a limited understanding of their workings. (T Vol 3, pp 602-606, 654-655, Vol 4, 815)

179. Petitioner has not met her burden of proof by a preponderance of the evidence that any of her work, documents or files were deleted, altered, changed or sabotaged. Based upon the preponderance of the credible evidence in the record including the testimony of Petitioner's witnesses, I find as a fact that Petitioner's documents and files were not tampered with, other than the occasion Samantha Seawright mistakenly altered one of Petitioner's files (T Vol 9, p 1993)

180. Petitioner continued her generalized complaint about other people hacking or sabotaging her computer. Petitioner continued blaming other people for changing her work. In January 2008, Pyreddy Reddy asked Scott Gardner to do a forensic investigation and start auditing Petitioner's computer. (T Vol 10, pp 2289-2290)

181. The forensic investigation consisted of Mr. Gardner auditing the actions of everyone's ID. The actions of everyone who used the data on the PSO file server were being audited. The auditing was inactivated when the project ended. Mr. Gardner saw no evidence of any wrongdoing by anyone in the office. (T Vol 11, pp 2289-2290, 2293, Vol 11, 2329, 2364)

182. In January 2008, when Petitioner's laptop was pending failure, Scott Gardner ran an image of the hard drive to transfer to a new computer. The IT people tried to save people's hard drives and then transfer them to a new computer. Mr. Gardner was unable to recover anything from the images because Petitioner had her work stored in other various locations. Petitioner told Mr. Gardner that she had her work stored in at least three places. Petitioner told Mr. Gardner she was also saving her work on her personal thumb drive and, the reason why she stored her documents in so many places, was because she didn't trust anybody. Petitioner did not say that she stored her work in multiple locations because Jared Murphy had asked her to. (T Vol 10, pp 2292-2293, 2298-2299, Vol 11, 2316)

183. Respondent produced Mr. Atanasoff, an employee in the Department of Health and Human Services, Privacy and Security Office, at the Contested Case Hearing at the court's request. The undersigned made this request in an attempt to verify the testimony of Brenda Richardson, who testified that she had not received an email from Samantha Seawright. Mr. Atanasoff's job was to recover e-mail from the mail server when requested. When a request comes in for e-mail to be retrieved from the mail server down at ITS, the request is sent to Mr. Atanasoff. He formulates the documents and then sends that request to ITS. ITS then retrieves the data for that specific time frame indicated in the request. ITS then produces the data and returns it back to him. (T pp 1294-12945). At the court's request Mr Atanasoff formulated a request to ITS to find the January 28th, 2008 e-mail from Samantha Seawright to Brenda Richardson. He received a response back from ITS that there was no data from that time frame or no tape backup

to utilize from that time frame. ITS initially started the freezing of tape backups at the end of April, 2008. When a tape backup does occur, it is essentially a picture of the data at that time they run that tape backup. So it is a picture of all mail that has not been deleted at that date and time. If the mail was deleted prior to that date and time, that data will not exist. Mr. Atanasoff was able to get something from January 28, 2008 but it was two disks that had hundreds of e-mails on them. Ultimately, the specific e-mails were located. Mr. Atanasoff was unable to produce a month's worth of chronological data. It would have been more costly in terms of man hours. It probably would have taken about a week. (T pp 1293- 1298, 1308, 1321; P Ex 96, 100)

184. Mr. Atanasoff has been working in the IT field approximately 23 years. Mr. Atanasoff has worked for the Privacy and Security Office approximately three and a half years. Prior to that, he was a contractor working for DHHS, DIRM for nine and a half years. He is familiar with the various e-mail systems that have been in place in DHHS and the State. When he initially came on board as a contractor, he worked with the previous e-mail system, which was Microsoft Mail. Mr. Atanasoff was hired at DIRM after working at Edwards Air Force Base in California and running their mail systems. Mr. Atanasoff has worked with Microsoft Mail, and Critical Path, which is the Netscape mail. He is currently working with the Outlook or Exchange Mail that is currently deployed through the State of North Carolina. (T Vol 6, pp 1310-1311, 1314-1315)

185. The undersigned qualified Mr. Atanasoff as an expert in this area of Information Technology and e-mails and found that his testimony had been helpful to the trier of fact to determine certain issues in this case. (T Vol 6, p 1320)

186. Mr. Atanasoff initially formulated a request for January 28, 2008. What he was able to retrieve was two disks that had hundreds of emails. . (T Vol 6, pp 1295-1296).

187. 196. Mr. Atanasoff testified directly and forthrightly. The undersigned finds George Atanasoff to be a credible witness.

188. On or about January 3, 2008, while Jared Murphy was absent from work, Petitioner approached Dale Suggs in the morning. Petitioner said that her files had been compromised. Mr. Suggs asked Petitioner to tell him what she meant by compromised. Petitioner said her files on the server had been altered and changed. Mr. Suggs then asked Petitioner to assure him that she had backups somewhere; another copy that she had been working with, and saving. She said her only backup copies had been on her hard drive, which she had given to Scott Gardner. At that time, Petitioner's laptop was undergoing repairs by Scott Gardner because it had stopped working. Petitioner told Mr. Suggs that her only backup copies were on her laptop's hard drive. Scott Gardner had told Petitioner that her hard drive was unrecoverable. As soon as Petitioner left Mr. Suggs' office, Mr. Suggs spoke with Scott Gardner. Scott Gardner indicated that Petitioner's files were not unrecoverable, and that he had made a backup image of her hard drive. (T Vol 1, pp 149-150, Vol 9, 1955-1956, Vol 11, 2468, 2476, 2502; R Ex 6, 9)

189. John Lavender overheard part of the conversation that Petitioner and Dale Suggs were having regarding Petitioner's laptop having crashed. Mr. Lavender offered to find a spare

computer to give Petitioner until she got a new computer. Mr. Lavender had to "move heaven and earth" to get the extra computer for Petitioner because computers were in short supply at DIRM. Scott Gardner created a password for Petitioner to use on Mr. Lavender's spare computer. Mr. Suggs asked Mr. Lavender to take the computer to Petitioner so she could work. Petitioner refused to take the computer from Mr. Lavender. About an hour later, Petitioner was in Mr. Suggs office and he mentioned that she had a computer now so should be able to work. Petitioner said that no one had offered her a computer. Mr. Suggs asked Mr. Lavender about that and Mr. Lavender said that yes, he had offered it to Petitioner and she turned it down, saying that she didn't want it. When Mr. Suggs confronted Petitioner, she said that no one had been to her office to offer her a computer. (T Vol 4, pp 821- 825, Vol 10, 2290, 2473, Vol 11, 2526, 2570-2571-2573; R Ex 9)

190. Petitioner told Scott Gardner that she wanted her own computer. She just did not want to work on John Lavender's computer. Mr. Lavender's computer was not a laptop; it was a desktop machine. However, Mr. Lavender's desktop was in better computing shape than the laptop that Petitioner had been using. (T Vol 10, pp 2291, Vol 11, 2315, 2316)

191. Since Petitioner's laptop was failing at this time, Mr. Suggs asked Scott Gardner to make an image of Petitioner's laptop's hard drive. Mr. Gardner was able to recover an image of Petitioner's hard drive, so he was able to recover her work. Mr. Suggs gave Mr. Gardner a list of the files that Petitioner claimed were compromised and asked him to send them to the printer. Mr. Suggs got them off the printer as they came and wrote the date at the top. Mr. Suggs has very distinguishable writing. These were the files that Petitioner said were correct, her backup, which she thought had been destroyed. (T Vol 11, p 2504)

192. Mr. Suggs also asked Jason Smith to print out the standards that Petitioner was claiming were compromised and include the date, January 3, on the top of them. Mr. Suggs gave these copies to Petitioner and asked her to go through them and mark each place where someone had made changes. (T Vol 11, p 2504; R Ex 9)

193. Mr. Suggs requested that Petitioner provide him with a list of the standards that she claimed were compromised. Petitioner identified six Administrative and seven Network Security Standards that she claimed had been changed without her knowledge. Mr. Suggs asked Petitioner to print the files that she claimed were compromised and show him. Mr. Suggs doesn't know where she went, but Petitioner went to someone's computer and printed the files that she said were compromised. On the very first one that they opened, Petitioner had written on it in capital letters "big problems." Mr. Suggs said to Petitioner, "Let's look at the files and see what is wrong." The very file with the big problems didn't even exist. It was one of the standards that had not even been moved into the final stage yet. (T Vol 11, pp 2503-2504, 2526-2527; R Ex 9)

194. Petitioner and Mr. Suggs looked at the next two documents that she claimed were compromised. Petitioner attempted to describe the problems that she claimed with the next two documents to Mr. Suggs. She suggested that her compromised documents looked like a document if it runs through a printer or a copy machine and it gets jammed; and all the writing is line after

line at the top of the paper. But, as they opened each document, they were fine. There was absolutely nothing wrong with them. Then Petitioner gave Mr. Suggs a look indicating that she that knew she had been caught and so she left Mr. Suggs office. (T Vol 11, pp 2503-2504; R Ex 9)

195. Mr. Suggs gave Petitioner the documents that were printed from the server and ask her to identify what she considered compromised. He asked her to mark everywhere there is a change. She did it and brought them back to Mr. Suggs with circles all over them. She said "This is changed, this, this, this." Petitioner did not know that Mr. Suggs had the originals from Petitioner's laptop's hard drive. After Petitioner left Mr. Suggs, he sat down at his desk for many hours and, one by one, compromise by compromise, went over what Petitioner said was compromised. None of them existed. In all of those pages, only one comma was different. In other words, where she said "This has been changed without my knowledge," it existed on her backup as well, what she said was her good copy. The one comma, the file, that was on the shared drive actually had a newer save date. A check of the file properties on the file server showed that Petitioner was the last person to work on and save that file. The attributes behind the scenes in Microsoft Word where it says "Last saved by," cannot be edited. It was clear that Petitioner was the last one to have made those changes. Mr. Suggs found that, not only were her accusations incorrect, but the files on the server were more up to date and more correct than the ones on her hard drive. (T Vol 11, pp 2504-2506; R Ex 9)

196. Mr. Suggs only compared three of Petitioner's files. It took so many hours that he gave up. It was enough evidence for Mr. Suggs to prove that Petitioner was lying, that there were no compromises to those files. That was the first time that Mr. Suggs knew that Petitioner was lying. He had firmly believed Petitioner until that day. (T Vol 11, p 2506)

197. After six hours of comparing Petitioner's files, Mr. Suggs called Petitioner to his office along with Jason Smith who worked with Petitioner as a SME. When Petitioner realized that Mr. Suggs had the originals from her hard drive, she became nervous and said she did not want to talk about it in front of Jason Smith. Mr. Smith left. Petitioner threw up her arms and said "I don't want to talk about this right now. I want to talk with Pyreddy." Petitioner backed out of Mr. Suggs office. Mr. Suggs stood up at his desk and said, "Where are you going? Why are you leaving? What are we doing? I've spent hours working on this. You've said there was a compromise. I've done the investigation trying to help you and now you're leaving." That is the exact moment that Mr. Suggs knew that the reason Petitioner was leaving was because she knew that he had caught her lying. (T Vol 11, pp 2506-2509; R Ex 9)

198. In sum, Mr. Suggs' investigation determined that one of the Administrative Standards that Petitioner claimed was changed did not even exist. Mr. Suggs next looked at the Network Security files that Petitioner claimed were damaged and no damage was evident. Petitioner admitted there was no damage to her files and left Mr. Suggs office. (T Vol 11, pp 2503-2504; R Ex 9)

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199. It was on the occasion of Petitioner meeting with Dale Suggs in his office to discuss alleged compromising of her files that Petitioner alleges that Dale Suggs stood with rude force and pushed his chair against the wall. Petitioner alleges "The PSO Business Manager on two (2) occasions stood with rude force moving forward towards me and in displaying his frustration/anger, he pushed his office chair back, so hard it slammed into the wall. Since, this happened before with Dale, I was scared and I looked for another authority figure for help, so I went to Pyreddy's office, immediately. Unfortunately, we discussed only the problem with the security standards and not what just took place in Dale's office." (T Vol 3, pp 576-578, Vol 6, 1172-1173; P Ex 4, pages 2-3)

200. Being scared by Mr. Suggs allegedly pushing his chair with rude force was significant to Petitioner. This incident, which was of significance to Petitioner, does not appear in her daily calendar. (T Vol 5, pp 1026-1027, Vol 6, 1172- 1173)

201. Mr. Suggs' desk and chair are in close quarters. His office is 9 by 9 feet, or 9 by 8. The desk is in the middle of the room. Behind Mr. Suggs, is another table/desk underneath the window. Behind his chair, there is approximately a foot and a half to the table/desk behind him. There is just enough room for Mr. Suggs to walk around the desk and sit down. When Mr. Suggs gets out of his chair, it sometimes moves backwards and hits something. Getting up quickly would have caused the chair to move backwards. It doesn't take any force for the chair to hit the back table/desk that has a couple of feet of clearance. Petitioner has not meet her burden of proof by a preponderance of the evidence that Dale Suggs stood with rude force, pushed his chair against the wall and put her in fear. (T Vol 9, pp 1850, Vol 11, 2509-2510)

202. When Mr. Suggs stood up and said, "Wait a minute; where are you going" he still believed in Petitioner. He was trying to help her. He had no reason to be upset with her until that moment. When Mr. Suggs was talking to Petitioner in his office and his chair might have backed up towards the wall, Mr. Suggs was not aggressive towards Petitioner. He did not make any gestures like he was going to touch her or attack her. Petitioner did not give any indication to Mr. Suggs that she was in fear for her own safety. (T Vol 11, pp 2475, 2510, 2512)

203. Petitioner alleges that Dale Suggs slammed his chair with rude force and that she was scared of him so she went to Mr. Reddy's office to ask him, as another authority figure, for help. Petitioner did not tell Mr. Reddy about her being in a situation wherein she was scared of Dale Suggs just moments before. Rather, Petitioner told Mr. Reddy about her laptop crashing. Petitioner alleges Dale Suggs wanted her fired because she disrespected him as an authority figure, a Christian, and a friend by going to Pyreddy Reddy's office and allegedly telling Mr. Reddy that Dale Suggs slammed his chair and Petitioner was scared. (T Vol 6, pp 1214-1220)

204. When Petitioner backed out of Mr. Suggs office, she went in the direction of Pyreddy Reddy's office, but Mr. Suggs did not know for a fact that she went there. (T Vol 11, pp 2469, 2510)

205. Mr. Suggs did not know what Petitioner discussed with Pyreddy Reddy. (T Vol 11, p 2511)

206. In her past employment with another company Petitioner alleges a male manager grabbed Petitioner behind closed doors. Petitioner reported that incident, and the person was reprimanded two days later. In another occurrence, the male manager spoke with Petitioner about something with his wife and him, and someone else (a threesome). Petitioner reported that incident, and they let him go. In Petitioner's Exhibit 4, page 3 she indicates "I did not want to be in that situation again." (T Vol 5, pp 1086-1087; P Ex 4, page 3)

207. The undersigned finds that based on her prior experience at another company where she reported two incidents and prompt action was taken both times, if she was really scared of Dale Suggs and all of her harassment allegations really occurred, this would have been the perfect time for her to report such occurrences to Pyreddy Reddy.

208. This was the only time Petitioner went to see Mr. Reddy with any sort of complaint or issue. She complained about that her computer. She did not mention the meeting she had just had with Dale Suggs minutes prior. (T Vol 1, p 144)

209. Petitioner alleges that Dale Suggs "on two (2) occasions stood with rude force moving forward towards me." Petitioner has not offered any testimony regarding the alleged second occurrence. She has not met her burden of proof by a preponderance of the evidence that Dale Suggs pushed his chair back "with rude force" causing Petitioner to be scared of Mr. Suggs. (P Ex 4, pages 2-3)

210. Petitioner has not described either allegation regarding Dale Suggs and his chair in her daily calendar. (R Ex 4, P Ex 35)

211. At DIRM's Director, Karen Tomczak's request, Mr. Suggs prepared a memo of what occurred on January 3, 2008. (T Vol 11, p 2525; R ex 9)

212. When Jared Murphy returned to work, Dale Suggs told him what went on with Petitioner in his absence. Mr. Murphy did not want to believe what Mr. Suggs had told him. They met with Petitioner on Friday, January 25, 2008. At first, Mr. Murphy thought that there was just a miscommunication between Petitioner and Mr. Suggs. Petitioner told Mr. Murphy and Mr. Suggs that she was afraid to tell Mr. Suggs that her work was on her hard drive because it was in another folder in the shared drive. At that point, Mr. Suggs became aware that Petitioner's work was stored in a third location. It was a location to which no one had access but Petitioner and Mr. Murphy. Mr. Suggs asked Petitioner why she did not tell him this back on January 3. Petitioner said she was trying to protect her manager, Jared Murphy, because he had given her permission to use his hard drive to store backup copies. Mr. Suggs told Petitioner that this did not make sense. If she was trying to protect Jared Murphy, she should have told him about her copy on the shared drive, not the hard drive. Jared Murphy concluded that Petitioner purposely lied to Mr. Suggs (T Vol 9, pp 1866-1867, 1955-1960, 1973, Vol 11, 2482-2483, 2511-2515; R Ex 6, 9, 35; P Ex 4)

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213. Petitioner's Exhibit 4 refers to January 2007. This is a typographical error. It should be 2008. Petitioner did not become employed with the Respondent until May 2007. (T Vol 5, p 992; R Ex 2)

214. Petitioner recorded the January 25, 2008 meeting with Jared Murphy and Dale Suggs. (T Vol 4, pp 921-922)

215. Jared Murphy does not know why Petitioner felt that she was trying to protect him.(T Vol 9, p 2019)

216. Petitioner admitted that she purposefully withheld information from Mr. Suggs and Mr. Gardner. It was not a mistake; Petitioner did not misspeak. Petitioner admitted that she knowingly had another backup that she did not disclose in an attempt to cover up the fact that she had saved backup copies on her hard drive. (T Vol 9, pp 1959, 1962-1964, 1974, R Ex 6, 35)

217. Petitioner apologized to Mr. Suggs for what she had done. He told her he was going to have a hard time respecting her and that he no longer found her trustworthy. He further told her that there was nothing in her story that was valid after the investigation that he performed; that there were no files opened or saved by anyone other than her, and that there were no files compromised or damaged. (R Ex 9)

218. Petitioner's misrepresentations cost Mr. Suggs fourteen work hours focusing on her complaint. In addition, Scott Gardner and Joe Mancuso expended time in the investigation Petitioner's false allegations. (T Vol 9, p 1961; R Ex 9)

219. Based upon the investigation of Petitioner's complaints about co-workers compromising or altering her work, Mr. Suggs and Mr. Murphy believed Ms. White had lied to them. After Petitioner made these misrepresentations to Mr. Suggs, he went to Mr. Reddy and asked him not to release Petitioner from probation. Jared Murphy previously told Mr. Reddy that he wanted to make Petitioner a permanent employee in the time limited position, meaning that he wanted to lift the probation. However, after Petitioner admitted that she misrepresented information to Mr. Suggs, Mr. Murphy changed his mind and joined Mr. Suggs' recommendation that Petitioner's probation not be lifted and that she be let go. Mr. Murphy changed his mind regarding lifting Petitioner's probation based on the meeting that he and Dale Suggs had with Petitioner on January 25, 2008 wherein she admitted that she misrepresented information to Dale Suggs. (T Vol 1, pp 145 -146, 149-150, Vol 9, 1962-1964, Vol 11, 2516-2517; R Ex 6, 9) The undersigned finds as a fact that Ms. White did misrepresentation to Mr. Suggs concerning her files being compromised.

220. Petitioner alleges that Dale Suggs made threats to fire her. Mr. Suggs thought that not lifting Petitioner's probation, which would result in her being terminated, was a good solution to the situation she caused by lying. Mr. Suggs never made threats to Petitioner that she was going to be fired. He did not have the authority to fire her or even make a recommendation to fire her. However, Mr. Suggs did inform Pyreddy Reddy that he felt that Petitioner should not be released

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from her probation "because you lied to us." (T Vol 11, pp 2477-2478, 2518; R Ex 4, 35; P Ex 35)

221. Petitioner alleges that John Lavender told her on December 17, 2007 that she and him would be working together in January 2008, and that his understanding was that they wanted to hire her and one technical writer. The preponderance of the evidence establishes that no such conversation took place. The undersigned finds that Mr. Lavender would not likely be in a position to know one way or the other what management's staffing plans were. (T Vol 3, pp 547, Vol 11, 2556, 2568; R Ex 4, P Ex 35)

222. Contrary to Petitioner's allegation, Petitioner was never told by management that one of the two policy writer positions was going to become permanent or that there would be only one policy writer to remain after a period of time and that person would be made permanent. The undersigned finds that any competition between Samantha Seawright and the Petitioner for a permanent position was not arranged by the management of DIRM. Petitioner was told that they were time limited positions and, when the project was completed, the positions would dissolve. (T Vol 7, pp 1443, Vol 9, 1945-1946, 1972)

223. Petitioner's false allegations to Dale Suggs that someone compromised her documents occurred shortly before her probationary period was to expire on February 7, 2008. (T Vol 9, p 1964)

224. After Jared Murphy realized that Petitioner had not been truthful and wasted the PSO's valuable time, he told Petitioner that it was likely her probationary status would not be lifted. Mr. Murphy felt Petitioner was creating an environment where it was going to be more valuable to the office for her not to stay on. During the Friday, January 25, 2008 meeting, Mr. Murphy told Petitioner that she was in jeopardy of not being taken off of probation based upon everything that happened and the fact that she was the person that had issues with everybody. Mr. Murphy wanted to give Petitioner as much lead time as possible to find another job. That is why he tried to let her know before he actually got everything signed. He wanted to let her know "this is going to happen. Go ahead and start looking for a job. I understand you have bills to pay." (T Vol 9, pp 1964-1968, 1851-1852, 1857; R Ex 35)

225. Mr. Murphy changed his mind about making Petitioner a permanent employee because she caused Dale Suggs, Scott Gardner, and Joe Mancuso to waste valuable time in which they were supposed to be accomplishing Privacy and Security Office business. Mr. Murphy was extremely disappointed that Petitioner lied and knowingly allowed Mr. Suggs, Mr. Gardner, and Mr. Mancuso to waste their time on a mission that she knew was false. Mr. Murphy felt that in concert with all the other things that seemed to surround Petitioner, the job wasn't the right fit for her. Mr. Murphy was frustrated with Petitioner's repeated claims that somebody was messing with her files, and the PSO system administrators having to spend multiple man-hours investigating her claims when each time it showed that nothing happened to Petitioner's files. At that point, Mr. Murphy felt that it was going to be more taxing on the office to keep her on the project. He deemed it that Petitioner was less valuable than the time and man-hours that she was

expending. He was tired of the hassle of dealing with Petitioner and felt she was more of a detriment than an asset in regards to this team and PSO as a whole. She was more trouble than what she was worth. (T Vol 9, pp 1964-1965, 1974; R Ex 35)

226. After the Friday, January 25, 2008 meeting with Petitioner and Dale Suggs, Mr. Murphy authored a memo to document Petitioner's misrepresentation to him. In addition to Petitioner's "flat out lying," Mr. Murphy noted that a tremendous amount of manpower was expended and Petitioner's allegations turned out to be completely uncorroborated. (T Vol 9, pp 1962-1964; R Ex 6)

227. Petitioner alleges that she was subjected to retaliation. She alleges that Dale Suggs wanting her fired was "retaliation for the files" and "retaliation for going to Pyreddy." She alleges that Dale Suggs retaliated against her for not telling him where her files were backed up and that Mr. Suggs thought that Petitioner and Jared Murphy were covering for each other. The undersigned finds this allegation to be without merit. First, when Petitioner backed out of Mr. Suggs' office, he did not know where she went; and if she did go to Mr. Reddy's office, Mr. Suggs did not know what Petitioner discussed with him. Second, Sherri Brooks told Petitioner that neither Dale Suggs, nor Jared Murphy could fire her. Mr. Murphy could make the recommendation to Mr. Reddy, but he did not have the authority to fire Petitioner. Third, Petitioner never told Mr. Reddy about her files allegedly being sabotaged. Nor, did she tell him about the meeting that she had with Mr. Suggs just a few minutes prior wherein she was allegedly scared of Mr. Suggs. (T Vol 4, pp 920- 925, Vol 5, 978, Vol 11, 2417, 2469, 2510-2511; R Ex 15)

228. The undersigned finds as a fact that the reason why Dale Suggs and Jared Murphy wanted Petitioner fired is because Petitioner lied about not having another copy of her work and she caused Dale Suggs and other employees to spend almost two days extra to find her work.

229. The undersigned finds as a fact that the reason why Dale Suggs and Jared Murphy wanted Petitioner to be fired had nothing to do with her going to talk with Pyreddy Reddy.

230. Petitioner alleges that an incident that occurred on January 28, 2008 and an e-mail on that date was the straw that broke the camel's back resulting in her going to HR with her allegations. (T Vol 4, pp 908-909)

231. Brenda Richardson is DIRM's receptionist. She does not have an office. Ms. Richardson is located in the front lobby area as soon as you walk in the building. Ms. Richardson issues visitors' passes. DIRM gets a lot of visitors in the building. Sometimes 40 to 50 people a day stop at her receptionist's desk. Ms. Richardson's duties also include answering the telephone. She gets a voluminous amount of telephone calls a day. There are times when people speak with her at her front desk when she is on the telephone. (T Vol 7, pp 1345, 1352-1353)

232. Petitioner informed Ms. Richardson about something in reference to Petitioner's computer being sabotaged. Petitioner brought up Jared Murphy's name. Ms. Richardson told Petitioner to go to Pyreddy Reddy. (T Vol 7, pp 1348, 1371-1372)

233. In her calendar under Monday, January 28, 2008, 2:25 pm, Petitioner writes "Official Complaint: I was talking to the front secretary (Ms. Brenda R.) and John L. walked up and heard us talking about her grandson (Timmy). Somehow Sam/John thought we were talking about her and we weren't. Sam sent Mrs. Brenda a (sic) e-mail after the staff meeting. Mrs. Brenda showed it to me that afternoon. I said: that's it. I want HR (sic) phone number." (T Vol 3, pp 505- 507; R Ex 4, P Ex 35, emphasis supplied)

The e-mails in question are:

1. "From: Samantha Seawright
To: Brenda Richardson
Sent: Monday, January 28, 2008 12:12PM
Subject: ?? Sign in

Do you know why Gwen was saying something about me needing to sign in this morning ??? I'm confused!
I think I told you this, but I've got surgery scheduled on my foot on the 15th. How long did it take you before you were up and back to normal again?

2. From: Brenda Richardson
To: Samantha Seawright
Sent: Monday, January 28, 2008 1:56 PM
Subject: ?? Sign in

Samantha,
I don't have any idea of what you are talking about? Who should sign in? If you're a State Employee in the Anderson Building you don't have to sign in.
I came in about 8:05 AM; Kimberley Miller was sitting here at the Receptionist desk. When I arrived to work this morning, the only time that I saw Gwen was this morning going into 139 for a meeting. You may want to get with her reference to this.
Thanks
Brenda" (P Ex 96, 100)

234. Ms. Richardson testified that she did not recall receiving a January 28th, 2008 e-mail from Samantha Seawright because it didn't mean anything to her. Ms. Richardson gets tons of e-mails. This occurred two years ago and it was such a small thing to Ms. Richardson that she did not remember it. (T Vol 7, pp 1341 -1349, 1352, 1358; P Ex 96, 100)

235. The undersigned does not find Brenda Richardson testified directly and forthrightly and the undersigned does find that she was less than a credible witness with respect to the email in question. Her hostility toward Petitioner was evident to the Court and causes the undersigned to view her testimony with scrutiny and suspicion. However, the undersigned also finds that there is no legal significance of this testimony in evaluating Ms. White's claim of unlawful workplace harassment based upon race or gender. The undersigned finds that assuming arguendo that the

entirety of Ms. Richardson's testimony was completely false, which the undersigned does not find, the subject matter of her testimony relating to the email in question does not affect the outcome of Ms. White's complaint whatsoever. (T Vol 3, pp 505- 507, Vol 4, 848-851, 907-909, Vol 5, 960-961, Vol 7, 1341 -1349, 1352, 1358, 1401-1405; R Ex 4, P Ex 35, 96, 100). The undersigned also finds that whether or not this incident was indeed the "straw that broke the camel's back thus prompting Ms. White to file her complaint," it is insignificant as compared to the voluminous more relevant evidence in the record which bears on the merits of Ms. White's claim of unlawful workplace harassment.

236. Ms. Seawright also did not remember anything about the e-mail. She and Brenda Richardson went to the same podiatrist. Ms. Seawright was following up with Ms. Richardson, telling her that she had surgery scheduled with the same podiatrist. Ms. Seawright thought she heard Petitioner say her name. Ms Seawright overheard something and asked a question. It was an innocent question. It wasn't meant to antagonize Petitioner or anything. It was out of curiosity. (T Vol 7, pp 1401-1405)

237. Petitioner started writing a complaint on the evening of Friday, January 25, 2008, the day she learned that Dale Suggs and Jared Murphy wanted her to be fired. (T Vol 4, pp 907, 921-922, Vol 5, 961)

238. Petitioner alleges that Scott Gardner removed Brenda Richardson's desktop from her office to search for and erase the January 28, 2008 e-mail from Samantha Seawright to Brenda Richardson. The undersigned finds by a preponderance of the evidence that Mr. Gardner did not remove Ms. Richardson's computer, nor was he ever asked to. Mr. Gardner did not erase the e-mail in question as he doesn't have rights to do that. ITS, the State's Information Technology Service, an agency that is completely separate from DHHS, is the only agency that has rights to e-mails. They store it the way they want to so that can manipulate it as necessary. All the e-mails reside on its servers. Even if an e-mail is erased locally, it still resides on the server unless ITS deletes it. No one within DHHS has the rights to erase an e-mail. (T Vol 10, pp 2294, Vol 11, 2320-2321, 2327, 2357-2358)

239. Christine Midgette is the Human Resources Director for DHHS's Office of the Secretary. DIRM is included under the umbrella in the Office of the Secretary. Ms. Midgette supervises a staff of six. Her team provides comprehensive human resource support for all employees and managers, including recruitment, salary administration, compensation, employee relations, safety and benefits. In addition to supervising her staff, Ms. Midgette spends most of her time in consultation

240. Pearla Alston is the Assistant Human Resources Director/ Employee Relations Manager with DHHS. She oversees the employee relations program in the department. She is responsible for ensuring that the department's disciplinary action and the grievance procedure policies are administered appropriately. She has Bachelor's degree in general studies from Valdosta State College; a Masters degree in Public Administration from N.C. State University, and a Juris Doctorate from North Carolina Central University. Ms. Alston is a licensed North Carolina

Attorney. She has worked in State government for about 15 years. (T Vol 10, pp 2171, 2190, 2222-2223)

241. On Monday, January 28, 2008, Petitioner called HR on the phone. Christine Midgette, who would usually take such a call, was not in the office. Pearla Alston spoke with Petitioner who said she wanted to meet in person. Ms. Alston met with Petitioner. Petitioner said that Jared Murphy and Dale Suggs told her that she was not going to be recommended for permanent employment and that she was going to be dismissed. Ms. Alston spoke with Petitioner about her probationary status and told her she could be released without warning. Petitioner told Ms. Alston that her files were being sabotaged, altered or deleted and spoke about her interactions with Samantha Seawright. Petitioner said that she had been keeping a calendar since the first day of work. Christine Midgette returned to the office and Ms. Alston asked Ms. Midgette to join them. Petitioner gave Ms. Alston and Ms. Midgette an "informal request." (T Vol 2, pp 349, Vol 3, 506-508, Vol 10, 2172-2176, 2186-2187)

242. Ms. Alston and Ms. Midgette spoke with Petitioner about her complaint and made sure that she was okay and that she felt safe that she could go back to work. Petitioner said she was doing okay and would be OK to go back to work. Ms. Midgette had the impression that Petitioner was a person who would stand up for herself. Petitioner communicated that she was fine, that she had been documenting incidents, and she was all right at DIRM. (T Vol 2, pp 309-310, 332, 354-355)

243. At no time during this meeting did Petitioner indicate that she was fearful for her safety or that she was in a situation that she could not tolerate. She indicated she was able to work and that she had not missed any work as a result of her complaints. (T Vol 2, pp 309-310, 332, 350-351)

244. Petitioner taped recorded her conversation with Ms. Alston and Ms. Midgette. (T Vol 6, p 1211)

245. Petitioner impressed Ms. Alston and Ms. Midgette as being extremely intelligent, and very communicative. Ms. Midgette was struck by the whole meeting and took it very seriously. She was very concerned about Petitioner's allegations and wanted to make sure that they acted promptly and appropriately for both Petitioner's and the department's sakes. (T Vol 2, pp 354-355)

246. There is a process that HR goes by in terms of reading a complaint and then immediately following up, acknowledging it, making sure that it's filed on the proper documents. Ms. Alston and Ms. Midgette told Petitioner that if she wished to file a complaint of unlawful workplace harassment, she needed to change her informal request to an official unlawful workplace harassment complaint. Ms. Alston and Ms. Midgette asked Petitioner to put her complaint on the proper form. The next day, January 29, 2008, Petitioner went back to Ms. Alston's office and brought in a CD with her complaint on it. Ms. Alston and Ms. Midgette immediately notified

management at DIRM, Karen Tomczak and Pyreddy Reddy of Petitioner's complaint. (T Vol 2, pp 354-355, 372-373, Vol 3, 544, Vol 10, 2186-2187; R Ex 7, P Ex 108)

247. Ms. Alston and Ms. Midgette told Petitioner that she should inform Pyreddy Reddy of her complaints and they also informed him. (T Vol 2, pp 371-372, Vol 3, 540) T pp 505- 507, Vol 4, 848-851, 907-909, Vol 5, 960-961, Vol 7 1341 -1349, 1352, 1358, 1401-1405; R Ex 4, P Ex 35, 96, 100)

248. Ms Alston testified directly and forthrightly. The undersigned finds Pearla Alston to be a credible witness.

249. Ms. Midgette testified directly and forthrightly. The undersigned finds Christine Midgette to be a credible witness.

250. The undersigned finds as a fact that after learning on Friday, January 25, 2008 that Jared Murphy and Dale Suggs wanted Petitioner to be fired for "lying," Petitioner filed an unlawful workplace harassment complaint with HR on Monday, January 28, 20008.

251. Petitioner's probation was lifted on February 7, 2008 because she filed an unlawful workplace harassment complaint at the recommendation of HR. (T Vol 1, pp 181, Vol 9, 1967-1969, Vol 10, 2231-2232, Vol 11, 2405) .

252. Petitioner made numerous other allegations against her co-workers in her unlawful workplace harassment claim which she contends were based upon race, gender and/or religion. Petitioner finds all of the occurrences of which she complains equally offensive. (T. p. 670). Apparently she claims that the doctrine of "separation of church and state" was violated by the State by virtue of her coworkers discussing the Bible and one coworker passing out Bibles to a few co-workers and inviting co-workers to a men's group worship service after work hours and off work premises.

253. On May 8, 2007, Samantha Seawright obtained Petitioner's salary from the Security Project server and told Petitioner what Petitioner's salary was. (T Vol 2, pp 454, Vol 7, 1383; R Ex 4; P Ex 35)

254. Petitioner alleges that on January 18, 2007 (sic)(date should be 2008) Dale Suggs yelled out her name and annual salary to other PSO members. (R Ex 4; P Ex 4 (page 2), 35)

255. Petitioner mentioned to Michael Webb that somebody had yelled out her salary in the hallway. Mr. Webb didn't think was a problem because State employees' salaries are public information. He found a web site showing Petitioner her that it was public information. Mr. Webb told Petitioner that he didn't think it would be a problem if they all yelled out each other's salaries because State employees' salaries are public information. (T Vol 8, p 1630)

256. State employees' salaries are public records pursuant to N.C.G.S. 126-23. While Petitioner may have found the disclosure of her salary subjectively offensive, it would not be objectively offensive to a reasonable person.

257. The undersigned finds that one isolated incident of communicating Petitioner's salary to others in the workplace, even if true, did not constitute unlawful workplace harassment as defined in the applicable statute, rules and policies.

258. Petitioner alleges that Bob Moran, a white male, (T Vol 7, p 1535), "repeatedly referred to [her] as a 'black cat' and that he called [her] a 'pussy.'" (T Vol 3, pp 510- 511; P Ex 77, 6th and 7th page)

259. In her daily calendar under the date of December 13, 2007, Petitioner alleges that "per Horace, Bob Moran called me a 'Black cat' and 'pussy' and Sam a 'White cat.'" (R Ex 4; P Ex 35)

260. Petitioner did not hear Bob Moran Make this statement. She does not know for a fact that he made it. (T Vol 4, pp 808-811)

261. Bob Moran thought Petitioner was hard to work with. He considered her an omen and referred to her as a black cat. She was someone that he did not want to work with. When Petitioner came into the room where Mr. Moran was working, Petitioner always seemed to make his work miserable and very difficult. So, he saw her as an omen and a black cat, like a black cat crossing his path. (T Vol 7, pp 1530, 1544-1545)

262. Mr. Moran referred to Petitioner as black cat in front of Horace Palmer and Elijah Chapman, both black males. Mr. Moran is friends with both Mr. Palmer and Mr. Chapman. They did things together after work and are still are in contact with each other even though they no longer work together. Mr. Palmer and Mr. Moran recently went to a hockey game together. Mr. Moran sees Mr. Chapman here and there. (T Vol 7, pp 1536)

263. Mr. Moran never referred to Petitioner as a black cat in front of her. He did, however, make that comment to Horace Palmer and Elijah Chapman. Mr. Palmer did not tell Mr. Moran that he told Petitioner that Mr. Moran referred to her as a black cat. Mr. Moran considered it to be an inside joke between Horace Palmer, Elijah Chapman, and himself. They talked about it in their office, but Mr. Moran did not think it went farther than that. Mr. Moran had no idea that Petitioner knew about it. (T Vol 7, pp 1535-1536, 1542)

264. Mr. Moran referred to Samantha Seawright as a "cat woman." This is because Ms. Seawright put up a Meow Mix clock in the middle of the office area and a large amount of the time, she talked about her cats and rescuing them. (T Vol 7, pp 1536-1537)

265. Mr. Moran testified directly and forthrightly. The undersigned finds Bob Moran to be a credible witness.

266. 275. Prior to the hearing, Ms. Seawright was not aware that Bob Moran referred to her as a "white cat" or "cat woman." Ms. Seawright thought it was funny and ironic because most of the people at the PSO knew that she was involved in animal rescue regarding cats. Ms. Seawright surmised that is probably where the implication came from. Ms. Seawright did not find it offensive, but rather ironic because she was involved in animal rescue and primarily in cats. She also found it silly and childish. (T Vol 7, pp 1390-1392)

267. Being called a black cat would not offend Sherri Brooks, a black female and that it would have to be more, and it depends on the facts. (T Vol 11, p 2377)

268. Petitioner complained to Jared Murphy that Horace Palmer told her that Bob Moran said that "the black cat and the white cat were fighting again" and that their relationship was kind of "catty." Petitioner did not hear Bob Moran make the actual statement and did not tell Mr. Murphy that she was offended by it. Mr. Murphy spoke with Petitioner about the context of the comments; Petitioner and Ms. Seawright not getting along; the nature of their relationship; and the fact that Samantha Seawright is a huge cat lover. Mr. Murphy told Bob Moran to "tone it down." Mr. Murphy did not issue any reprimands because he did not view this as a matter of significance. (T Vol 9, pp 1929-1930)

269. When Petitioner told Mr. Murphy that Mr. Moran referred to her a "black cat," she did not use the term "pussy." (T Vol 9, p 1940)

270. While Petitioner may have found being referred to as a 'black cat' subjectively offensive, after learning the reason for Mr. Moran's statement and the surrounding circumstances, it would not be objectively offensive to a reasonable person.

271. A preponderance of the evidence reveals that Bob Moran did not refer to Petitioner as a pussy. Nor did he refer to Petitioner and Samantha Seawright collectively as pussies. (T Vol 7, pp 1530- 1531)

272. At one of the staff meetings, a going away party or luncheon for Bob Moran was discussed. Mr. Moran mentioned possibly going to Hooters for his luncheon. Some people chuckled and joked and said "we are not going there." Other than suggesting going to Hooters restaurant, there was no other conversation regarding Hooters. There were no comments about a woman's anatomy. The luncheon ended up being rescheduled to Sammy's, a sports bar which is down the street from the office. No one, including Petitioner, complained about this comment. Petitioner never told Mr. Moran that she was offended by his suggestion of Hooters. (T Vol 1, pp 180, Vol 3, 535-536, Vol 9, 1919, Vol 7, 1539-1540)

273. Pyreddy Reddy informed his staff that if they go to Hooters or anywhere else and consume any type of alcohol, they cannot come back on the State's premises. (T Vol 1, pp 64, Vol 3, 535)

274. The undersigned takes official notice and finds as a fact that Hooters is a legitimate franchise restaurant which is open to the public. There was no evidence that Mr. Moran's suggestion to go to Hooters was anything other than a restaurant suggestion. While Petitioner may have found a suggestion of going to Hooters subjectively offensive, it would not be objectively offensive to a reasonable person.

275. Petitioner alleges that Karen Tomczak fired Bob Moran for calling Petitioner a black cat and a pussy. The preponderance of the evidence reveals that this allegation is false, as Ms. Tomczak was unaware of any situation involving Bob Moran and, Mr. Moran left DIRM voluntarily to obtain another job. (T Vol 1, pp 206-207)

276. When Mr. Moran was hired at DIRM, he was told it was a time limited position. Mr. Moran voluntarily left DIRM in February of 2008 to take a job with NetApp, a computer storage company in the Research Triangle Park ("RTP"). Net App offered him an increase in pay. Because the DIRM position was time limited, when another opportunity came about, Mr. Moran took advantage of it. (T Vol 7, p 1537)

277. The undersigned finds Mr. Moran's testified forthrightly. He even testified in Court that because of Ms. White's personality, he would refer to her as a black cat again. The undersigned finds that Mr. Moran's referring to Petitioner as a "black cat" was inappropriate for the workplace, it does not rise to the level of unlawful workplace harassment within the meaning of the applicable Statutes, rules, polices or case law precedents. In spite of his unabashed candor on the witness stand, the undersigned finds Mr. Moran to be a credible witness.

278. Michael Webb was a Network specialist at DIRM as part of the security project team. He reported to Jared Murphy. He started in September or October 2007. The project ended eleven months later. (T Vol 8, pp 1628, 1631)

279. Petitioner told Michael Webb that she was called a black cat and a pussy. (T Vol 8, p 1639)

280. Petitioner also complained to Michael Webb about her salary being talked about. He looked it up on the web site and told her he thought it was a public record. (T Vol 8, p 1630)

281. Upon being asked by Petitioner, whether he remembered telling her that someone told him that the State's stance was it never happened, they're denying everything, Mr. Webb recalls that the general feel among co-workers was that they (State) were "denying the validity of some of the things that you were saying." (T Vol 8, p 1635)

282. Hooters would not be a place that Mr. Webb would frequent, but he would not be offended by the suggestion made by Mr. Moran that they go to Hooters for lunch. He would not be offended because he would not expect everyone to share his opinions. (T Vol 8, p 1638)

283. Mr. Webb recalls only second hand conversation about her being Petitioner a "black cat and a pussy." The second hand source was Petitioner as she was the only person that talked to him about that. (T Vol 8, p 1639)

284. Mr. Webb never heard anyone say the term 'N-i-g-g-e-r" first hand or second hand or the word "KKK", "cracker" or "redneck." He does not recall hearing anyone using the term "white cat." (T Vol 8, p 1640)

285. Mr. Webb never received a bible from Dale Suggs and he doesn't know who else may have received one. He does not recall Mr. Suggs discussing biblical scriptures but does recall Mr. Suggs going to bible school because he went to Idaho and the fact that he (Webb) is from Washington. Mr. Webb thinks he remembered that Jared and Dale were going to something on a regular basis and that no one talked to him about it. Mr. Webb does not recall receiving an invitation to attend church from Mr. Suggs. Mr. Webb did sense that his department was a Christian oriented department just by visiting Jared's and Dale's offices in particular. No one ever informed him that it was a Christian oriented department (T Vol 8, p 1641-1643)

286. Mr. Webb was not present in the room when the phrases, "you are a black woman; no black woman should ever be seen," You hare a black woman; no black woman should ever tell a white man he can't write," was said or when Proverb 31 may have been mentioned. Neither did Mr. Webb witness anyone saying "the pussies are at it again." He did not recall whether he ever heard Horace Palmer calling her "baby." (T Vol 8, p. 1641-1642)

287. Mr. Webb only heard Ms. White complain about having problems with her files being tampered with, altered, changed, deleted. He didn't hear it from anyone else and did not hear her complain to Jared. (T Vol 8, p 1647)

288. Mr. Webb did observe Jared commenting on Ms. White's attire by telling her she was dressed nice and that she continued to talk business without acknowledging any of his comments. (T Vol 8 p. 1648). When the comments were made by Jared Murphy, Mr. Webb would think nothing of it. (T Vol 8 p 1651)

289. Mr. Webb testified directly and forthrightly. The undersigned finds Michael Webb to be a credible witness.

290. Horace Palmer began working at PSO on May 7, 2008, the same day as Petitioner. He is an African-American male. Petitioner labels Mr. Palmer as "black male (he looks Indonesian or native Mexican (Army))." (T Vol 2, p 454, Vol 4, p 812, Vol. 10, pp 2112, 2132-2133; P Ex 33)

291. Mr. Palmer believed that he had a pretty good and close relationship with Petitioner. (T pp 523, 2124)

292. Mr. Palmer felt like he was in the middle between Petitioner and Samantha Seawright. He was being torn between them as they both confided in him about issues with each other. (T pp 2112-2113)

293. Petitioner alleges that on November 8, 2007, Horace Palmer referred to her as "chocolate" and "thick thighs." (T p 522; R Ex 4; P Ex 35, 77, 6th page)

294. Petitioner invited the sharing of information about her personal life. (T Vol 10, p 2122)

295. Horace Palmer and Petitioner talked about Petitioner's personal relationships. Petitioner would bring up conversations about her relationships with her son and her boyfriend. During these conversations, Petitioner indicated that she was available. Mr. Palmer told Petitioner that he knew a single, black, professional man that he thought would be a good match for her. Mr. Palmer asked Petitioner if she would like to meet his friend. Petitioner said that she would consider meeting Mr. Palmer's friend. Mr. Palmer described his friend to her. She asked more questions about Mr. Palmer's friend. Petitioner asked Mr. Palmer how he would describe her to his friend. Mr. Palmer said he would describe Petitioner as a "very strong and an independent woman, with a brown or dark complexion." (T Vol 10, pp 2117-2118, 2150; R Ex 36)

296. Petitioner told Jared Murphy that Horace Palmer referred to her as "chocolate" and "thick thighs." Petitioner just waved it off and said "Just talk to him." Petitioner did not indicate to Mr. Murphy that she felt that Horace Palmer was trying to be malicious. Mr. Murphy asked Petitioner if she wanted to file a report, and she said no, just talk with him. (T Vol 9, pp 1926, 1975)

297. 306. Jared Murphy, as the project manager and Mr. Palmers' direct supervisor, spoke to Mr. Palmer about Petitioner's allegation that the referred to her as "chocolate" and "thick thighs." Mr. Palmer explained to Mr. Murphy that he was describing Petitioner to a friend. Petitioner and Horace Palmer were talking about hooking Petitioner up with Mr. Palmer's friend to go out on a date. Petitioner asked Mr. Palmer, "What would you say about me?" While Mr. Palmer did not use the exact words that Petitioner alleges to describe her, he nevertheless immediately went and apologized to Petitioner. Because Mr. Palmer apologized to Petitioner and to Mr. Murphy, Mr. Murphy considered the matter resolved and not something of significance for him to bring up his chain of command. Petitioner said thank you to Mr. Murphy. (T Vol 9, pp 1861-1862, 1921, 1926-1927)

298. Petitioner has not met her burden by a preponderance of the evidence that Mr. Palmer referred to her as "chocolate and thick thighs. Even assuming that Mr. Palmer made these comments, and that Petitioner found the references subjectively offensive, their use in the circumstances and context the words were used. does not prove Petitioner was subjected to unlawful workplace harassment. The circumstances include the facts that Petitioner voluntarily agreed to allow Mr. Palmer to speak with his friend about her; Petitioner, herself, asked Mr. Palmer how he would describe her to his friend; and Petitioner never directly verbalized to Mr.

Palmer that she was offended by any of the conversation. (T Vol 10, pp 2118- 2121). The use of the words, "chocolate and thick thighed" if in fact made in response to Petitioner's question to Mr. Palmer, and in this specific context, does not amount to unlawful workplace harassment within the meaning of the applicable Statute, rules or policies.

299. Petitioner alleges that in November 2007 Horace Palmer told her that if he were not married he would "hit that" which Petitioner believes refers to Mr. Palmer wanting to have intercourse with her. Mr. Palmer denies he made this statement. The undersigned finds that Petitioner has not met her burden of proof by a preponderance of the evidence that this occurred. (T Vol 10, pp 2056, 2122; P Ex 77, 7th and 8th pages)

300. Petitioner alleges that Horace Palmer referred to her as 'baby" in a mocking manner in front of management. (T Vol 3, pp 512, Vol 4, 859; P Ex 77, 8th page)

301. The preponderance of the evidence reveals that Mr. Palmer greeted Petitioner with the term "hey baby" or "good night baby" three times in the span of fifteen months:

1. The first time was on 8/13/07. Mr. Palmer greeted Petitioner with the term "hey baby" after a staff meeting. Petitioner and Jared Murphy were walking down the hallway when Horace Palmer said to Petitioner, "Hey Baby, can I talk to you for a minute?" Mr. Palmer said this in front of Jared Murphy, his supervisor. Petitioner did not tell Mr. Murphy that she was offended by the comment. She just said she didn't like it. She did not act like she was grossly offended or it was horrible. Jared Murphy, as the project manager, and Mr. Palmers' direct supervisor, spoke to Mr. Palmer about the "baby" comment. Mr. Palmer assured Mr. Murphy he meant no malice by it. Mr. Murphy told Mr. Palmer that he knew that he didn't mean anything by it, but to watch what he says. Mr. Palmer said he was sorry and that he understood. (T Vol 3, pp 512, Vol 4, 742, 745, 857, 859, 1 Vol 9, 921-1922; R Ex 4; P Ex 33 (12th page), P Ex 35)

2. The second time was on ¼/08. Petitioner was standing at the elevator on the first floor. Mr. Palmer and Joe Mancuso were walking down the hallway. Petitioner said, "Good night, H.P. (Horace Palmer), Good night, Joe." Horace Palmer said, "Good night, Baby " Mr. Palmer remembers this because as soon as he said it, he realized what he had just said and apologized to Petitioner on the spot. Horace Palmer was very emotional when he apologized to Petitioner when he realized that he inadvertently said "baby" again. He was actually crying when he apologized to her. Petitioner said "Don't worry, I know you don't mean it." Petitioner knew that Mr. Palmer did not mean it as a sexual thing. That's the reason why she accepted the apology right there. Mr. Palmer thought it was over with at that time. (T Vol 3, pp 512-513, Vol 4, 875, Vol 9, 1816; Vol 10, 2051-2054, 2146; R Ex 4, R Ex 36, ¶ 16; P Ex 33 (12th page), P Ex 35)

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3. The third time was on 5/12/08. Jared Murphy and Horace Palmer were in Jared Murphy's office with the door open. Mr. Palmer was sitting at Mr. Murphy's desk typing with his back to the door. Petitioner walked by Mr. Murphy's office and said "Hi, H.P.," "Hi, Jared." Mr. Palmer turned over his shoulder and said "Hey, Baby." Mr. Palmer said this mistakenly. He wasn't paying attention to what he was doing. He was in the middle of typing and it was just like "Hey." Petitioner joked "Maybe my voice sounds like your wife." After Mr. Murphy heard Horace Palmer say "hey baby," he told him it was totally unacceptable and he cannot continue to say that. Mr. Murphy gave Mr. Palmer a reprimand, a written documented counseling. Later that day, Mr. Palmer told Petitioner "I apologize. I know I'm wrong. Jared has to write me up and can you please accept my apology?" (T Vol 3, pp 514, 558-559, 18 Vol 9, 15, 1921- 1924, Vol 10, 2049-2051, 2081-2082; R Ex 4; P Ex 33 (12th page), P Ex 35, 77)

302. Mr. Palmer uses the term "baby" in an endearing way, not in a sexual way. (T Vol 10, pp 2146-2147)

303. Mr. Palmer has greeted other woman with the term baby and no one has complained that they were offended by it. Mr. Palmer has worked in many environments for thirty years and has used the term baby to greet others and it has never been an issue. Mr. Palmer respects people for what they feel. It took some time for him to realize that this was not acceptable to Petitioner and he tried to respect her for that. (T Vol 10, pp 2116, 2125-2126)

304. After the third time Mr. Palmer greeted Petitioner with the term "baby," Mr. Murphy issued a documented counseling to Mr. Palmer for referring to Petitioner as baby. Mr. Palmer understood why it had to be given. He was remorseful about it and stated that he wasn't trying to offend anybody. It is a habit. He was not even paying attention to the comment because he was focused on typing on the computer. Mr. Murphy considered the matter resolved. (T Vol 3, pp 514, Vol 9, 1815, 1924-1925, Vol 10, 2053)

305. 314. There were approximately five or six months in between the three times in which Mr. Palmer greeted Petitioner with the salutation "Hi baby" or "hey baby." Each time Mr. Palmer said "hi baby" or "hey baby" to Petitioner, he apologized to her. (T Vol 9, pp 1924, Vol 10, 2117, 2116-2117)

306. Petitioner may have found being said hello to with the phrase "hey baby" subjectively offensive. However, based on the circumstances surrounding these salutations, the undersigned finds as a fact that it would not be objectively offensive to a reasonable person. The circumstances include infrequency in which it occurred (three times in fifteen months); each time it was said in the presence of other people including Mr. Palmer's supervisor Jared Murphy; Mr. Palmer sincerely apologized each time; and it was said as a greeting, not with a sexual intent.

307. The undersigned finds that Mr. Johnson did use the word "hi baby" or "hey baby" on three different occasions when greeting Petitioner. The undersigned finds that under the specific

facts of this case, the words while offensive to Petitioner, were not be reasonably and objectively offensive to others so as to amount to unlawful workplace harassment within the meaning of the applicable statutes, rules or policies.

308. Petitioner alleges that on December 13, 2007 Horace Palmer told her that Bob Moran told him "the black cat and white cat are fighting ... the pussies are at it again" (T Vol 9, pp 1781; R Ex 4; P Ex 35, 77, 6th and 7th pages)

309. Petitioner went to lunch with Horace Palmer at K&S cafeteria to discuss what he had just told her. Petitioner's calendar reflects that this occurred on December 13, 2007. She did not report this to Jared Murphy or Pyreddy Reddy, but rather repeated it again to co-workers including Michael Webb, Janice Warren and Joann Robertson. Petitioner discussed these comments that she found to be so offensive with Horace Palmer three times. (T Vol 3, pp 510, Vol 4, 809-812, 829-830, 832-833; R Ex 4; P Ex 35)

310. The undersigned finds as a fact that it does not make rational sense that Petitioner went to lunch with Horace Palmer to discuss her being called a "pussy." This is in light of the fact that Horace Palmer is a man that Petitioner has accused of making racist and sexist comments to her. Petitioner has put many labels on Mr. Palmer including "Mexican," and "Indonesian," when in reality he is the same race as Petitioner. Yet, Petitioner invites Mr. Palmer to lunch to discuss another sexist comment. By December 13, 2007, when Petitioner invited Mr. Palmer to lunch to discuss her being called a pussy:

1. Mr. Palmer had already referred to Petitioner as "baby" once on 8/13/07;
2. Mr. Palmer was allegedly with Elijah Chapman on 8/17/07 when Mr. Chapman allegedly referred to Petitioner with the "N" word;
3. Mr. Palmer was allegedly with Elijah Chapman on 8/17/07 when Mr. Chapman allegedly said Petitioner should "be hog tied to a tree and a real man needs to handle [her]." Petitioner alleges that this was said by Elijah Chapman and "agreed to" by Horace Palmer;
4. Mr. Palmer was allegedly with Elijah Chapman on8/17/07 when Mr. Chapman allegedly said that "women should be seen not heard;"
5. Mr. Palmer had allegedly said to Petitioner on 11/8/07 that if he was not married, he would "hit that," which Petitioner testified that she believes refers to sexual intercourse.
6. Mr. Palmer allegedly called Petitioner "chocolate" and "thick thighs." In Petitioner's 11/8/07 calendar, she indicates that this occurred "last year."

311. Petitioner found all of the above to be offensive. Petitioner testified that Mr. Palmer and she talked about her being called a pussy on the way to K&S in the car and then they talked about it again while they were sitting down eating. The undersigned finds as a fact that it does not make rational sense that Petitioner would go to lunch with Mr. Palmer, whom she alleges is a sexual harasser, to discuss being her called a "pussy." (T Vol 4, pp 858-860, Vol 6, 1291-1292; P Ex 4-page 3, 33-pages3-5, 35; R Ex 4)

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312. Assuming arguendo that Mr. Palmer used the word "pussy" or "pussies" to Petitioner and that it was offensive to Petitioner, the undersigned finds as a fact that Petitioner discussing this with co-workers over and over again and not reporting it to management is not what a reasonable person would do. If it was so offensive to her, it is not reasonable for her to repeat it to co-workers, rather than to report it up her chain of command.

313. The preponderance of the evidence is and the undersigned finds as a fact that Mr. Palmer did not say "pussy" or "pussies" to Petitioner. His credible testimony is that he would not use that term in front of Petitioner or anyone else. It is not in his vocabulary. (T Vol 10, pp 2125, 2069)

314. Mr. Palmer felt that Petitioner was too aggressive in a group of people. He felt that Petitioner should have addressed her issues with management and not amongst coworkers, especially when it came to an issue that she disagreed with management on how things are done. He told the Petitioner that she could not change the environment herself and that she should let management do their thing. Mr. Palmer and Petitioner had a conversation about how Petitioner needed to relax and not be so confrontational. Mr. Palmer was offering advice to Petitioner as friend that she should not be so confrontational in their work environment. (T Vol 10, pp 2085-2087, 2097, 2128-2129)

315. Horace Palmer was very surprised, hurt, and disappointed when he learned Petitioner filed a harassment complaint alleging that she was harassed based upon her race and sex. He was hurt and disappointed that Petitioner made allegations against him personally and did not come to him directly, when she pretended to be his friend. Mr. Palmer was totally blind sided by Petitioner's complaint. He was open with Petitioner, tried to get along with her and be her friend. All of a sudden, he was blown away when Petitioner filed a complaint against him. (T Vol 10, pp 2137- 2138; R Ex 36, ¶ 5)

316. After she filed her complaint, Petitioner went into Horace Palmer's office and closed the door. It was just the two of them in the room by themselves laughing and kidding around about a task they worked on together. At first, Mr. Palmer had a problem with Petitioner going in his office and closing the door. After he thought about it and looked at the situation, he started putting it together. Petitioner had just filed a complaint against him. Logically, it didn't make sense for her to come into his office and close the door if she felt sexually harassed by him. It wasn't logical for her to do that. (T Vol 10, pp 2142-2143, 2165-2166; R Ex 36, ¶ 5)

317. The day after she filed the complaint, a staff meeting was held. During this meeting, Petitioner walked past Horace Palmer and squeezed his shoulder. (T Vol 9, pp 1986, Vol 10, 2077)

318. After she filed her complaint, Petitioner also offered Horace Palmer tickets to attend a Barack Obama rally at the Fairgrounds. Mr. Palmer feels that if Petitioner was really offended by him and harassed by him, she not would offer him tickets. Petitioner's friendly gesture to someone she has accused of sexually harassing her is not logical. (T Vol 10, p 2143)

319. Horace Palmer testified directly and forthrightly. The undersigned finds Horace Palmer to be a credible witness. He admitted he should not have referred to Petitioner as baby and apologized to her and that he intended no ill will toward her; that he was using it as a term of endearment.

320. Elijah Chapman, an African American male, (R. Ex. 28 ¶ 2) did not testify at the hearing. Both Petitioner and Respondent offered his affidavit in lieu of his testimony. (R Ex 28; P Ex 88, approximately 74 pages from the end of P Ex 88);

321. Petitioner has presented no evidence contradicting Mr. Chapman's sworn testimony in his affidavit. (P Ex 88, approximately 74 pages from the end of P Ex 88 and R Ex 28)

322. Mr. Chapman met Petitioner in June 2007 as the Privacy and Security Project team was being put together. Petitioner said to Mr. Chapman, "I was wondering who had the nice smile," in reference to Mr. Chapman. Petitioner and Mr. Chapman would sometimes talk about personal matters. She told him that she didn't have a man (boyfriend or husband). She talked about what she liked in a man. (R Ex 28, ¶ ¶ 6, 7; P Ex 77, 6th page; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ ¶ 6, 7)

323. Petitioner alleges that in August 2007, Elijah Chapman told her she "needed to be taken outside and hog tied or tied to tree and a real man needs to handle [her] or to bed [her]." She alleges that the statement was made by Elijah Chapman and agreed to by Horace Palmer. Elijah Chapman never said anything offensive or harassing to Petitioner in Mr. Palmer's presence. Petitioner has not met her burden of proof by the preponderance of the evidence that Mr. Chapman made this statement to her. (T Vol 3, pp 533-534, Vol 10, 2136; R Ex 28, ¶ 13; P Ex 33, 9th page; P Ex 77, 7th page; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ 13)

324. Petitioner alleges that she responded to both Elijah Chapman and Horace Palmer that she could report them to HR. Even if Mr. Chapman made the statement and that Horace Palmer agreed to it, the undersigned finds as a fact that Petitioner's failure to report it, knowing and verbalizing that she could report it, is not reasonable. The undersigned further finds that assuming arguendo Elijah Chapman made the statement about Petitioner needing to be hog tied or tied to a tree and a real man needs to handle her or to bed her, Petitioner's failure to report it prevented management from doing anything about it. (T Vol 4, p 750)

325. Contrary to Petitioner's allegation, the preponderance of the evidence is that Horace Palmer did not hear Elijah Chapman say to Petitioner that she needs to be taken outside and hog-tied or tied to a tree and a real man needs to handle her. If Mr. Palmer had heard Mr. Chapman make such a statement, he would have had a conversation about it with Petitioner. He did not have a conversation about it with Petitioner. (T Vol 10, pp 2100-2101, 2136, 2145; P Ex 33, 9th page) The evidence shows that Horace Palmer and Petitioner remained close throughout the duration of their employment at DIRM and the allegation that Mr. Palmer agreed with such an

alleged derogatory statement is inconsistent with the positive relationship Mr. Palmer and Petitioner had with each other.

326. Horace Palmer never saw Elijah Chapman ever come on to the Petitioner. He never observed or heard Elijah Chapman ever say anything offensive or harassing to Petitioner. (T Vol 10, p 2136)

327. Petitioner made comments to Mr. Chapman regarding his appearance and attire. Petitioner told Mr. Chapman that because of his dark complexion, he should not wear such bright colors in clothes. She also told him that his complexion was too dark to have curly hair. (T Vol 4, p 801; R Ex 28, ¶ 7; P Ex 77, 6th page; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ 7)

328. Petitioner initiated or engaged in interactions with Mr. Chapman regarding her personal life and made comments regarding Mr. Chapman's appearance without any indication that she was uncomfortable or offended by such conversation. Petitioner invited discussions about personal matters and never told Mr. Chapman that she did not like the tone or topics of conversations that she had with them. (R Ex 28, ¶ 7; P Ex 77, 6th page; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶7)

329. Petitioner alleges that in August 2007, Elijah Chapman used the "N" word referring to her. Petitioner has not met her burden of proof by a preponderance of the evidence and the Mr. Chapman finds the use of that term very offensive. (R Ex 4 (8/17/08); R Ex 28, ¶ 16; P Ex 77, 6th page; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ 16)

330. Petitioner did not report to Jared Murphy that Elijah Chapman allegedly used the "N" word. Assuming arguendo Mr. Chapman referred to Petitioner by using the "N" word in a conversation in which he allegedly said, "nigger please, you aint no better than the rest of us niggers here," Mr. Murphy would not have been able to do anything about it because it was not reported to him. (T Vol 9, p 1938)

331. 338. Petitioner alleges that in January 2008, Elijah Chapman mocked Rev. Martin Luther King Jr.'s famous comments, "free at last, free at last, thank God Almighty, I'm free at last." (T Vol 3, pp 515-517; P Ex 33, 3rd page; P Ex 77, 6th page)

332. Referring to leaving his employment at the Division of Mental Health ("DMH"), Elijah Chapman said "Free at last, free at last, thank God Almighty, I'm free at last." quoting Reverend Martin Luther King, Jr. This was in the context of Mr. Chapman leaving a very turbulent work environment. DMH is a very difficult place to work based on the office politics. After the meeting, Petitioner went to Jared Murphy and said that Elijah Chapman should not say things like that. Mr. Murphy did not take any action regarding this because he did not deem that there was any action necessary to be taken. No one else was be offended it. No one, other than Petitioner, complained about Mr. Chapman making that statement. Petitioner was the only person in the room that did not understand the context of the statement. (T Vol 7, pp 1446, 1509, 1541-1542,

Vol 9, 1783, 1930-1931, 1938, Vol 11, 2574; R Ex 28, ¶ 11; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ 11; R Ex 28, ¶ 11)

333. In addition to Elijah Chapman, Samantha Seawright also came to the PSO from working at the Division of Mental Health. Ms. Seawright felt that DMH was a rather difficult work environment. Ms. Seawright, having worked at the Division of Mental Health knew exactly where Mr. Chapman had been working; she knew exactly who he had been working with, and she knew exactly how he felt about working at DMH. Mr. Chapman's comment was made in jest and was not objectively offensive to reasonable person. (T Vol 7, p 1446)

334. Petitioner testified that she thinks that speaking about Martin Luther King at the workplace is inappropriate and unlawful workplace harassment. (T Vol 4, pp 905-906)

335. The undersigned finds as a fact that the "Free at last" statement had no racial context at all and was not inappropriate, nor was it unlawful workplace harassment within the meaning of the statutes, rules or policies. (R Ex 28, ¶ 11; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ 11)

336. While Petitioner may have found the "Free at last" statement subjectively offensive, based on the circumstances surrounding this statement, it would not be objectively offensive to a reasonable person.

337. Petitioner alleges that in August 2007, Elijah Chapman told her to loosen up. Petitioner testified that she believes "loosen up" refers to sexual intercourse. Petitioner did not report this allegation to Mr. Murphy. Petitioner has not met her burden of proof by a preponderance of the evidence that this statement was made to her. Assuming, without finding that this did occur, Mr. Murphy was unable to do anything about it because Petitioner did not report it to him. (T Vol 9, p 1942; R Ex 28, ¶ 14; P Ex 77, 7th page; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ 14) The undersigned takes official notice and finds that the word "loosen" up in its general and everyday meaning does not have a sexual connotation, but generally refers to a person exhibiting nervous tension.

338. Mr. Chapman did nothing in word or actions to give Petitioner any reason to think he was attracted to Petitioner. (T Vol 10, p 2136; R Ex 28, ¶ 6; P Ex 77, 7th page; P Ex 88, approximately 74 pages from the end of P Ex 88, ¶ 6)

339. Petitioner alleges that Sammy Leach repeatedly referred to the KKK, Cracker and Redneck. (T Vol 3, pp 517-518, R Ex 4, P Ex 33, 4th page, P Ex 35, P Ex 77, 6th page) Sammy Leach is an African-American male. (T Vol 7, p 1522). Petitioner labels Mr. Leach as a "black male (Army). (P Ex 33)

340. Petitioner alleges that on January 29th, 2008, the day she resubmitted her official complaint to HR and Sammy's Leach's second day of work, he offended her by using the term "redneck." Petitioner alleges that she told Jared Murphy about it. This incident was significant

enough for Petitioner put it in her calendar. Petitioner's actions in telling only Jared Murphy and not reporting it to HR and upper management are unreasonable. She had filed her official complaint the day before directly with HR; and according to her, Mr. Murphy had not dealt with her previous complaints. If this incident occurred, and if she was offended by it, the reasonable thing to do would be go to HR or upper management to complain, not to Jared Murphy. (T Vol 5, pp 1030-1031, 1053-1054)

341. Petitioner alleges that Sammy Leach continued to offend her with words like "KKK," "cracker," and "bitch," which she found to be both inappropriate and offensive. The allegations allegedly occurred during the time that HR was doing its investigation. Petitioner did not tell Jared Murphy about Mr. Leach's allegedly continued offensive language, nor did she report it to HR or the investigators. Petitioner's testimony was that she did not need any more "drama." Petitioner's explanation is not reasonable. The language was allegedly offensive enough that she included it in her calendar thirteen times between January 29, 2008 and March 13, 2008. She met with the unlawful workplace harassments investigators (Mr. Lane and Ms. Mandeville) on March 6 and 7, 2008 and did not report Mr. Leach's offensive language. Petitioner did not prove by a preponderance of the evidence that Mr. Leach used offensive language in the workplace. (T Vol 5, pp 1033-1035; R Ex 4, 13; P Ex 35)

342. Mr. Leach did make reference to the term KKK. He had a conversation with Petitioner when he was a new employee at DIRM. Petitioner asked him "Where are you from," "Where were you raised" and things like that. Mr. Leach discussed the history of Johnston County and Smithfield. He asked Petitioner if she knew about the sign that was erected at the Neuse River at the entrance to Smithfield that read, "This is KKK country. Love it or leave it." That is how that conversation came about. Mr. Leach did not intend any racial harassment toward anyone. It was just the history of where he was born and raised and he told Petitioner about it. Mr. Leach did not repeatedly refer to the KKK. He gave a historical perspective regarding where he grew up. A reasonable person would not find this conversation objectively offensive. (T Vol 7, pp 1517, 1523-1524)

343. Petitioner did not report to Jared Murphy that Sammy Leach allegedly repeatedly referred to the KKK. Assuming *arguendo*, that did occur, Mr. Murphy would not have been able to do anything about it because Petitioner did not report it to him. Nevertheless, a reasonable person would not find a historical perspective of Smithfield and Johnston County objectively offensive. (T Vol 9, p 1938)

344. Petitioner did not report to Jared Murphy that Sammy Leach repeatedly referred to "Cracker." Assuming *arguendo* that did occur, Mr. Murphy would not have been able to do anything about it because Petitioner did not report it to him. Other than Petitioner's own allegations and testimony, she has presented no evidence to corroborate these allegations. Petitioner has not met her burden of proof by a preponderance of the evidence that Mr. Leach repeatedly referred to "Cracker." (T Vol 9, pp 1938-1939)

345. Petitioner alleges that Sammy Leach repeatedly referred to rednecks and stated that rednecks do not want to intermix with blacks. Other than Samantha Seawright's testimony that she thought she heard Mr. Leach use the word "redneck" directed toward John Lavender, but she could not say for sure. (T Vol 7, pp 1439-1441). Petitioner has not met her burden of proof by a preponderance of the evidence that Sammy Leach repeatedly used the word "rednecks." (T Vol 7, pp 1514-1517, 1524; R Ex 4; P Ex 35, 77)

346. Petitioner alleges that Sammy Leach repeatedly referred to bitch. Petitioner has not met her burden of proof by a preponderance of the evidence that Sammy Leach repeatedly referred to "bitch" (R Ex 4, P Ex 35, 77)

347. Petitioner did not report to Jared Murphy that Sammy Leach repeatedly referred to "bitch." Assuming *arguendo* that did occur, Mr. Murphy would not have been able to do anything about it because Petitioner did not report it to him. (T Vol 5, pp 1036-1038, Vol 9, 1938-1939)

348. Management did not know about this new employee, Sammy Leach, allegedly making comments that Petitioner found offensive because Petitioner did not report it. Assuming *arguendo* that Sammy Leach used offensive language, management was unable to take any action because they were unaware of the alleged offensive language. (T Vol 5, p 1038)

349. Samantha Seawright testified she never saw Petitioner take offense to Sammy Leach regarding anything that he said. (T Vol 7, pp 1438-1439)

350. When Samantha Seawright was moved out of the office that she shared with Petitioner, she was assigned a larger office that she shared at different times with Mark Kulp, Bob Moran, Elijah Chapman, Jason Gilmore, and Sammy Leach. (T Vol 7, pp 1392-1393, 1438)

351. Samantha Seawright observed Petitioner wrap her arms around Sammy Leach and hug him and kid and laugh. Petitioner walked to Sammy Leach's desk, which was directly in front of Ms. Seawright's desk, and hugged him, laughed and said "Ha, ha, I better get out of here before I get in trouble." (T Vol 7, pp 1438-1439)

352. Mr. Leach testified directly and forthrightly. The undersigned finds Sammy Leach to be a credible witness.

353. Mr. Leach began working at the PSO January 28, 2008. This is the same date that Petitioner alleges Samantha Seawright was talking about Petitioner and sent Brenda Richardson an e-mail. It is also the same date that Petitioner went to HR with her complaint. (T Vol 5, pp 1023-1024; R Ex 4; P Ex 4; P Ex 35)

354. Mr. Clifford Jones was employed as a Networking Analyst/ Field Analyst in a time limited position at DHHS/ DIRM. He began on November 5th, 2007. His position ended when the project ended. The position could have lasted up to two years after his employment date, if necessary. (T Vol 7, pp 1463, 1502-1503) He is an African-American male. (T Vol 7, p 1497) He

is also co-pastor of Faith in the Word Christian Center Church. His wife is the senior pastor. (T Vol 7, p 1465)

355. Mr. Jones testified that he had conversations with Jared Murphy relating to whether a woman should be a senior pastor. He doesn't recall specifically discussing Proverbs 31, but may have discussed at least one time, but he was not sure. He has never read Proverbs 31 in its entirety. (T Vol 7, pp 1464-1466, 1472-1474)

356. Mr. Jones never witnessed Mr. Suggs giving anyone bibles and he heard that from Petitioner. He also heard that Artem Kazantsev received one. Mr. Jones did not know if George received one or not. Mr. Jones never heard Bob Moran complain about receiving religious material and Mr. Jones did not recall if Jared ever made the comment that a woman should be seen and not heard. (T Vol 7, p 1489)

357. Mr. Jones heard Jared Murphy comment on Petitioner's dress attire during the first several weeks of work. Mr. Murphy commented that the suits she wore were nice suits. (T Vol 7, p 1475) Mr. Jones did not think that Ms. White did not like the comments and he never heard her complain that she did not like her comments. Mr. Jones never considered any of Mr. Murphy's comments to be racially or sexually harassing and at the time he did not perceive the comments to be a problem. ((T Vol 7, p 1505)

358. Mr. Jones observed Petition come into Jared Murphy's office and inform him about documents being tampered with. Mr. Jones remembers two occasions Petitioner came into Mr. Murphy's office and talked about her documents being tampered with. (T Vol 7, p 1475, 1485-1486) Mr. Jones had no personal knowledge of anyone tampering with her computer. (T Vol 7, p 1504).

359. Mr. Jones heard Dale Suggs state in the first floor hallway that Ms. White made more in salary than anyone else, "but didn't call out a salary." Mr. Jones came into the office and told Petitioner what he had overheard. Mr. Jones testified that John Lavender, Jason Smith, Scott Gardner, Christopher Turpin were being spoken to by Dale Suggs when the comment was made by Dale Suggs. During the conversation by Mr. Suggs, Mr. Jones didn't hear "She's out of here: or Gwen's out of here." (T Vol 7, p. 1476-1477))

360. Petitioner told Mr. Jones about the incident involving Dale Suggs standing up and pushing a chair back against the wall. (T Vol 7, p 1477) Ms. White did not say to Mr. Jones that she was afraid and he didn't recall whether she said she had stated she was offended. (T Vol 7, p 1508)

361. Mr. Jones did not recall whether he had ever heard anyone say the word "n-i-g-g-e-r."He did not recall whether he had ever heard it secondarily from someone else." (T Vol 7 p 1490)Mr. Jones would consider it to be offensive if he was called the "N" word. (T Vol 7, 1510)

362. Mr. Jones was present during the meeting when Elijah Chapman made the comment, "Free at Last" was quoted, but he could not remember when the statement was made or who all was present when it was made. (T Vol 7 p 1490-1491) He was not offended by that comment. He remembers that the context of that comment was that Mr. Chapman had been a field analyst or a network analyst for DMH and he was told he no longer had had to provide service for them and they were getting ready to move him to a SME position. That's when the comment was made. Mr. Jones did not find that comment to be racially offensive and he did not recall whether Ms. White ever complained to him that she was offended by it.

363. Mr. Jones did not hear anyone say KKK, cracker, or redneck, "a black cat and a white cat; the pussies are at it again." He never told anyone the comment was made (T Vol 7 p 1491-1493) Mr. Jones would consider it to be offensive for a female to be called a black cat or white cat or pussy. (T Vol 7, p 1510)

364. When Mr. Jones was hired he heard Dale and Jared say that this is a Christian oriented department. (T Vol 7, p 1492)

365. Mr. Jones did not recall whether he ever heard Jared make the comment that someone did not want to hire any more African-American people. Neither did he recall whether he had ever heard anyone say that Petitioner needed to loosen up." Mr. Jones did not remember hearing anyone saying "Hey, Baby" to Petitioner. Mr. Jones remembered being in the conference room when Bob Moran stated he wanted his going away party to be at Hooters. (T Vol 7, pp 1494-1495)

366. Mr. Jones recalled seeing Petitioner upset about what was transpiring in the office approximately three times. (T Vol 7, p 1497)

367. Petitioner discussed with Mr. Jones about the church she attends. They didn't get into discussion about religious beliefs, and she didn't indicate to him that she was uncomfortable talking about religious matters. (T Vol 7, pp 1506-1507)

368. Mr. Jones had discussions with Dale Suggs about the bible, but they didn't get into deep discussions about religion. Mr. Suggs did invite him to his men's bible study, but he declined because his schedule as a pastor is busy doing things for the church and his kids. Mr. Jones was not offended by Mr. Suggs' invitation. (T Vol 7, p 1507)

369. Mr. Jones never heard Mr. Murphy say anything like "no African American woman should ever tell a white man he cannot write." (T Vol 7 p 1508)

370. The undersigned finds that Mr. Jones testified directly and forthrightly and finds him to be a credible witness.

371. Mr. Leach began working at the PSO January 28, 2008. This is the same date that Petitioner alleges Samantha Seawright was talking about Petitioner and sent Brenda Richardson

an e-mail. It is also the same date that Petitioner went to HR with her complaint. (T Vol 5, pp 1023-1024; R Ex 4; P Ex 4; P Ex 35)

372. Petitioner alleges that Sammy Leach repeatedly referred to the KKK, Cracker and Redneck. (T Vol 3, pp 517-518, R Ex 4, P Ex 33, 4th page, P Ex 35, P Ex 77, 6th page)

373. Petitioner alleges that on January 29th, 2008, the day she resubmitted her official complaint to HR and Sammy's Leach's second day of work, he offended her by using the term "redneck." Petitioner alleges that she told Jared Murphy about it. This incident was significant enough for Petitioner put it in her calendar. Petitioner's actions in telling only Jared Murphy and not reporting it to HR and upper management are unreasonable. She had filed her official complaint the day before directly with HR; and according her, Mr. Murphy had not dealt with her previous complaints. If this incident occurred, and if she was offended by it, the reasonable thing to do would be go to HR or upper management to complain, not to Jared Murphy. (T Vol 5, pp 1030-1031, 1053-1054)

374. Petitioner alleges that Sammy Leach continued to offend her with words like "KKK," "cracker," and "bitch," which she found to be both inappropriate and offensive. The allegations allegedly occurred during the time that HR was doing its investigation. Petitioner did not tell Jared Murphy about Mr. Leach's allegedly continued offensive language, nor did she report it to HR or the investigators. Her testimony was that she did not need any more "drama." Petitioner's explanation is not reasonable. The language was allegedly offensive enough that she included it in her calendar thirteen times between January 29, 2008 and March 13, 2008. She met with the unlawful workplace harassments investigators (Mr. Lane and Ms. Mandeville) on March 6 and 7, 2008 and did not report Mr. Leach's offensive language. Petitioner did not prove by a preponderance of the evidence that Mr. Leach used offensive language in the workplace. (T Vol 5, pp 1033-1035; R Ex 4, 13; P Ex 35)

375. Mr. Leach did make reference to the term KKK. He had a conversation with Petitioner when he was a new employee at DIRM. Petitioner asked him "Where are you from," "Where were you raised" and things like that. Mr. Leach discussed the history of Johnston County and Smithfield. He asked Petitioner if she knew about the sign that was erected at the Neuse River at the entrance to Smithfield that read, "This is KKK country. Love it or leave it." That is how that conversation came about. Mr. Leach did not intend any racial harassment toward anyone. It was just the history of where he was born and raised that he was offering. Mr. Leach did not repeatedly refer to the KKK. He gave a historical perspective regarding where he grew up. A reasonable person would not find this conversation objectively offensive. (T Vol 7, pp 1517, 1523-1524)

376. Petitioner alleges that from May 2007 through December 2007, Dale Suggs handed out bibles to only male employees in the department. Petitioner alleges that Dale Suggs committed gender and racial harassment against her by giving away bibles in the work place. Mr. Suggs gave two bibles to Artem Kazantsev and one to Arun Kumar. He also invited the men in the department to attend his male ministry which consisted of bible study. They studied one book of

the bible, the book of John, and that ended in August 2008. One time, Mr. Suggs made a blessing at lunch. No one, including Petitioner, objected to Mr. Suggs' blessing. (T Vol 7, pp 895- 896, 2529-2530, 2540-2541, 2543; P Ex 77)

377. It was offensive to Petitioner that Mr. Suggs gave other employees bibles. (T Vol 7, p 806)

378. Jared Murphy had about three or four bibles in his office. Petitioner did not find this objectionable. (T Vol 8, p 806)

379. Dale Suggs conducted a male ministry outside of work hours consisting of bible studies. When Mr. Suggs discussed scriptures and prayed with co-employees, no one told him that they felt that it was an unwelcome conversation or that they were offended by it. (T Vol 8, pp 1507, 1581, 2529)

380. Jared Murphy attended Mr. Suggs' bible study. It was not forced on him. (T Vol 9, pp 1935-1936)

381. Jared Murphy was aware that Mr. Suggs gave a bible to Arun Kumar, a man that did not work on their team. Mr. Kumar attended Mr. Suggs' bible study meetings. (T Vol 9, p 1935)

382. Sherri Brooks did not know about Mr. Suggs' male ministries or anything about the bibles. She would not be offended if Dale Suggs gave her a bible. (T Vol 11, pp 2378, 2388)

383. Clifford Jones and Dale Suggs talked generally about the bible. Mr. Suggs invited Mr. Jones to attend his bible study group. Mr. Jones appreciated the invite but, declined because he is a co-pastor in his own church and had a busy schedule involving doing things for his kids and the church. Mr. Jones was not offended by Mr. Suggs invitation. (T Vol 7, p 1507)

384. Petitioner asked Clifford Jones if he knew that Dale Suggs was giving out bibles. Mr. Jones was unaware until Petitioner told him. (T Vol 7, p 1489)

385. Petitioner and Clifford Jones talked generally about church and the church Petitioner attends. Petitioner never indicated to Mr. Jones that she was uncomfortable talking about religious matters. (T Vol 7, p 1505)

386. Jason Smith was invited to participate in Mr. Suggs' male ministries if he wanted to. The invitation occurred at lunch time. Mr. Smith did occasionally attend. (T Vol 12, pp 2595-2596)

387. Michael Webb was aware that Dale Suggs was in a ministry. If he was invited to the ministry, it was just a casual invite to a church Mr. Suggs was going to. Mr. Suggs and Mr. Webb discussed both of them having gone to bible school. Mr. Webb believed that Jared Murphy and Dale Suggs were going to something on a regular basis, but nobody else talked to Mr. Webb about

it. Mr. Webb did not receive a bible from Dale Suggs and is unaware of anyone else who may have received one. (T Vol 8, p 1641)

388. The receptionist, Brenda Richardson, is unaware that bibles were given to her coworkers. (T Vol 7, p 1372)

389. Horace Palmer received religious material from Mr. Suggs at his home. The information came from Mr. Suggs' private e-mail account. Mr. Palmer went to church with Mr. Suggs a couple of times. Mr. Palmer and Mr. Suggs sometimes discussed religion in the work place. (T Vol 10, pp 2070- 2071)

390. Scott Gardner was invited to Dale Suggs' bible ministries, but did not go. (T p 2349) No one ever told Mr. Suggs that they were offended by him discussing religion or the scriptures at work. (T Vol 11, p 2530)

391. The undersigned finds as a fact and a matter of law that Mr. Suggs giving a few people a bible in the workplace, occasional religious talk at work, and conducting a male bible study ministry outside of work does not constitute unlawful workplace harassment or a hostile environment based upon race or gender. Petitioner testified that having a conversation about Proverbs 31 was offensive to her; then testified that Proverbs 31 was just mentioned in passing, saying hi and moving on. (T Vol 4, pp 804, 807)

392. Petitioner had Christian artifacts displayed in her office. (T Vol 11, pp 2542, 2553)

393. Petitioner has included the statement "People use duct tape to fix things... GOD used nails!" with a crucifix at the end on her e-mails to co-employees. (T Vol 11, pp 2519-2520; P Ex.59, 3rd page)

394. Mr. Kazantsev was a security specialist with DIRM from June 2007 until April 2008. Jared Murphy was his supervisor. (T Vol 8, pp 1576-1577)

395. Mr. Kazantsev was born in the Russian Federation. He has lived in the United States for 16½ years and is a citizen of the United States and is a white mail. He has served in the Soviet Army. (T Vol 8, pp 1614-1616)

396. Petitioner labels Mr. Kazantsev as "German male (Army)." (R Ex 33)

397. Artem Kazantsev visited Italy in November of 2008, and was deeply moved by visiting the sites relevant to the early Christians. This trip sparked a conversation between Mr. Kazantsev and Dale Suggs. Mr. Kazantsev expressed interest in Christianity. Mr. Suggs suggested that Mr. Kazantsev attend his bible study. Mr. Suggs gave Mr. Kazantsev two bibles as a gift. In one of the bibles on the first page, a presentation page, Mr. Suggs wrote "from Dale Suggs to Artem Kazantsev." (T Vol 8, pp 1578-1579)

398. Even though Petitioner has not claimed unlawful workplace harassment or a hostile environment based upon religion, (*see Petition*) she has presented testimony and argument regarding the same. Allowing the pleadings to conform to the evidence, the undersigned finds as a fact and a matter law that Petitioner has not met her burden of proof by a preponderance of the evidence that she was subjected to unlawful workplace harassment or a hostile environment based upon religion.

399. Petitioner alleges that from May 2007 through December 2007, Dale Suggs hired white military men almost exclusively. (R Ex 4; P Ex 35, 77, 6th page)

400. Mr. Suggs did not hire white military men almost exclusively. He hired Petitioner (black female), Samantha Seawright (white female), Horace Palmer (black male), Jared Murphy (black male) and John Lavendar (white male). He was on the interview team for Elijah Chapman (black male) and Clifford Jones (black male) and recommended hiring both of them. (T Vol 5, pp 1024, Vol 9, 1936, Vol 11, 2501)

401. Assuming *arguendo* that Mr. Suggs had a preference to hire military veterans, absent other discriminatory intentions, there is nothing illegal about this. In fact, North Carolina General Statutes, N.C.G.S. § 126- 80 *et. seq*. provide for a Veteran's Preference in State government employment. As such, a reasonable person would not find Mr. Suggs' alleged preference for veteran's objectively offensive.

402. Petitioner alleges that on August 7, 2007, Jared Murphy told her that Dale Suggs complained to Mr. Murphy about Mr. Murphy hiring African-Americans so often. Dale Suggs did not tell Jared Murphy that he did not want to hire anymore blacks. The preponderance of the evidence proves that this did not occur. (T Vol 3, pp 576, Vol 9, 1811-1812, 1936, 1979, Vol 11, 2501; R Ex 4; P Ex 33, 2nd page; P Ex35; P Ex 77, 6th page)

403. Jared Murphy, a black male, and Dale Suggs, a white male, are very good friends and have kept in contact with each other after the project ended. They still see each other on the weekends. (T Vol 9, pp 1811-1812, 1979, Vol 11, 2500)

404. Respondent agreed to allow Petitioner to conduct informal discovery so that she could avoid the expense of depositions. As part of informal discovery in this case, Ms. Kimberly Richards met with Respondent's counsel, Assistant Attorney General Kathryn Thomas and Petitioner's supervisor Jared Murphy, in Mr. Murphy's office on July 8, 2008. Mr. Murphy was not under oath. The meeting was not taped and there was no transcript of it. (T Vol 1, pp 39-40, 59)

405. During this meeting, Jared Murphy did not admit to Ms. Richards that Petitioner was discriminated against based on her race and sex. (T Vol 9, pp 1987, P Ex 1))

406. At Petitioner's request, at or around the time Ms. Richards was withdrawing as Petitioner's counsel in November 2008, Ms. Richards created a memo regarding the informal

meeting with Jared Murphy. The memo regarding the July 8, 2008 meeting was created on November 16, 2008. The undersigned determines the memo was created by Ms. Richards 4 months after the actual meeting, and without the benefit of a tape recording or a verbatim transcript, carries little weight as to the actual statements made at the informal discovery meeting. (T Vol 1, pp 40-41; P Ex 1)

407. Ms. Richards testified directly and forthrightly. The undersigned finds Kimberley Richards to be a credible witness.

408. Petitioner alleges that from May 2007 through July 2008, Jared Murphy called on women last in staff meetings. The preponderance of the evidence supports that the order in which a person was called on at a staff meeting depended upon where they were seated around a table or in the office. Mr. Murphy just went around the room or the table. This is not objectively offensive by a reasonable person standard. (T Vol 7, pp 1443-1444, 1 Vol 8, 640, Vol 9, 1942, Vol 10, 2129; P Ex 77)

409. There was some cursing in the workplace. Horace Palmer has heard cursing in practically every workplace that he has worked in. In fact, he once heard Petitioner curse in the workplace. (T Vol 10, pp 2099, 2128)

410. The undersigned finds as a fact that cursing was not pervasive in PSO and a reasonable person would not be objectively offended by sporadic cursing, and assuming arguendo a reasonable person would be offended, the cursing was not directed at Petitioner and did not result in Petitioner being subjected to unlawful workplace harassment within the meaning of the statutes, rules or policies.

411. In August 2007, Petitioner began recording people's conversations on her cell phone. She recorded Jared Murphy, Elijah Chapman, and Horace Palmer on her cell phone. They did not know Petitioner was recording them. (T Vol 10, pp 698-699)

412. Petitioner also recorded staff meetings on her cell phone. She testified that she recorded the staff meeting where Bob Moran suggested Hooters for his going away luncheon and the one where Elijah Chapman said "Free at last." (T Vol 10, p 699)

413. Petitioner testified that she recorded staff meetings when they got to be outrageous. This is inconsistent with her testimony that Hooters as a restaurant was not offensive to her and she had no problem with it. If it was not offensive, and not a problem to her, then it should not have been outrageous enough for her to record it. (T Vol 3, pp 536, 665-667, 700)

414. In addition to her cell phone, Petitioner also taped conversations with her fellow employees on a tape recorder. She taped Jared Murphy, Horace Palmer, Elijah Chapman, and some staff meetings on a portable recorder. (T Vol 3, pp 702-703)

415. Petitioner taped the January 25, 2008 meetings with Dale Suggs and Jared Murphy and transcribed them. (T Vol 4, pp 920-921)

416. Petitioner taped her meeting with Pearla Alston and Christine Midgette in January 2008. (T Vol 6, p 1211)

417. Petitioner's attorney, Kimberly Richards, listened to a tape in a tape recorder provided by Petitioner. The tape was of Petitioner walking down the hallway at work. Petitioner recorded whoever she encountered walking down the hallway. If someone said hello to Petitioner in the hallway, you could hear the person's voice saying hello. It was as if Petitioner had a tape recorder on while contemporaneously walking around. The tape did not have any relevant information about this Contested Case, so Ms. Richards gave it back to Petitioner. (T Vol 1, pp 37, 41-42, 45)

418. Petitioner testified that between June and September 2008, her attorney Kimberly Richards told her that she never wanted to see the tape again and to destroy or get rid of the recordings. Petitioner put the tapes in a dumpster. Contrary to Petitioner's testimony, Ms. Richards did not tell Petitioner to destroy the tapes or get rid of them (T Vol 11, pp 42, Vol 3, pp 700-702)

419. When Ms. Richards listened to the taped recordings provided by Petitioner, Ms. Richards did not hear any of the information included in Petitioner's Prehearing Statement prepared by Ms. Richards. (T Vol 1, p 57; R Ex 16)

420. Even though the Respondent engaged informal discovery by producing Jared Murphy for a meeting with Ms. Richards, Ms. Richards did not provide Respondent with a copy of the audio tape(s). In her judgment, they were not relevant to the proceedings and it was definitely not in Petitioner's best interest to provide the tapes(s) to the Respondent. It was not in Petitioner's best interest because part of the tape was of Petitioner going to the restroom. Ms. Richards felt that would embarrass Petitioner more than produce anything that was relevant to this matter. The audio tape also included Petitioner slamming her car door and driving home with particular music on her radio system, which also is not relevant to this case. Of the voices that Ms. Richards could hear of people walking in the hallways, they were unidentifiable. (T Vol 1, pp 55-56, 59)

421. Petitioner did not produce any audio tapes at the Contested Case Hearing, although she had a tape recorder and asked witnesses if they have seen it. (T Vol 7, pp 1467-1469, Vol 8 1632)

422. Petitioner acknowledges that Jared Murphy told her that she is a strong woman and could be very intimidating. (T Vol 4, p 827)

423. Petitioner had issues relating to getting along with some people in the office. Mr. Murphy received no complaints about Ms. White and believes she was good at her job. (T Vol 1, pp 31, Vol 19, 1971; R Ex 35; P Ex 1)

424. Some co-workers felt Petitioner treated them in a demeaning manner. (T Vol 7, p 1440) and was confrontational and aggressive with other workers. Mr. Palmer testified that in staff meetings, Petitioner indirectly expressed criticism of other people's work. Petitioner never held back giving her opinions in the staff meetings. (T Vol 10, p 2129)

425. Samantha Seawright testified that every time she spoke with Petitioner, Ms. Seawright felt her words were twisted around and ended up being completely blown out of proportion. As a result, Ms. Seawright made it a point not to talk to Petitioner and asked repeatedly that any communication that she had with Petitioner be by e-mail, and e-mail only. (T p 1394, 1451)Whenever Samantha had a meeting that involved Petitioner, she took anxiety medication before attending that meeting. (T Vol 7, pp. 1394, 1451)

426. John Lavender's dealings with the Petitioner were that she was typically condescending toward him. At their first meeting, Petitioner called Mr. Lavender an "illiterate hick." She told him that Jared Murphy thought he was stupid. Mr. Murphy never told Petitioner that he thought Mr. Lavender was stupid. (T Vol 9, pp 1979, Vol 11, pp 2556, 2566-2567) There was an occasion where Mr. Lavender felt Petitioner attempted to humiliate him while he was in her office discussing business. Petitioner talked very slowly in a mocking way and said, "You must understand. I am the policy writer and you are just a technical writer." Petitioner made Mr. Lavender feel about two inches tall. Mr. Lavender did not engage Petitioner in conversation unless necessary because she was hypersensitive. Mr. Lavender was aware that when he was talking with Petitioner that there were invisible lines that were out there, just waiting to be tripped over. (T Vol 11, pp 2567, 2569, 2579-2580)

427. Bob Moran tried to have little to do with Petitioner; he felt she made additional work for him. For example, he would give Petitioner information to be reviewed and most of the comments were pretty straight forward. Petitioner would add more to it or try to add more suggestions. A lot of what she did was redoing or re-editing. It added more work to what Mr. Moran had to do. (T Vol 7, pp 1537-1538)

428. John Lavender testified that the only racially insensitive remarks or otherwise insensitive remarks made in the workplace came from Petitioner. (T Vol 11, p 2557)

429. Petitioner's motive is suspect. She filed her internal harassment grievance on January 29, 2008 at which time she was aware of discussions about not extending employment due to her misrepresentation in early January 2008. If these matters that she complains of were so significant to her, she should have immediately taken her allegations to Mr. Reddy, escalated them up the chain of command, and followed the State and DHHS harassment policies by filing a complaint within 30 days of the alleged harassing action(s) (T Vol 9, pp 1984-1985; R Ex 18, 19, 35 ¶ 55)

430. All the managers had an open door policy. (T Vol 7, pp 1445, Vol 8 1619, Vol 11, 2313)

431. As the Chief Information Security Officer for DHHS, Mr. Reddy has an open door policy. He gives his cell phone number and his home telephone number to all staff in the event they cannot contact him at work. He has told his staff "[e]ven if it's night, just call me." Mr.Reddy tells his staff if he is busy, they should schedule a meeting on his calendar. His calendar is open to all staff. It is an online calendar, which the security project team and other staff members have access to. (T Vol 1, pp 93-94, 137-138, 1 Vol 9, 986, Vol 11, 2313, 2420)

432. Pyreddy Reddy told staff that if there were any issues within the security project, they should first try to resolve it with the project manager. The employees in the PSO all were well aware of the chain of command of reporting if they had a problem. The first person to go to was either Jared Murphy or Dale Suggs. If the project managers, Dale Suggs or Jared Murphy, could not resolve the issues or if the issue itself is about the project manager, then staff should to escalate the matter to Mr. Reddy. If someone has an issue with Mr. Reddy and cannot resolve the issue, they are expected to go to his supervisor, Karen Tomczak. (T Vol 1, pp 93-94, 138, Vol 10, 2141-2142)

433. In accordance with Mr. Reddy's open door policy, staff went to him with various problems or issues. These issues included complaints that a manager is not performing the way they're supposed to; a staff member wanting to do it this way and another wanting to do it their way. Staff members made complaints to Mr. Reddy by coming to see him, scheduling a meeting on his calendar or by calling him at night. Petitioner never contacted Mr. Reddy by any of those means. (T Vol 1, pp 141-142, Vol 4, 925, Vol 11, 2147)

434. Pyreddy Reddy was not aware that Petitioner alleged that Samantha Seawright called her a bitch and gave her the finger until he read it in Petitioner's complaint. (T pp Vol 1, 140, Vol 6, 1184)

435. Prior to her Official Complaint in January 2008, Petitioner never went to Mr. Reddy with reports of conflict or complaints that she had with any staff on the security project. She never told Mr. Reddy that she felt her relationship with other staff interfered with her ability to do her work. She never complained that she was being sexually or racially harassed. She never complained that her health was being adversely affected by working on the security project. Petitioner never complained that other staff was making statements that made her uncomfortable. (T Vol 1, pp 141-143)

436. On Sunday evening, March 16, 2008, Petitioner attempted to send Pyreddy Reddy an e-mail from her home computer. Mr. Reddy never received the e-mail because Petitioner sent it to the wrong address. She sent it to pyreddy.reddy@ncmil.net. The correct address is @ncmail.net. (Emphasis added). In this e-mail, Petitioner attempts to notify Mr. Reddy of her conversation with Mr. Murphy regarding the potty training of his son. Even though that incident allegedly occurred either on January 10 or 11, 2008 or February 8, 2008 according to her daily calendar, she does not attempt to notify Mr. Reddy of it until Sunday March 16, 2008. This is so, even though the very day prior to the alleged incident (if it occurred on February 8), she received a letter from

Mr. Reddy telling her to notify him immediately if any problems or issues should arise. (T Vol 6, pp 1158- 1160; R Ex 4, 10, 12; P Ex 6, 35)

437. Petitioner never reported to Mr. Reddy that Samantha Seawright allegedly exposed her breast in a meeting with Jared Smith. (T Vol 1, pp 155)

438. In her March 16, 2008 attempt to e-mail Mr. Reddy, Petitioner fails to describe the incident where Samantha Seawright allegedly exposed her breast in meeting with Petitioner and Jared Murphy. This incident allegedly occurred on March 4, 2008, less than 2 weeks before Petitioner's attempt to notify Mr. Reddy of issues that were of concern to her. Instead, she reports a situation which occurred one or two months prior (potty training) and an insignificant issue where Jared Murphy allegedly told Sammy leach to watch who he associates with. (R Ex 4, 10, 12; P Ex 6, 35)

439. In her deposition, Petitioner was asked if she reported the alleged breast incident to anyone other than Jared Murphy. She testified "Absolutely." "I reported it to HR." At the Contested Case Hearing, Petitioner testified she only spoke with Sherri Brooks and co-workers. (T Vol 5, pp 1080-1083)

440. The undersigned finds as a fact that Petitioner's alleged reporting of the alleged breast incident to Sherri Brooks does not make sense. It allegedly occurred on March 4, 2008; Petitioner had already filed a formal request and an official complaint; and Ms. Brooks had done nothing to help Petitioner so far. Petitioner's alleged continued reporting to Ms. Brooks is unreasonable because it had not produced results for Petitioner and by then Petitioner was aware of the proper reporting procedure as she had used it just several weeks prior.

441. The undersigned finds a fact that if Samantha Seawright exposed her breast during a meeting, it would have been such a significant issue, that a reasonable person would have reported it immediately as Mr. Reddy's letter directs. As such, the undersigned finds that Samantha Seawright did not expose a breast as described in Petitioner's calendar under March 4, 2008. This is further supported by the fact that Petitioner did not report this alleged incident to the unlawful workplace harassment investigators, Charles Lane and Wanda Mandeville. Petitioner met with Mr. Lane and Ms. Mandeville on March 6, 2008, just 2 days after the alleged incident. (T Vol 9, pp 1934- 1935, Vol 12, 2675; R Ex 4, 10, 13; P Ex 35)

442. While Petitioner makes mention of Sammy Leach in her March 16, 2008 attempt at an e-mail to Mr. Reddy, she does not inform Mr. Reddy of her allegations against Mr. Leach (KKK, Redneck, Cracker, Bitch). In her calendar, Petitioner indicates that Mr. Leach began allegedly using offensive language on January 29, 2008, his second day of employment and continued up through at least March 13, 2008. (T Vol 5, pp 1073, 1075-1076; R Ex 4, 12; P Ex 6).

443. Prior to January 4, 2008, Pyreddy Reddy was not aware that Petitioner was claiming that she had problems with her laptop. When Mr. Reddy became aware from Petitioner that she was alleging that her files were being tampered with, Mr. Reddy immediately assigned staff to deal

with her issues. It was determined that Petitioner was not able to get access to some of her files because of the technology issues. These issues were corrected. The staff that assisted Petitioner with her computer issues included Scott Gardner, George Atanasoff, Chris Turpin and Joe Mancuso. They went back and complained to Mr. Reddy that Petitioner was crying and complaining. They didn't want to hear her complaints. My Reddy instructed them to take additional staff with them whenever they had to assist Petitioner. (T Vol 1, pp 153, 155-156, 166, Vol 4, 925)

444. When Petitioner complained to Pyreddy Reddy on January 4, 2008 that her laptop was failing, she got another laptop the exact same day. The undersigned finds as a fact that Petitioner's reporting to Mr. Reddy about her failing laptop resulted in immediate favorable results for the Petitioner. (T Vol 5, p 1087)

445. Petitioner knew that if she could not obtain satisfaction with her immediate supervisor, Jared Murphy, she could escalate the matter to Pyreddy Reddy. There was a scenario where Jared Murphy would not grant Petitioner leave when she needed to take care of a personal emergency. Petitioner expedited it up to Mr. Reddy and was granted the leave. (T Vol 4, pp 867-868)

446. Petitioner never gave Mr. Reddy the opportunity to resolve her issues because she went directly to HR with her Official Complaint. (T Vol 1, p 169)

447. Karen Tomczak, the Director of DIRM initiated an investigation of Petitioner's Unlawful Workplace Harassment complaint. She selected a team composed of two senior managers. This team included one person, Charles Lane, who had been in the department for a number of years, had experience with the administrative processes, and was experienced in doing workplace harassment investigations. Ms. Tomczak also assigned Wanda Mandeville, another senior manager within the division, to work with Mr. Lane. Mr. Lane and Ms. Mandeville were to investigate Petitioner's allegations and to also make a recommendation to Ms. Tomczak. (T Vol 1, pp 204-205, Vol 8, 1716, 1750-1751, 2608)

448. At times relevant herein (May 2007 to September 30, 2008), Charles Lane was an IT Director at DIRM. His immediate supervisor was Karen Tomczak. (T Vol 8, p 1652)

449. Currently, Charles Lane is an applications development manager with the Administrative Office of the Courts. He manages software development teams. He has been employed with the State of North Carolina for over 26 years, having been with DHHS for 25 years. He has been in management 18 or 19 years. (T Vol 8, pp 1749-1751)

450. Charles Lane did a prior sexual harassment investigation at DIRM. In that case, he found that harassment did occur. (T pp Vol 1, 205, Vol 8, 1752)

451. Mr. Lane testified directly and forthrightly. The undersigned finds Charles Lane to be a credible witness.

452. Wanda Mandeville is employed by DHHS in DIRM. She has a Masters of Science Degree and has been employed in State government for 30 years. Karen Tomczak is her immediate supervisor. Ms. Mandeville's working title is budget officer and her official classification is business manager. Ms. Mandeville is responsible for ensuring that the DIRM budget meets the needs of the division and that funds are spent appropriately. She ensures that the continuation and expansion budgets are prepared accurately and presented to the governor for consideration. She also develops estimates for the costs of services provided by the agency and monitors the spending of the agency. (T pp Vol 12, 2607, 2673-2675)

453. Wanda Mandeville testified directly and forthrightly. The undersigned finds Wanda Mandeville to be a credible witness.

454. Ms. Tomczak assigned the investigation of Petitioner's complaint as a high priority project. Mr. Lane and Ms. Mandeville studied Petitioner's complaint. They met with HR, consisting of Pearla Alston and Chris Midgette, early on in the investigation to discuss how to proceed with the investigation. They all worked together at the beginning and talked about strategies and plans. They made a list of the people they wanted to interview and developed a questionnaire. They set up a time line in which to interview witnesses; discussed what the final format would look like; met with the interviewees and told them that the investigation was confidential. Mr. Lane and Ms. Mandeville also told the interviewees about the unlawful workplace harassment policies and gave them a copy of it. (T Vol 8, pp 1751-1753, Vol 10, 2194-2196, 2213, 2616-2619)

455. Petitioner was the first person interviewed. Her interview continued over the course of three days. Petitioner did not provide Mr. Lane or Ms. Mandeville with a copy of her journal/diary/calendar. She did not tell them that it existed. Petitioner did not provide them with a copy of her racial discrimination and sexual harassment summary. She did not tell them that it existed. She did not offer them the audiotapes that she recorded for them to listen to. (T Vol 8, pp 1654-1655, 1754-1755, Vol 12, 2628-2629, 2676-2677; R Ex 4; P Ex 33, 35)

456. Sometime during the investigation Mr. Lane and Ms. Mandeville called Ms. Alston and Ms. Midgette and said that some additional allegations not included in Petitioner complaint had been made. They asked if they should look into those also. Ms. Alston responded. "No." (T Vol 8, pp 1676, Vol 10, 2194-2196, 2213, Vol 12, 2632-2633)

457. Mr. Lane and Ms. Mandeville first interviewed Petitioner on March 5, 2008. Petitioner did not tell them that just the day before Samantha Seawright had allegedly exposed her breast to Petitioner and Jared Murphy in a meeting. Ms. Mandeville would recall something like that if Petitioner had told her. (T Vol 12, pp 2675-2676)

458. Mr. Lane and Ms. Mandeville would take turns where one of them would ask the questions. The other person would capture the response to the questions on the computer. They inserted the interviewee response after each question. One of them was typing as it was going on.

They printed the statements as interviewee was there. Some of the interviewees made minor typo corrections. (T Vol 8, pp 1756, Vol 12, 2634)

459. Petitioner took her statement away with her. She wanted to take it and review it in more detail. She actually created a new version and brought it back to Mr. Lane and Ms. Mandeville. Petitioner's new version had a lot more information in it. (T Vol 8, pp 1756-1757, Vol 12, 2634; P Ex 30)

460. Mr. Lane and Ms. Mandeville talked to HR about what they should do with Petitioner's new version. As a result, they inserted this summary ¶ on the top of the first page of their report describing what had happened. They wrote:

a. "General note inserted on 3/12/08: At the conclusion of the interview and review sessions referenced in the above ¶, Gwendolyn asked Wanda and Charles if she could take the resulting document and review it in her office before signing it. Wanda and Charles responded that she could. Later that day Gwendolyn asked Charles for an electronic copy of the document so that she could make some modifications and Charles e-mailed the document to her. Gwendolyn modified the document and returned it via e-mail. This signed version, with the exception of the 'General Note inserted on 3/12/08' ¶, is exactly as reported and returned by Gwendolyn." (T Vol 8, pp 1757-1758; P Ex 30)

461. Despite HR directing Mr. Lane and Ms. Mandeville not to investigate Petitioner's allegations that occurred after the official complaint, Petitioner was given the opportunity to say everything that she wanted to say. Petitioner did bring up other matters that were not included in any of the documentation. Her Exhibit 30 includes things were not in the January 29th official complaint. (T Vol 8, pp 1758 -1759, Vol 12, 2650; P Ex 30, 108)

462. Based on his interviews with Petitioner, Mr. Lane came away with the impression that Petitioner wanted her job made permanent. What was brought to light was some of the concerns about correspondence that had come from HR to several people who had been hired about the same time about their probationary status. It seemed to Mr. Lane that Petitioner was concerned with the long term stability of her position, and the bottom line was she was wanted that extended. (T Vol 8, p 1759)

463. On March 25, 2008, Charles Lane and Wanda Mandeville submitted an "Executive Summary of Unlawful Workplace Harassment Interview Results" to Ms. Tomczak summarizing their findings and making recommendations after interviewing Petitioner and twelve other employees. (T Vol 1, pp 207; R Ex 13)

464. Mr. Lane and Ms. Mandeville were unable to substantiate that unlawful workplace harassment occurred. In order for them to substantiate an allegation, they needed to hear it from more than one person. Just hearing it from Petitioner was not enough. They would have considered it substantiated if another person had said the same thing. (T p Vol 8, 1763; R Ex 13)

465. Neither the State nor DHHS's policies and procedures define the word "substantiated." Webster's Dictionary defines "substantiate" as "to give substance; to prove." (T Vol 2, pp 345-346, 379, 381)

466. Mr. Lane and Ms. Mandeville did substantiate occurrences of inappropriate behavior in the workplace, but not creating a hostile work environment. (T Vol 8, p 1763; R Ex 13)

467. Mr. Lane and Ms. Mandeville did substantiate that on two occasions, Horace Palmer referred to Petitioner as "baby." However, Mr. Lane and Ms. Mandeville were unable to substantiate that the comments resulted in creating a hostile work environment. (T Vol 12, pp 2649-2650; R Ex 13)

468. Mr. Lane and Ms. Mandeville recommended that Horace Palmer be counseled for his actions, and that all staff in the DHHS privacy and security area be required to take the workplace harassment course that is administered through DHHS HR over again. They further recommended that Mr. Reddy contact HR and management development area to pursue training offerings for staff of the DHHS privacy and security area in workplace diversity. It was also recommended that Mr. Reddy explore potential training from DHHS HR on policies on handling complaints, including managers' understanding the meaning of a hostile working environment. (T Vol 1, pp 207-210; R Ex13)

469. Ms. Tomczak did not have input into the outcome of the investigation. She reviewed the recommendations made by Charles Lane and Wanda Mandeville, and based on the recommendations; Petitioner's claim of workplace harassment was not substantiated. (T Vol 1, p 207)

470. A decision was made to end the HIPAA security project because what was needed to be accomplished was. Most phases of the project were completed. There remains an ongoing validation piece, which comes under the maintenance phase. Maintenance will be an ongoing process where assessments will be conducted on a periodic basis. There is no time limit on it. All the security project employees were let go effective September 30, 2008. They were all in time limited positions. At the time the project ended, eleven time limited positions, including Petitioner's were let go. (T Vol 1, pp 157-158, 162, 213-214, Vol 3, 564; R Ex 17)

471. . The undersigned finds as a fact and as a matter of law that at the time the project ended, Petitioner was in a time-limited permanent appointment. Her appointment as a Networking Specialist/ Policy Writer had a limited duration which was over effective September 30, 2008. Even though Petitioner was taken off probation in February 2008, she never became a permanent status employee. As such, Petitioner's employment was properly and legally terminated. (T Vol 1, pp 136-137, Vol 2, 312, 342, Vol 7, 1420-1422, Vol 8, 1954-1955, Vol 9, 1996, Vol 10, 2192-2193, 2230, Vol 11, 2565; R Ex 11, 20)

472. The undersigned finds as fact that the project ended on September 30, 2008, ending Petitioner's time limited position fifteen months after it started. (R Ex 17)

473. After her probation was lifted, Petitioner knew she was still in a time limited position. In her calendar under February 7, 2008, she writes: ". . . I received a probation letter." "But I know I am in a time limited position ..." (T Vol 5, pp 1061-1062, Vol 10, 2192- 2194, 2230; R Ex 4, 11, 20)

474. On August 29, 2008, Karen Tomczak gave a letter to Petitioner and all the other employees in time limited positions informing them that their appointments would end on September 30, 2008. (T Vol 1, pp 213-214; R Ex 17)

475. Petitioner told Pearla Alston and Christine Midgette that she had a law degree. When Petitioner first spoke with Ms. Alston, she had with her, her informal request. There were a lot of laws and statutes quoted in the front of it. Ms. Alston asked her had she worked with an attorney because most employees who write a complaint don't include laws and statutes. Petitioner said that she had a law degree. Ms. Alston asked her where she attended law school and Petitioner replied "Central" (North Carolina Central University). (T Vol 2, pp 355-356, 357, 380, Vol 10, 2224-2226, 2238)

476. Ms. Alston and Ms. Midgette attempted to verify that Petitioner had a law degree by looking her up in the PMIS system, which was the personnel electronic system the State used at the time. It did not indicate that Petitioner had a law degree. Ms Alston told Petitioner that her law degree was not showing in the system and they needed to update her record. As a result, Ms. Midgette asked a person that works for her to verify Petitioner's degree with the National Student Clearinghouse. It turned out that Petitioner does not have a law degree, but rather a bachelor's degree in criminal justice. (T Vol 2, pp 356, Vol 10, 2224-2225; R Ex 24) Petitioner also told Samantha Seawright and Artem Kazantsev that she was in law school. (T Vol 7, pp 1436, Vol 8, 1616)

477. Scott Gardner heard that Petitioner was going to N.C. Central University and that she had graduated. Mr. Gardner congratulated Petitioner on her graduation. Mr. Gardner became aware that Petitioner's degree had something to do with law. Mr. Gardner asked Petitioner what she was going to do and if she was going to take the bar. Petitioner said no and she wanted to work with the FBI. Mr. Gardner was left with the impression that Petitioner had a law degree, but because she hadn't taken the bar, she was not an attorney. (T Vol 11, pp 2321-2322, 2346)

478. The undersigned finds as a fact that Petitioner is not a lawyer and did not go to law school. The undersigned finds that Petitioner misrepresented her education which negatively reflects on Petitioner's credibility.

479. Petitioner called three of her friends as witnesses; Shinita Wrenwick, Janice Warren, and Joann Robertson. Petitioner sometimes went to lunch with these women. (T Vol 2, pp 408, 427, 467)

480. Petitioner complained of unlawful workplace harassment to Ms. Shinita Wrenwick and also complained that her files were being altered, changed or deleted. Ms. Wrenwick observed people working on Petitioner's computer two to three times a week. (T Vol 2, pp 406-410)

481. Petitioner told Ms. Wrenwick that she was called a black cat, a bitch and a pussy. In the 5 months that Ms. Wrenwick and Petitioner worked in the same area of the building together, Petitioner spoke about the alleged harassment once or twice a week. (T Vol 2, pp 406, 413-415)

482. Petitioner told Ms. Wrenwick that Jared Murphy had come on to her and made comments about her shape and cleavage. (T Vol 2, p 416) Ms. Wrenwick only knows what Petitioner told her. She did not observe or hear any unlawful workplace harassment. (T Vol 2, pp 411-413)

483. Petitioner told Ms. Janice Warren that her computer had been sabotaged and that she was subjected to sexual and racial slurs. (T Vol 2, p 429) Ms. Warren only knows what Petitioner told her. (T Vol 2, p 436)

484. Petitioner told Ms. Joann Robertson that she was having issues with her computer and was called a bitch and a black cat. (T Vol 2, p 468)

485. Ms. Robertson has no personal knowledge any of any of Petitioner's complaints. (T Vol 2, p 474)

486. Ms. Wrenwick, Ms. Warren and Ms. Robertson testified directly and forthrightly. The undersigned finds Ms. Wrenwick, Ms. Warren and Ms. Robertson to be credible witnesses.

487. The undersigned finds as a fact that Ms. Wrenwick, Ms. Warren, and Ms. Robertson have no personal knowledge of Petitioner's work environment and no personal knowledge of the facts in this Contested Case.

488. Sherri Brooks told Petitioner over and over again to go to Pyreddy Reddy with any complaints. (T Vol 11, pp 2405, 2420)

489. Brenda Richardson always told Petitioner if she was having problems, to go to Pyreddy Reddy. (T Vol 2, pp 459, 466, Vol 7, 1348, 1371-1372)

490. Scott Gardner asked Petitioner was she talking to anyone about her issues at work. She said she was talking to her friends and her sister. Mr. Gardner told Petitioner that the proper thing for her to do was to go to Pyreddy Reddy and Human Resources. (T Vol 11, pp 2322-2323)

491. Janice Warren told Petitioner to go to her higher ups on more than one occasion. (T Vol 2, pp 444-445)

492. Joann Robertson told Petitioner to go to someone other than her supervisor. When Petitioner informed Ms. Robertson of her allegations, the first thing Ms. Robertson said was "if you are going to your supervisor and the supervisor does not help you or give you the satisfaction that you are looking for, then you should go to your next line supervisor and use that chain of command until you get an answer." (T Vol 2, pp 472-474)

493. Petitioner did not report any of the occurrences that she deemed hostile or offensive past her first line manger, Jared Murphy for a full nine months. (T Vol 4, pp 838- 839, 847-848)

494. Petitioner testified that as of September 3, 2007, she could not trust her boss Jared Murphy. In her calendar entry of that date, she wrote "I can't even trust my boss (Jared) – wow." (T Vol 4, p 754; R Ex 4; P Ex 35)

495. The first time Petitioner went to Pyreddy Reddy with any of her complaints, concerns, or issues was on January 4, 2008. At that time, she only discussed only computer issues with him and did not mention any of the harassment that she alleges she endured. (T Vol 1, pp 144, Vol 4, 925)

496. Petitioner did not report anything to HR until after the January 25, 2008 meeting with Jared Murphy when he told her that Dale Suggs wanted her to be fired. (T Vol 4, p 848)

497. Petitioner testified that the "territory of unlawful workplace harassment" is something that she did not have to deal with at other jobs. The undersigned finds as a fact that this is not a true statement. Based upon Petitioner's own testimony she had worked at a prior job when someone in the workplace made a comment to her about engaging in a threesome. Petitioner reported the incident to HR and management immediately let the accused go. (T Vol 3, pp 710, Vol 4, 800, Vol 5, 1086-1087)

498. The undersigned finds as a fact that based on this experience, Petitioner did not act as a reasonable person by failing to report occurrences that she deemed to be offensive up the chain of command to management as they occurred. This is also supported by the fact that Petitioner testified that she could not trust Jared Murphy as of September 3, 2007. Petitioner waited until January 28, 2008 to go HR and at request of Pearla Alston and Christine Midgette, Petitioner reported her unlawful workplace harassment claims to Pyreaddy Reddy on January 29, 2008 (T Vol 4, p 754: R Ex 4; P Ex 35)

499. Petitioner took the unlawful workplace harassment training. She knew that she could and should report any harassment. The undersigned finds as a fact that Petitioner made a conscious decision not to report any complaints that she had in effort to accumulate enough complaints that it would appear that she was subjected to a severe and pervasive hostile workplace environment. (T Vol 3, pp 526, 676-678, Vol 4, 838, 856-857 Vol 7, 1437, R Ex 3, 25, 26)

500. Petitioner claims that she did not report incidences she found unlawful or harassing up the chain of command because Sherri Brooks and her friends gave her advice to keep her head up

and stay strong. The undersigned finds Petitioner's excuse for not reporting her complaints up the chain of command not reasonable because this course of action did not produce any results over the nine months that Petitioner claimed she was subjected to harassment before she finally filed a complaint. (T Vol 4, p 880)

501. The undersigned finds Petitioner's excuse for not reporting her complaints up the chain of command because she was telling Jared Murphy not reasonable because it did not produce any results for her and because Jared Murphy was an alleged harasser. (T Vol 4, pp 880-881))

502. The undersigned finds as a fact that Horace Palmer greeted Petitioner with the phrase "hi baby" or hey baby" three times in a span of fifteen months; Elijah Chapman made the "free at last" comment; and Bob Moran referred to Petitioner as an omen or a "black cat." The undersigned further finds as a fact that a reasonable person would not be objectively offended by these statements based on the circumstances surrounding these statements.

503. The undersigned finds a fact that Petitioner was not subjected to a hostile-unlawful workplace environment.

504. The undersigned finds as a fact that Petitioner was not truthful to Dale Suggs on January 4, 2008 when she told him that her files were compromised and that she did not have a backup copy of her files.

505. The undersigned finds as a fact that Petitioner was not truthful to Dale Suggs when she told him that John Lavender did not offer her a substitute computer when her laptop had crashed.

506. In the years 2002 through 2006, Petitioner's work assignments sometimes lasted only a week, two weeks, or less than a month. She worked on and off with various companies. Sometimes, during that time frame, Petitioner did not even work a solid six months. (T Vol 5, pp 1005-1008)

507. In her Application for Employment (PD-107) dated March 7, 2007, Petitioner indicates that from 10/2002 to 1/2006, she worked at SOX consulting as a project manager. Petitioner indicates that she worked 40 + hours a week and made between $35. and $50. per hour. In this Application for Employment, Petitioner certified that she has given true, accurate, and complete information. (T Vol 5, pp 1004-1013; R Ex 21)

508. In her Application For Employment (PD-107) dated July 13, 2008, Petitioner indicates that from 10/2002 to 1/2006, she worked at SOX consulting as a project manager. Petitioner indicates that she worked 40 + hours a week and made between $75. and $125. per hour. In this Application For Employment, Petitioner certified that she has given true, accurate, and complete information. (T Vol 5, pp 1008-1013; R Ex 22)

509. The undersigned finds that while, the information contained in Petitioner's Applications for Employment is collateral to the issues in the Contested Case; nonetheless it carries some

weight as to Petitioner's credibility. Regarding Respondent's Exhibit 21, if Petitioner worked 40 plus hours a week at a salary of $35 to $50. per hour, that would translate to an annual salary between $72,800 to $100,400. Regarding Respondent's Exhibit 22, if Petitioner worked 40 plus hours a week a salary of $75 to $ 125. per hour, that would translate to an annual salary of between $150,000 to $260,000. The highest annual salary Petitioner ever made in her life is $75,805, which was her ending salary at DIRM. The undersigned finds as a fact that Petitioner consciously attempted to mislead prospective employers regarding her salary in Respondents Exhibits 21 and 22. Petitioner's misrepresentation of her salary in these documents, in addition to her inconsistencies and discrepancies in her testimony and evidence, raises serious doubts about her integrity. (T Vol 5, pp 1004-1013, 1023; R Ex 21, 22).

510. In her calendar under May 7, 2007, her first day of employment, Petitioner indicates "I could not always hear what Samantha Seawright was saying because I have a slight hearing impairment on one side." At the hearing, Petitioner testified that as of Monday, May 7, 2007, she did not have a hearing impairment and the reason she could not hear Ms. Seawright was because Ms. Seawright was whispering. The undersigned finds that while, this is regarding a collateral matter; nonetheless it carries some weight as to Petitioner's credibility when she indicated in her calendar that she had a hearing impairment, when in fact she did not. (T Vol 3, pp 687-688; R Ex 4; P Ex 35)

511. On November 17, 2008, Petitioner's first attorney of record, Kimberly Richards, wrote a letter to Petitioner indicating "[a]fter meeting with you yesterday and reflecting on the false accusations you have recently made, I need to provide the additional information. "You stated that you were upset that I did not file a charge with the Civil Rights Division in February 2008. We did not, however, know each other in February 2008. In fact, our attorney-client fee agreement was not signed until June 18, 2008, after your original appeal was filed with the OAH. The undersigned finds that while this is regarding a collateral matter, it nonetheless carries some weight as to Petitioner's credibility. (T Vol 6, p 1236; R Ex 37)

512. Based upon the preponderance of the credible evidence in the record, including the testimony of all of the witnesses, the undersigned finds Petitioner's credibility to be generally suspect. Based upon the number of untruths and inconsistencies in Petitioner's testimony and evidence, the undersigned finds that the Petitioner is not credible in her allegations.

513. The undersigned further find Petitioner's allegations and testimony to be suspect and not credible in light of her admitted involvement in a prior illegal workplace incident at a private employer, which she immediately reported and it was immediately resolved. This casts doubt on Petitioner voluminous allegations that she chose to allow to multiply while she ignored the State and department policies requiring reporting of illegal acts.

514. The undersigned finds as a fact that Petitioner has not suffered any adverse employment action having an adverse effect on the terms, conditions, or benefits of her employment.

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515. The State Personnel Manual Policy defines Hostile Work Environment as: " ... one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance." (T Vol 2, pp 351, Vol 10, 2199-2200, 2228; R Ex 18)

516. Pursuant to the State Personnel Manual Policy a hostile work environment is determined by looking at the following: " 1) whether the environment is objectively offensive in the eyes of a reasonable person, 2) whether the environment is subjectively offensive in the eyes of the person who is the object of the alleged harassment, and 3) the nature of the alleged hostility." (T Vol 2, p 352; R Ex. 18, Section 1, page 18)

517. The State Personnel Manual Policy Advisory Note provides that Sexual Harassment "does not include personal compliments welcomed by the recipient or social interaction or relationships freely entered into by State employees or prospective employees." (T Vol 2, pp 351-352; R Ex 18, Section 1, page 18)

518. The State Personnel Manual Policy provides that "a grievant must submit a written complaint to the employing agency within 30 calendar days of the alleged harassing action. (R Ex 18, Section 1, page 19)

519. The State Personnel Manual Policy defines Retaliation as "adverse treatment which occurs because of opposition to unlawful workplace harassment." (T Vol 10, p 2200; R Ex. 18)

520. In addition to the State's Personnel Manual, DHHS has an unlawful workplace harassment policy. It requires an employee who feels that (s)he has been unlawfully harassed in the workplace to submit a written complaint within 30 calendar days of the harassing action. The reason for the 30 day time limit is so that management can quickly remedy a problem before it gets out of hand. Management should take action. Managers wouldn't know that something is going on between employees if it's not brought to their attention. (T Vol 2, pp 353-354, Vol 10, 2229, 2252; R Ex. 19)

521. All employees must take unlawful workplace harassment training within 30 days of employment. As a result of this training, employees know what to do if they encounter a problem or experience harassment. (T Vol 1, pp 73, Vol 2, 408-409, Vol 3, 526, 676-678, Vol 7, 1503, Vol 8, 1614, 1619, 1630, Vol 10, 2201, 2265, 2313, 2351, 2366, 2553, 2603, 2608)

522. Petitioner, Samantha Seawright, Horace Palmer and John Lavender attended orientation on May 11, 2007 conducted by Sharon Prince, Human Resource Technician. It included unlawful harassment training. Petitioner also acknowledged that she would complete the online training regarding unlawful harassment and the employee grievance policy, among others within thirty days of her hire. (T Vol 3, pp 526, 676-678, Vol 7, 1385, 1437, R Ex 3, 25, 26)

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523. At the new employee orientation, Sharon Prince reviewed the unlawful workplace harassment policy, the workplace violence policy, and performance of employees and management policy. Ms. Prince gave Petitioner a stack of documents with all the policies. Petitioner signed off that she received each one of these policies. (T Vol 3, p 526; R Ex 25, 26)

524. After carefully considering the testimony of the hearing, the many exhibits admitted into evidence, the legal arguments of both sides in this case, and after applying the traditional guiding principles for weighing testimony of all the witnesses, the undersigned finds that the Petitioner has not met her burden of proof by the preponderance of the evidence that she was subjected to unlawful workplace harassment, a hostile environment or retaliation within the meaning of applicable statutes, rules, policies or case law precedent .

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 126 and 150B of the North Carolina General Statutes and has the authority to issue a Decision to the State Personnel Commission ("SPC"), which shall make the final decision.

2. The parties have been given proper notice of the hearing. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and the subject matter pursuant to Chapter 126 and Chapters 150B of the North Carolina General Statutes.

3. To the extent, the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

4. Petitioner is an African-American female who alleges that Respondent subjected her to unlawful workplace harassment and a hostile work environment based on her race and gender. Petitioner further alleges that Respondent retaliated against her.

5. The responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black's Law Dictionary cites that "preponderance means something more than weight; it denotes a superiority of weight, or outweighing." Petitioner has the burden of proof by a preponderance of the evidence as to a *prima facie* showing and ultimately as to her claims of unlawful workplace harassment, hostile work environment and retaliation.

6. The courts of North Carolina look to decisions of the courts of the United States for guidance in establishing evidentiary standards and principles of law to be applied in discrimination cases. The "ultimate burden" of proving that the employee discriminated against the employee remains with the employee all the time. *North Carolina Department of Correction v. Gibson*, 308 N.C. 131, 136-47, 301 S.E.2d 78, 82-88 (1983); *Reeves v. Sanderson Plumbing Prods.*, 530 U.S.133, 143, 147 L. Ed. 2d 105, 117 (2000).

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7. To establish a hostile work environment claim, Petitioner must prove that: (1) the conduct in question was unwelcome; (2) the harassment was based on race, sex or religion; (3) the harassment was sufficiently severe or pervasive to create an abusive working environment based on a reasonable person standard; and (4) there is some basis for imposing liability on the employer. *White v. Federal Exp. Corp.*, 939 F.2d 157, 159-60 (4th Cir. 1991); *Swentek v. US Air, Inc.*, 830 F.2d 552, 557 (4th Cir. 1987), *Rohan v. Networks Presentations LLC*, 375 F.3d 266, 273 (4th Cir. 2004); *Oleyar v. County of Durham*, 336 F.Supp.2d 512, (2004); *EEOC v. Sunbelt Rentals Inc.*, 521 F.3d 306 (4th Cir. 2008).

8. Our courts have made clear that only harassment that occurs **because of** the victim's gender, race, or religion is actionable." *Wrightson v. Pizza Hut of America, Inc.*, 99 F.3d 138 (4th Cir. 1996); *Hartsell v. Duplex Products, Inc.*, 123 F. 3d 766, 772 (4th Cir. 1997); *EEOC v. Sunbelt Rentals Inc.*, 521 F.3d 306 (4th Cir. 2008). (Emphasis added).

9. Courts have made it clear that [there] is not a "federal guarantee of refinement and sophistication in the workplace." There is no hostile work environment claim for a harasser's vulgarity, insensitivity or meanness of spirit. Thus, no alleged harassment is considered against the overall standard unless the Petitioner can show that, "**but for**" her protected characteristic, she would have been subjected to it. *Hartsell v. Duplex Products,* 123 F.3d 766, 773 (4th Cir. 1997). (Emphasis added).

10. Motivation based on personal animus is not evidence of a prohibited motivation such as gender, sex or race. *See St. Mary's Honor Center v. Hicks,* 509 U.S. 502, 113 S. Ct. 2742, 2748, 125 L. Ed. 2d 407 (1993)

11. Petitioner has not met her burden of proof by a preponderance of the evidence that the matters of which she complains occurred "but for" or "because of" her gender, race, or religion.

12. A hostile work environment based upon harassment is present when "the workplace is permeated with discriminatory intimidation, ridicule, and insults that are sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." In determining whether a workplace environment is sufficiently 'hostile" or "abusive" one looks to the totality of the circumstances including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. *Meritor Sav. Bank, FSB v. Vinson,* 477 U.S. 57, 67, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986); Harris *v. Forklift Systems, Inc.,* 510 U.S. 17, 114 S. Ct. 367 (1993); *EEOC v. Sunbelt Rentals Inc.*, 521 F.3d 306 (4th Cir. 2008).

13. The conduct alleged by Petitioner did not interfere with her work performance.

14. "[D]iscourtesy or rudeness should not be confused with [prohibited] harassment."(Citations omitted). *Faragher v. City of Boca Raton,* 524 U.S. 775, 118 S. Ct. 2275, 2283, 141 L. Ed. 2d 662 (1998).

14. "[The law] does not provide a remedy for every instance of verbal or physical harassment in the workplace." *Lissau v. Southern Food Serv., Inc.* 159 F.3d 177, 183 (4th Cir. 1998). "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of the victim's employment." *Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 141 L. Ed. 2d 662, 118 S. Ct. 2275 (1998). The "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee [does] not affect the conditions of employment to [such a] sufficiently significant degrees] to violate Title VII." *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986). Singling out an employee for criticism, unfavorable evaluations, and poor relationships with supervisors, together with a plaintiff's own assertions of discrimination, will not support a finding of discrimination. An employer is not required to like his employees. *Williams v. Cerberonics, Inc.*, 871 F.2d 452, 455-57 (1989).

15. Petitioner's evidence is insufficient to establish an actionable hostile work environment based on gender, race, or religion discrimination. The United States Supreme Court has repeatedly emphasized that this type of cause of action is limited to extreme work conditions. *Faragher v. City of Boca Raton* 524 U.S. 775, 118 S. Ct. 2275 (1998).

16. An adverse employment action requires actions having an adverse effect on the terms, conditions, or benefits of employment. *Von Gunten v. Maryland*, 243 F.3d 858, 866 (4th Cir. 2001). Petitioner has not suffered any adverse employment action.

17. If the alleged harasser is not a "supervisor," liability is only imposed on Respondent for unlawful harassment where Petitioner proves, by the preponderance of the evidence, that Respondent: (1) "knew or should have known of the illegal conduct;" and (2) "failed to take prompt and adequate remedial action." *Brown v. Perry*, 184 F.3d 388, 393 (4th Cir. 1999). Regarding Petitioner's allegations against everyone except her supervisor Jared Murphy, Respondent did not know of the alleged illegal conduct because Petitioner did not report any of her allegations it until she filed her formal complaint. As such, Petitioner has not proven, by the preponderance of the evidence, that Respondent knew or should have known of the alleged illegal conduct and that Respondent failed to take prompt and adequate remedial action. "To escape liability for a supervisor's harassment of a subordinate by means of [an] affirmative defense, an employer must prove by a "preponderance of the evidence . . . two necessary elements." *Faragher v. City of Boca Raton,* 524 U.S. 775, 118 S. Ct. 2275, 2293, 141 L. Ed. 2d 662 (1998). First, the employer must establish that it "exercised reasonable care to prevent and correct promptly any sexually harassing behavior." *Id.* Second, the employer must demonstrate "that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." Proof that a plaintiff employee failed to follow a complaint procedure "will normally suffice to satisfy the employer's burden under the second element of the defense." *Id.*

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18. Respondent DHHS and the State of North Carolina have unlawful workplace harassment policies to prevent and correct promptly any harassing behavior. DHHS's policy has been proven effective by Charles Lane having conducted an unlawful workplace harassment investigation prior to the matter at hand and finding that harassment occurred. As such, Respondent through its effective unlawful workplace harassment policy exercised reasonable care to prevent and correct promptly any sexually, racially, or religious harassing behavior.

19. Respondent has demonstrated by a preponderance of the evidence that the Petitioner unreasonably failed to take advantage of Respondent's preventative, corrective and effective unlawful workplace harassment policy.

20. Upon examining the totality of the circumstances, including the frequency of the alleged discriminatory conduct; its severity; whether it was physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interfered with the Petitioner's work performance, the undersigned finds as a matter of law that the conduct alleged by Petitioner was not taken because of her race, sex, or religion and was not sufficiently severe or pervasive to state a claim. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22, 126 L. Ed. 2d 295, 114 S. Ct. 367 (1993).

21. The allegations of unlawful workplace harassment and a hostile work environment made by Petitioner fail as a matter of law. The remarks, events and circumstances described by Petitioner, assuming them all to be true, are insufficient to satisfy the requirement that the harassment must be sufficiently severe or pervasive to create an abusive working environment. On the contrary, Petitioner's allegations (even taken as true) demonstrate only that co-worker(s) and her supervisor were unpleasant and frustrating to her, and that she disagreed with the final outcome of the investigation. Even viewed in the light most favorable to Petitioner, the evidence she presented merely tell a story of workplace issues regarding computers, work product, different personalities, and comments that Petitioner deemed inappropriate. Many of the comments, if they were said as alleged by Petitioner, were indeed inappropriate in the work place and some could have been the cause for some disciplinary action. Whether appropriate disciplinary action was taken by Respondent against the alleged harassers is not the primary subject of the Petition. The use of the word "nigger" or any other racial slur in the workplace is always inappropriate and "unacceptable personal conduct," and if proven by the preponderance of the evidence, could be the basis of some type of disciplinary action, especially if an employee calls a fellow employee a "nigger" or some other derogatory name. State Government Departments are armed with a wide variety of disciplinary actions that can be taken ranging from written warnings to dismissal, depending upon the gravity of the situation. The undersigned takes official notice that among some African-Americans, the "N" word is used in jest or even as a term of endearment when referring to one another. However, no one, including African-American employees should be excluded from the prohibition disallowing the use of the word "nigger" in the workplace. It is offensive and derogatory language, no matter who utters it. It has no place in the workplace. In the words of the leadership of the National Association for the Advancement of Colored People (NAACP) during its highly publicized mock funeral of the "N" word in July 9, 2007, the use of the "N" word should be laid to rest. In the case at bar Petitioner

alleges the term "nigger please" was used twice by co-workers. On one occasion Petitioner alleges she overheard a co-worker using the phrase "nigger please," referring to a friend he was talking to on the telephone. The other occasion Petitioner alleges a co-worker used the phrase "nigger please" in referring to Petitioner and told her "she was just like the rest of us niggers here." These alleged isolated incidents, even if they had been proven by a preponderance of the evidence, did not prove unlawful workplace harassment within the meaning of the applicable statutes, rules, policies or applicable case law.

22. Petitioner's claim of unlawful workplace harassment based upon religion, arguing that the doctrine of "separation of church and state" was violated by the Respondent State Agency. She presents evidence that her coworkers discussed Bible verses and one coworker passed out Bibles to a few co-workers and invited co-workers to a men's group worship service after work hours and off work premises. Petitioner's claim is not well placed. The 1st Amendment to the United States Constitution states, "Congress shall make no law respecting an establishment of religion, prohibiting the free exercise thereof." Over many years, the principle of "Separation of Church and State" has evolved as a guiding principle from the 1st Amendment to the U.S. Constitution. For many years case law has involved the issue of whether the church or religion has become impermissibly entangled in the State's business. Mandatory prayer in school, the placement of the 10 Commandments on Courthouse property, erection of religious crosses or Christmas scenes on publicly owned property are but a few examples of issues that have been litigated in our Courts. The undersigned can find no case law that interprets the "separation of church and state" principle to prohibit the occasional employee conduct relating to religion or faith issues brought to light by Petitioner's Unlawful workplace harassment complaint. It is ironic that the facts show Petitioner, herself, spoke with co-workers about the church she attends and invoked God's name at the end of some emails to co-workers. Based upon the facts presented, the undersigned cannot find as a matter of law that any work place rules were violated let alone the "separation" of church and state" principle. There is absolutely no evidence in the record that Respondent's personnel policies prohibited communications among consenting co-workers in the work place about their faith or religion, invitations to off premises, non work hours Bible study, and isolated sharing of bibles or other religious material. Prior to filing Petitioner Official Complaint on January 29, 2008, there is also no evidence of Petitioner complaining to anyone in authority either in writing or orally that she objected to or had any problems with her co-workers who openly discussed in the work place matters of faith or religion. Therefore, the undersigned finds as a matter of law that none of the conduct complained about by Petitioner relating to co-workers faith or religious discussions, one employee inviting consenting or non-objecting co-workers to Bible Study or giving them a Bible violates the 1st Amendment of the U.S. Constitution, the "separation of church and state" principle, or proves Petitioner was subjected to unlawful workplace harassment based upon religion within the meaning of applicable statutes, rules, policies or applicable case law.

23. As to Petitioner's retaliation claim, Petitioner must establish a *prima facie* case of retaliation by proving, by a preponderance of the evidence, that: (1) she engaged in a "protected activity;" (2) Respondent took an "adverse employment action" against her; and (3) a causal connection exists between the protected activity and the adverse employment action, i.e., that

"but for" the former, the latter would not have occurred. *Von Gunten v. Maryland*, 243 F.3d 858, 863 (4th Cir. 2001). (Emphasis added) Here, Petitioner has not established a *prima facie* case of retaliation. She alleges that Dale Suggs wanting her fired was "retaliation for the files" and "retaliation for going to Pyreddy." First of all, her claim of "retaliation for the files" does not make sense in fact or law. It does not relate to any protected activity. Her claim of "retaliation for going to Pyreddy" is without merit because the only matter Petitioner discussed with Pyreddy Reddy was her laptop crashing. This was not protected activity. Second, Petitioner did not suffer an adverse employment action. Petitioner was not fired. Third, because there was no protected activity and no adverse employment action, it follows that there was no causal connection between the two. The undersigned finds as a matter of law that Petitioner has failed to establish a prima facie case of retaliation, which requires proof of the three elements listed above. Petitioner has failed to establish any of the three required elements.

24. After carefully considering the testimony of the hearing, the many exhibits admitted into evidence, the legal arguments of both sides in this case, and after applying the traditional guiding principles for weighing testimony of all the witnesses, I find that the Petitioner has not met her burden of persuading the undersigned by the preponderance of the evidence that Petitioner was subjected to unlawful workplace harassment or a hostile work environment based on her race, sex, or religion, or that she was retaliated against.

DECISION

It is recommended that the State Personnel Commission find that Petitioner has not met her burden of proof by a preponderance of the evidence.

ORDER

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, North Carolina 27699-6714 in accordance with N.C. Gen. Stat. § 150B-36(b).

NOTICE

The Decision of the Administrative Law Judge is this Contested Case will be reviewed by the agency making the final decision according to standards found in N.C. G.S. §150B-36(b)(b1) and (b2). 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, in accordance with N.C.G.S.§ 150B-36(a).

The agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 7th day of June, 2010

Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

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Kathryn J Thomas
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ATTORNEYS FOR RESPONDENT

This the 8th day of June, 2010.

Anita M. Knight

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