

# ***NORTH CAROLINA REGISTER***

**VOLUME 25 • ISSUE 23 • Pages 2478 - 2539**

**June 01, 2011**

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**PUBLISHED BY**

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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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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2011 – December 2011

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
25:16	02/15/11	01/25/11	03/02/11	04/18/11	04/20/11	06/01/11	05/2012	11/12/11
25:17	03/01/11	02/08/11	03/16/11	05/02/11	05/20/11	07/01/11	05/2012	11/26/11
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25:19	04/01/11	03/11/11	04/16/11	05/31/11	06/20/11	08/01/11	05/2012	12/27/11
25:20	04/15/11	03/25/11	04/30/11	06/14/11	06/20/11	08/01/11	05/2012	01/10/12
25:21	05/02/11	04/08/11	05/17/11	07/01/11	07/20/11	09/01/11	05/2012	01/27/12
25:22	05/16/11	04/25/11	05/31/11	07/15/11	07/20/11	09/01/11	05/2012	02/10/12
25:23	06/01/11	05/10/11	06/16/11	08/01/11	08/22/11	10/01/11	05/2012	02/26/12
25:24	06/15/11	05/24/11	06/30/11	08/15/11	08/22/11	10/01/11	05/2012	03/11/12
26:01	07/01/11	06/10/11	07/16/11	08/30/11	09/20/11	11/01/11	05/2012	03/27/12
26:02	07/15/11	06/23/11	07/30/11	09/13/11	09/20/11	11/01/11	05/2012	04/10/12
26:03	08/01/11	07/11/11	08/16/11	09/30/11	10/20/11	12/01/11	05/2012	04/27/12
26:04	08/15/11	07/25/11	08/30/11	10/14/11	10/20/11	12/01/11	05/2012	05/11/12
26:05	09/01/11	08/11/11	09/16/11	10/31/11	11/21/11	01/01/12	05/2012	05/28/12
26:06	09/15/11	08/24/11	09/30/11	11/14/11	11/21/11	01/01/12	05/2012	06/11/12
26:07	10/03/11	09/12/11	10/18/11	12/02/11	12/20/11	02/01/12	05/2012	06/29/12
26:08	10/17/11	09/26/11	11/01/11	12/16/11	12/20/11	02/01/12	05/2012	07/13/12
26:09	11/01/11	10/11/11	11/16/11	01/03/12	01/20/12	03/01/12	05/2012	07/28/12
26:10	11/15/11	10/24/11	11/30/11	01/17/12	01/20/12	03/01/12	05/2012	08/11/12
26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

## **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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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on March 17, 2011.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****CULTURAL RESOURCES, DEPARTMENT OF**

<u>Library Collections</u>	07	NCAC	02H	.0102*	25:09 NCR
<u>Depository Requirements for State Agencies</u>	07	NCAC	02H	.0203*	25:09 NCR
<u>Circulation</u>	07	NCAC	02H	.0305*	25:09 NCR

**SOCIAL SERVICES COMMISSION**

<u>Goals and Strategies</u>	10A	NCAC	70B	.0105*	25:13 NCR
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**PUBLIC HEALTH, COMMISSION FOR**

<u>General Requirements for MSWLF Facilities</u>	15A	NCAC	13B	.1604*	25:04 NCR
<u>Operational Requirements for MSWLF Facilities</u>	15A	NCAC	13B	.1626*	25:04 NCR
<u>Assessment of Corrective Measures</u>	15A	NCAC	13B	.1635*	25:04 NCR

**WELL CONTRACTORS CERTIFICATION COMMISSION**

<u>Application for Certification</u>	15A	NCAC	27	.0301*	25:12 NCR
<u>Requirements of Certification</u>	15A	NCAC	27	.0702*	25:12 NCR

**DENTAL EXAMINERS, BOARD OF**

<u>Definitions</u>	21	NCAC	16A	.0101*	25:12 NCR
<u>Corporate or Limited Liability Company Name</u>	21	NCAC	16F	.0103*	24:23 NCR
<u>Dentists</u>	21	NCAC	16M	.0101	25:12 NCR

**MEDICAL BOARD**

<u>Fee</u>	21	NCAC	32F	.0103	25:10 NCR
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**MIDWIFERY JOINT COMMITTEE**

<u>Suspension of Authority to Expend Funds</u>	21	NCAC	33	.0108	25:13 NCR
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These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Definitions</u>	15A	NCAC	02H	.1002	25:10 NCR
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**OPTICIANS, STATE BOARD OF**

<u>Complaints, Preliminary Determinations</u>	21	NCAC	40	.0214*	25:10 NCR
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The following Rules were not subject to approval by the Rules Review Commission. (See S.L. 2006-246)

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Stormwater Discharges</u>	15A NCAC 02H .0126*	25:10 NCR
<u>Definitions</u>	15A NCAC 02H .0150	25:10 NCR
<u>Designation and Petition Process</u>	15A NCAC 02H .0151*	25:10 NCR
<u>Development in Urbanizing Areas</u>	15A NCAC 02H .0152*	25:10 NCR
<u>Program Implementation</u>	15A NCAC 02H .0153*	25:10 NCR
<u>Post-Construction Practices</u>	15A NCAC 02H .0154*	25:10 NCR
<u>Stormwater Requirements: Coastal Counties</u>	15A NCAC 02H .1005*	25:10 NCR
<u>Stormwater Management for Urbanizing Areas</u>	15A NCAC 02H .1014*	25:10 NCR
<u>Urbanizing Area Definitions</u>	15A NCAC 02H .1015	25:10 NCR
<u>Development in Urbanizing Areas</u>	15A NCAC 02H .1016*	25:10 NCR
<u>Post-Construction Practices</u>	15A NCAC 02H .1017*	25:10 NCR

**TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES**

**07 NCAC 02H .0102 LIBRARY COLLECTIONS**

- (a) The State Librarian shall determine the scope and focus of the Library's collections. Library staff and users may recommend materials for Library collections.
- (b) The Library shall collect and maintain resource collections in all relevant formats as budgets permit, including current and historical print and digital books, periodicals, newspapers, maps, state and federal documents, family histories, indexes, and bibliographies; historical newspapers, census reports, and primary source materials on microfilm; audiovisual materials in analog and digital formats and media; and online databases.

*History Note: Authority G.S. 125-2; 143B-10; Eff. May 1, 2011.*

**07 NCAC 02H .0203 DEPOSITORY REQUIREMENTS FOR STATE AGENCIES**

- (a) State agencies in the executive, legislative, and judicial branches of State government and State-funded boards, commissions, and institutions shall submit all State publications and documents defined in the G.S. 125-11.6(2) and 125-11.6(4) to the North Carolina State Publications Clearinghouse for the permanent depository collection, distribution to depository libraries, and public access.
- (b) State agencies in the executive, legislative, and judicial branches of State government and State-funded boards, commissions, and institutions shall submit 10 copies of documents and State publications as defined in G.S. 125-11.6(2) and 125-11.6(4) in tangible formats to the North Carolina State Publications Clearinghouse and one copy of publications published or distributed in electronic formats to the North Carolina State Publications Clearinghouse.

*History Note: Authority G.S. 125-2; 125-11.9; Eff. May 1, 2011.*

**07 NCAC 02H .0305 CIRCULATION**

- (a) The Library shall provide materials and playback equipment according to the Library of Congress lending policies.
- (b) The Library shall furnish deposit collections to libraries, hospitals, rest homes, and other institutions serving eligible visually and physically handicapped persons.
- (c) The following practices by any Library patron shall result in the suspension of Library services:
- (1) repeated failure to return materials within the borrowing period;
  - (2) willful and negligent damage to equipment or materials;
  - (3) unauthorized use of materials or equipment, such as loan to an ineligible person or modification of equipment; or
  - (4) repeated abusive verbal attacks or behavior toward Library staff that is offensive or threatening.

*History Note: Authority G.S. 125-2; 143B-10; Eff. May 1, 2011.*

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

**10A NCAC 70B .0105 GOALS AND STRATEGIES**

- (a) The goal for each fiscal year commencing with the fiscal year which begins on October 1, 2011 is that of all the children in foster care receiving Title IV-E Foster Care Assistance the number of children who remain in foster care in excess of 24 months will decrease by 1.5 percent.
- (b) The following steps shall be taken to achieve the goal stated in (a) of this Rule. The Department of Health and Human Services shall:

- (1) provide a preplacement preventive services program designed to help children remain with their families;
- (2) provide a post placement reunification services program designed to reunite children with their families in a timely fashion;
- (3) maintain a statewide information system;
- (4) insure that there is an individual case plan for each child in foster care;
- (5) insure that the status of each child is reviewed no less frequently than once every six months;
- (6) institute procedural safeguards to assure each child of a dispositional hearing in accordance with statutory requirements; and
- (7) institute procedural safeguards with respect to parental rights to be informed of changes in the child's placement and to visit the child.

*History Note:* Authority G.S. 108A-49; 143B-153; P.L. 96-272;

*Temporary Rule Eff. October 1, 1982, for a Period of 92 Days to Expire on January 1, 1983;*

*Eff. January 1, 1983;*

*Amended Eff. October 1, 2011; June 1, 1990.*

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

### 15A NCAC 02H .0126 STORMWATER DISCHARGES

(a) Stormwater discharges subject to NPDES permitting are addressed in this section, which incorporates, supplements and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are addressed in Section 02H .1000 entitled "Stormwater Management", but may also be addressed in sections dedicated to particular water classifications or circumstances.

(b) Facilities and Regulated Entities (REs), subject to NPDES permitting, shall be issued NPDES permits for stormwater discharges to surface waters, in accordance with this Rule, 15A NCAC 02H .0150 through 02H .0154, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.26, and 122.28 through 122.37 which are hereby incorporated by reference including any subsequent amendments. These federal regulations can be accessed on the world wide web at <http://www.gpoaccess.gov/cfr/index.html>. State regulations can be accessed on the world wide web at <http://www.ncoah.com/rules>.

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);

*Eff. November 1, 1986;*

*Amended Eff. August 3, 1992;*

*Temporary Amendment Eff. November 1, 2002;*

*Temporary Amendment returned to Agency by Rules Review Commission on January 22, 2004;*

*Amended Eff. Pending Legislative Review.*

### 15A NCAC 02H .0150 DEFINITIONS

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b), are incorporated herein by reference. State definitions for NPDES discharges are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .0103. As used in the NPDES stormwater program, the following additional definitions apply:

- (1) The definitions set out in 15A NCAC 02H .1002 (Definitions).
- (2) "Division" means the Division of Water Quality in the Department.
- (3) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (4) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (5) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (6) "Sensitive receiving waters" means any of the following:
  - (a) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with Paragraphs (d) and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).
  - (b) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. § 1531, et seq.), as amended.
  - (c) Waters for which the designated use, as described by the classification system set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the

- requirements of subsection (d) of 33 U.S.C. §§ 1313.
- (7) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
- (8) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

*History Note:* Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1);  
*Eff. Pending Legislative Review.*

**15A NCAC 02H .0151 DESIGNATION AND PETITION PROCESS**

(a) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this Paragraph.

- (1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32.
- (2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in Subparagraphs (2)(A) through (F) below:
- (A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
- (B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:

- (i) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact; or
- (ii) Serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.
- (C) Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.
- (D) Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:
- (i) The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years;
- (ii) The public entity has a projected population growth rate that exceeds 1.3 times the projected State



- population growth rate for the next 10 years;
    - (iii) The public entity has an actual population increase that exceeds 15 percent of its previous population for the previous two years;
    - (iv) The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality; or
    - (v) The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
  - (E) Notice of designation. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.
  - (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (3) Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (b) Petition Process. A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:
  - (1) Connected discharge petition. An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).
  - (2) Adverse impact petition. Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

- (A) Petition review. The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:
  - (i) The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation;
  - (ii) The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to receiving waters;
  - (iii) The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.
- (B) Types of evidence for required showing. Petitioners may make the required showing by providing to the Commission the following information:
  - (i) Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities;
  - (ii) Scientific or technical literature that supports the sampling methods;
  - (iii) Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses;
  - (iv) A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality;
  - (v) For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded;
  - (vi) For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.
- (C) Water quality protection program offset. If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the

water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.

- (3) Petition administration. The Commission shall process petitions in the following manner:
  - (A) The Commission shall only accept petitions submitted on Department forms.
  - (B) A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.
  - (C) The Commission shall evaluate only complete petitions. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.
  - (D) The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.
  - (E) The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.
  - (F) The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public

hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.

- (G) An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.

- (i) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

- (ii) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System

(NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.

- (H) The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(c) Exemption. A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

(d) Waiver. The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e).

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. Pending Legislative Review.*

**15A NCAC 02H .0152 DEVELOPMENT IN URBANIZING AREAS**

(a) Development in Unincorporated Areas of Counties.

- (1) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Rule 02H .0154 of this Section beginning 1 July 2007 if the development is located in:

- (A) An area that is designated as an urbanized area under the most recent federal decennial census.
- (B) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:
  - (i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
  - (ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and
  - (iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (C) An area delineated pursuant to Item (2) of this Paragraph.
- (D) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in Subparagraph (1)(B) of this Paragraph; (iii) the area delineated pursuant to Item (2) of this Paragraph; (iv) the jurisdiction of a regulated entity designated pursuant to Rule 02H .0151(a) of this Section; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Rule 02H .0151(b) of this Section; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed 75 percent of the total geographic area of the county. For purposes of this Paragraph, the stormwater programs administered by the Division are:

- (i) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
  - (ii) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
  - (iii) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
  - (iv) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
  - (v) High Quality Waters (HQW) – 15A NCAC 02H .1006;
  - (vi) Outstanding Resource Waters (ORW) – 15A NCAC 02H .1007;
  - (vii) The Coastal Stormwater Program – 15A NCAC 02H .1005;
  - (viii) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
  - (ix) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258;
  - (x) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251; and
  - (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
- (E) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.
- (2) Delineation Process. The Commission shall delineate regulated coverage areas as provided in Subparagraphs (2)(A) through (F) below:
- (A) Schedule. The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
  - (B) Potential candidate coverage areas. A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Rule 02H .0151(a) of this Section that:
    - (i) Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
    - (ii) Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and
    - (iii) Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
  - (C) Identification of candidate coverage areas. The Commission shall identify an area within a potential candidate coverage area described in Subparagraph (2)(B)(ii) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
  - (D) Notice and comment on candidacy. The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.
  - (E) Delineation of regulated coverage areas. After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the

discharge of stormwater within or from the candidate coverage area either:

- (i) Adversely impacts water quality; or
- (ii) Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).

(F) Notice of delineation. The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

- (3) Except as provided in this Paragraph and 15A NCAC 02H .1016(d), the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).

(b) Development in Non-Phase II Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in Subparagraphs (1)(D) and (E) of Paragraph (a), that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Rule 02H .0151(a) of this Section of this act beginning 1 July 2007. The Commission shall administer and enforce the

standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);*

*Eff. Pending Legislative Review.*

#### **15A NCAC 02H .0153 PROGRAM IMPLEMENTATION**

(a) Permit Standards. To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b). The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) shall be conducted as provided in Rule .0154(a) of this Section. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

(b) Implementation Schedule. The requirements of this act shall be implemented as follows:

- (1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Rules .0151(a) and (b), and .0152 of this Section.
- (2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.
- (3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.
- (4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

(c) Federal and State Projects. The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular project, then the project is subject to the stormwater management requirements of this Rule as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this Rule.

(d) General Permit. The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System

(NPDES) general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) shall require a permittee to meet the standards set out in Rule .0154(a) of this Section but shall not impose any requirement on the permittee that exceeds the standards set out in Rule .0154(a) of this Section. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this Paragraph.

(e) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);*  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES**

##### **(a) Requirements for Post-Construction Practices.**

- (1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:

(A) Low Density Option. A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of 15A NCAC 02H .1005. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment

devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

- (B) High Density Option. A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of 15A NCAC 2H .1005. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:

- (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (ii) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
- (iii) Remove an 85 percent average annual amount of Total Suspended Solids.
- (iv) Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).
- (v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.

- (2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For

- purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.
- (3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
  - (4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.
  - (5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
  - (6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:
    - (A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
    - (B) Implement a program to control the sources of fecal coliform to the maximum extent practicable,
- including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
- (C) Meet the requirements of 15A NCAC 2H .1005(a)(2).
- (7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:
    - (A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
    - (B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
  - (8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:
    - (A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
    - (B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.
  - (9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:
    - (A) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
    - (B) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
    - (C) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
    - (D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
    - (E) Freshwater High Quality Waters (HQW) – 15A NCAC 02H .1006;



- (F) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 02H .1007;
  - (G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
  - (H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258; or
  - (I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
- (10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5).
- (11) Nothing in this Paragraph shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.
- (b) Exclusions from Post-Construction Practices. The post-construction practices required by Paragraph (a) of this Rule shall not apply to any of the following:
- (1) Development in an area where the requirements of Paragraph (a) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
    - (A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417;
    - (B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5);
    - (C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a) that shows:
      - (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
      - (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.
  - (D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a); or
  - (E) A vested right to the development pursuant to common law.
- (2) Redevelopment as defined in Rule .0150 of this Section.
- (c) Exceptions. The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:
- (1) An exception may be granted if the application meets all of the following criteria:
    - (A) Unnecessary hardships would result from strict application of the act;
    - (B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property;
    - (C) The hardships did not result from actions taken by the petitioner; and
    - (D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.
  - (2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:
    - (A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize

disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

- (B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.
- (4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.
- (5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);  
*Eff. Pending Legislative Review.*

**15A NCAC 02H .1002 DEFINITIONS**

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes

of North Carolina, as amended. Other words and phrases used in this Section are defined as follows:

- (1) "Built-upon Area" means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts "Built upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (2) "CAMA Major Development Permits" mean those permits or revised permits required by the Coastal Resources Commission according to 15A NCAC 7J Sections .0100 and .0200.
- (3) "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.
- (4) "Coastal Counties" include Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (5) "Curb Outlet System" means curb and gutter installed in a development which meets low density criteria [Rule .1003(d)(1) of this Section] with breaks in the curb or other outlets used to convey stormwater runoff to grassed swales or vegetated or natural areas and designed in accordance with Rule .1008(g) of this Section.
- (6) "Development" means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (7) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (8) "Forebay" means a device located at the head of a wet detention pond to capture incoming sediment before it reaches the main portion of the pond. The forebay is typically an excavated settling basin or a section separated by a low weir.
- (9) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) authorizing a category of similar activities or discharges.
- (10) "Infiltration Systems" mean stormwater control systems designed to allow runoff to pass or move (infiltrate/exfiltrate) into the soil.
- (11) "Notice of Intent" means a written notification to the Division that an activity or discharge is

- intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (12) "Off-site Stormwater Systems" mean stormwater management systems that are located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites. These systems shall designate responsible parties for operation and maintenance and may be owned and operated as a duly licensed utility or by a local government.
- (13) "On-site Stormwater Systems" mean the systems necessary to control stormwater within an individual development project and located within the project boundaries.
- (14) "Redevelopment" means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development (stormwater controls shall not be allowed where otherwise prohibited).
- (15) "Seasonal High Water Table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil that results from mineral leaching.
- (16) "Sedimentation/Erosion Control Plan" means any plan, amended plan or revision to an approved plan submitted to the Division of Land Resources or delegated authority in accordance with G.S. 113A-57.
- (17) "Stormwater" is defined in G.S. 143, Article 21.
- (18) "Stormwater Collection System" means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule .1003(d)(1) in this Section.
- (19) "10 Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- (20) "Water Dependent Structures" means a structure for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and boat storage areas are not water dependent uses.
- (21) "Wet Detention Pond" means a structure that provides for the storage and control of runoff and includes a designed and maintained permanent pool volume.
- (22) "Vegetative Buffer" means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities. The width of the buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high water line of tidal waters, perpendicular to the shoreline.
- (23) "Vegetative Filter" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and which provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for in the direction of stormwater flow.
- (24) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (25) "BMP" means Best Management Practice.
- (26) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.
- (27) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).
- (28) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

*History Note: Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); Eff. January 1, 1988; Amended Eff. December 1, 1995; September 1, 1995; Amended Eff. Pending Legislative Review.*

# 15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES

(a) Requirements for Certain Nonresidential and Residential Development in the Coastal Counties. All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in Items (1), (2), and (3) below. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006.

- (1) Development Near Outstanding Resource Waters (ORW). Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding Resource Waters (ORW) shall meet the requirements of Rule .1007 of the Section and shall be permitted as follows:

(A) Low Density Option. Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:

- (i) The development has a built upon area of 12 percent or less. A development project with an overall density at or below the low density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.
- (ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The

conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.

- (iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.
- (B) High Density Option. Development shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:
  - (i) The development has a built upon area of greater than 12 percent.
  - (ii) The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H .0126.
  - (iii) The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative low impact development (LID) stormwater management systems designed in accordance with Rule .1008 of this Section to control and treat the greater of, runoff from all surfaces generated by one and one-half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the predevelopment and postdevelopment conditions for a one-year, 24-hour storm. Wet detention ponds may be used as a stormwater control system to meet the requirements of this Subparagraph (1)(B)(iii), provided that the stormwater control system fully complies with the requirements of Subparagraph (1)(B). If a wet detention pond is used within one-half mile of Class SA waters, installation of a stormwater best management practice in

- series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Alternatives as described in Rule .1008(h) of this Section may also be approved if they meet the requirements of Subparagraph (1)(B).
  - (iv) Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter designed in accordance with Rule .1008 of this Section with a minimum length of 50 feet measured from mean high water of Class SA waters.
  - (v) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.
- (C) Stormwater Discharges Prohibited. All development activities, including both low and high density projects, shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:
  - (i) Infiltration of the stormwater runoff from the design storm as described in Subparagraph (1)(B)(iii).
  - (ii) Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in Subparagraph (1)(B)(iii). Notwithstanding the other requirements of this Rule, the infiltration mandated in this Subparagraph (1)(C)(ii) does not require a minimum separation from the seasonal high-water table.
- (iii) The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of Subparagraph (1)(C).
- (D) Limitation on the Density of Development. Development shall be limited to a built upon area of 25 percent or less.
- (2) Development Near Class SA Waters. Development activities within one-half mile of and draining to those waters classified by the Commission as Class SA waters or within one-half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of Subparagraphs (1)(A), (B), and (C). The extent of Class SA waters is limited to those waters that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division's "Identification Methods for the Origin of Intermittent and Perennial Streams" prepared pursuant to Session Law 2001-404.
- (3) Other Coastal Development. Development activities within the Coastal Counties except those areas described in Items (1) and (2) of this Paragraph shall meet all of the following requirements:
  - (A) Low-Density Option. Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:
    - (i) The development has a built upon area of 24 percent or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low-density development and locates the higher density in upland

areas and away from surface waters and drainageways to the maximum extent practicable.

- (ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.
- (iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(B) High-Density Option. Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:

- (i) The development has a built upon area of greater than 24 percent.
- (ii) The development uses control systems that are any combination of infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative stormwater management systems designed in accordance with Rule .1008 of this Section.
- (iii) Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall.
- (iv) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(b) Requirements for Limited Residential Development in Coastal Counties. For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than 12 percent, that will add more than 10,000 square feet of built upon area, and that does not require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded restrictions or protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in

order to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

- (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- (2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- (3) Install any other stormwater best management practice that meets the requirements of Rule .1008 of this Section to control and treat the stormwater runoff from all built upon areas of the site from the first one and one-half inches of rain.

(c) Requirements for Structural Stormwater Controls. Structural stormwater controls required under this Rule shall meet all of the following requirements:

- (1) Remove an 85 percent average annual amount of Total Suspended Solids.
- (2) For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (3) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
- (4) Meet the General Engineering Design Criteria set forth in Rule .1008(c) of this Section.
- (5) For structural stormwater controls that require separation from the seasonal high water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal high water table is not practicable, the Division may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in Rule .1008(h) of this Section. No minimum separation from the seasonal high water table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.

(d) Wetlands. Developments regulated by this Rule that have wetlands inside of, or adjacent to, the development must meet the following requirements:

- (1) Areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.
  - (2) Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.
- (e) **Vegetative Buffer.** Developments permitted under Paragraph (a) shall contain a 50 foot wide vegetative buffer, as defined in Rule .1002(22) of this Section, for new development activities and a 30 foot wide vegetative buffer for redevelopment activities. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. The Division may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.
- (f) **Exemptions From Vegetative Buffer Requirements.** The following activities are exempt from the vegetative buffer requirements of Paragraph (e) of this Rule:
- (1) Development in urban waterfronts that meets the requirements of 15A NCAC 07H .0209(g),
  - (2) Development in a new urban waterfront area that meets the requirements of S.L. 2004-117,
  - (3) Those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC 07H .0209(d)(10)(H),
  - (4) Development of upland marinas that have received or are required to secure a CAMA Major Development Permit.
- (g) **Compliance with Other Rules.** In addition to the requirements specified in this section, activities regulated under this section must also comply with any requirements of any other applicable law or rule.
- (h) **Exclusions.** The amended requirements of this Rule shall not apply to any of the following:
- (1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.
  - (2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of this Rule that were effective at the time of the original issuance of the following authorizations:
    - (A) State Stormwater Permit issued under the provisions of this Rule.
    - (B) Stormwater Certification issued pursuant to Rule .1000 of this Section prior to 1 December 1995.
    - (C) A CAMA Major Development Permit.
    - (D) 401 Certification that contains an approved Stormwater Management Plan.
    - (E) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
    - (F) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
    - (G) A phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160A-385.1 that shows:
      - (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.
      - (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.
      - (iii) A vested right to the development pursuant to common law.
    - (H) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.
    - (I) Development activities for which a complete Stormwater Permit Application has been accepted by the Division prior to October 1, 2008, shall be regulated by the provisions and requirements of this Rule that were effective at the time that this application was accepted as complete by the Division. For purposes of this Rule, a Stormwater Permit Application is deemed accepted as complete by the Division when the application is assigned a permit

number in the Division's Basinwide Information Management System.

- (J) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of this Rule that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this Rule, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.

- (K) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this Rule.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);*  
*Eff. September 1, 1995;*  
*This Rule is superseded by S.L. 2008-211 Eff. October 1, 2008;*  
*Amended Eff. Pending Legislative Review.*

#### **15A NCAC 02H .1014 STORMWATER MANAGEMENT FOR URBANIZING AREAS**

(a) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in Section .0100 entitled "Point Source Discharges to the Surface Waters," which incorporates, supplements and elaborates on the federal rules for stormwater NPDES discharges.

(b) Other stormwater control requirements are addressed in this Section but may also be addressed in sections dedicated to particular water classifications or circumstances. Projects located in urbanizing areas, which are not subject to NPDES permitting, must obtain permits in accordance with Rules .1014 through .1017 of this Section. For post-construction requirements, a program will be deemed compliant for the areas that satisfy Rule .1017(a)(9) of this Section.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);*  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02H .1015 URBANIZING AREA**

##### **DEFINITIONS**

The definition of any word or phrase for Urbanizing Areas shall be as follows:

- (1) The definitions set out in 40 Code of Federal Regulations § 122.2 and § 122.26(b) (1 July 2003 Edition).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) The definitions set out in 15A NCAC 02H .0103.
- (4) The definitions set out in Rule .1002 of this Section, except for the definitions of "Development" and "Redevelopment", which are defined below.
- (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (6) "BMP" means Best Management Practice.
- (7) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (8) "Division" means the Division of Water Quality in the Department.
- (9) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by G.S. 160A-19, or a county may exercise the powers authorized by G.S. 153A-18.
- (10) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (11) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.
- (12) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (13) "Sensitive receiving waters" means any of the following:
- (14) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 02B .0101.



- (15) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
- (16) Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 02B .0101, have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.
- (17) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300, et seq.
- (18) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.
- (ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
- (iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (C) An area delineated pursuant to Item (2) of this Paragraph.
- (D) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in Subparagraph (1)(B) of this Paragraph; (iii) the area delineated pursuant to Item (2) of this Paragraph; (iv) the jurisdiction of a regulated entity designated pursuant to Paragraph (c) of this Rule; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to 15A NCAC 02H .0151(b); and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed 75 percent of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:
  - (i) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
  - (ii) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
  - (iii) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
  - (iv) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
  - (v) High Quality Waters (HQW) – Rule .1006 of this Section;
  - (vi) Outstanding Resource Waters (ORW) – Rule .1007 of this Section;

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);*  
*Eff. Pending Legislative Review.*

**15A NCAC 02H .1016 DEVELOPMENT IN URBANIZING AREAS**

**(a) Development in Unincorporated Areas of Counties.**

- (1) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Rule .1018 of this Section beginning 1 July 2007 if the development is located in:
  - (A) An area that is designated as an urbanized area under the most recent federal decennial census.
  - (B) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:
    - (i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

- (vii) The Coastal Stormwater Program – Rule .1005 of this Section;
  - (viii) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
  - (ix) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258;
  - (x) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251; and
  - (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
- (E) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.
- (2) Delineation Process. The Commission shall delineate regulated coverage areas as follows:
- (A) Schedule: The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
  - (B) Potential candidate coverage areas. A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Items (2) and (3) of Paragraph (c) that:
    - (i) Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
    - (ii) Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and
    - (iii) Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (C) Identification of candidate coverage areas. The Commission shall identify an area within a potential candidate coverage area described in Subparagraph (2)(B) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
- (D) Notice and comment on candidacy. The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.
- (E) Delineation of regulated coverage areas. After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:
- (i) Adversely impacts water quality.
  - (ii) Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of

the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).

(F) Notice of delineation. The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

(3) Except as provided in this Item (3) of this Paragraph and Paragraph (d) of this Rule, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Paragraph (d) of this Rule.

(b) Development in Non-Phase II Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in Subparagraphs (2)(D) and (E) of Paragraph (a), that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Rule .1018 of this Section beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Paragraph (d) of this Rule.

(c) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.

(1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition).

(2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as follows:

(A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

(B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:

(i) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

(ii) Serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.

(C) Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.

(D) Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The

Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:

- (i) The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.
- (ii) The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.
- (iii) The public entity has an actual population increase that exceeds 15 percent of its previous population for the previous two years.
- (iv) The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.
- (v) The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).

- (E) Notice of designation. The Commission shall provide written notice to each public entity of its

designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.

- (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

- (3) Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(d) Delegation. A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Paragraphs (a) and (b) of this Rule may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of Rule .1018 of this Section. Two or more public entities are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly

recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of Rule .1018 of this Section. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);*  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02H .1017 POST-CONSTRUCTION PRACTICES**

##### **(a) Requirements for Post-Construction Practices.**

- (1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:

(A) Low Density Option. A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment

devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

- (B) High Density Option. A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:

- (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (ii) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
- (iii) Remove an 85 percent average annual amount of Total Suspended Solids.
- (iv) Meet the General Engineering Design Criteria set out in Rule .1008(c) of this Section.
- (v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.

- (2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For

- purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.
- (3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
  - (4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.
  - (5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
  - (6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:
    - (A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
    - (B) Implement a program to control the sources of fecal coliform to the maximum extent practicable,
- including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
- (C) Meet the requirements of Rule .1005(a)(2) of this Section.
- (7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:
    - (A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
    - (B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
  - (8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:
    - (A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
    - (B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.
  - (9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:
    - (A) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
    - (B) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
    - (C) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
    - (D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
    - (E) Freshwater High Quality Waters (HQW) – Rule .1006 of this Section;

- (F) Freshwater Outstanding Resource Waters (ORW) – Rule .1007 of this Section;
  - (G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
  - (H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258; or
  - (I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
- (10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).
- (11) Nothing in this Paragraph (a) shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.
- (b) Exclusions from Post-Construction Practices. The post-construction practices required by Paragraph (a) of this act shall not apply to any of the following:
- (1) Development in an area where the requirements of Paragraph (a) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
    - (A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417;
    - (B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5);
    - (C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a), that shows:
      - (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
      - (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.
  - (D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a); or
  - (E) A vested right to the development pursuant to common law.
- (2) Redevelopment as defined in Rule .1015 of this Section.
- (c) Exceptions. The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:
- (1) An exception may be granted if the application meets all of the following criteria:
    - (A) Unnecessary hardships would result from strict application of the act;
    - (B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property;
    - (C) The hardships did not result from actions taken by the petitioner; and
    - (D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.
  - (2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:
    - (A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as

it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

- (B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.
- (4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.
- (5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

#### 15A NCAC 13B .1604 GENERAL REQUIREMENTS FOR MSWLF FACILITIES

(a) Applicability. Permits issued by the Division for new and existing MSWLF facilities are subject to the 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 the provisions of this Paragraph.

- (1) Division Approved Plan. Permits issued subsequent to March 9, 1993 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 are 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 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.
- (2) Permit provisions. All disposal facilities shall conform to the conditions set forth in the permit and the following provisions. Nothing in this Subparagraph shall be construed to limit the conditions the Division may otherwise impose on a permit:
  - (A) Duty to Comply. The permittee shall comply with all conditions of the permit.
  - (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,

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);  
Eff. Pending Legislative Review.

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- 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 is not 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. A 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. The Commission does not intend for a permit to convey any property rights of any sort or any exclusive privilege. A 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 the approval. In determining whether to approve construction, the division shall consider length of time elapsed since issuance of permit, any changes in applicable state and federal statutes and rules since issuance of the permit, and any changes in financial qualifications or environmental compliance status of the holder of the permit in accordance with G.S. 130A-295.2 and G.S. 130A-295.3.
- (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.

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| (iii) | Records of monitoring information shall include:  |       | submit such facts or information.   |
|       | (I) The date, place, and time of sampling or measurements;  | (M)   | Survey for Compliance.  |
|       | (II) The individual(s) who performed the sampling or measurements;  | (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. |
|       | (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.  | (ii)  | A survey may be required by the Division:   |
| (L)   | Reporting Requirements.   | (I)   | If there is reason to believe that operations are being conducted in a manner that deviates from the Division approved plans; or  |
|       | (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)  | As a periodic verification (but no more than annual) that operations are being conducted in accordance with the approved plans.   |
|       | (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 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 and Natural Resources. | (iii) | If required by G.S. 89C, 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. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, by resolution dated March 31, 2011 that preparation of survey pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]   |
|       | (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   | (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.
- (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.
- The owner or operator shall establish a schedule for permit renewal that demonstrates compliance with Rule .1603 of this Section.
- The owner or operator shall place the demonstration in the operating record and submit a copy to the Division for approval.

*History Note: Authority G.S. 130A-294;  
Eff. October 9, 1993;  
Amended Eff. May 1, 2011.*

**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, including 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.
- (c) Spoiled foods, animal carcasses, abattoir waste, hatchery waste, and other animal waste delivered to the disposal site shall be covered upon receipt.

- (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 upon receipt, with soil or waste, 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 designated, with signage, 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; or
  - (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, in accordance with 40 CFR 258.20:
- (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, 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, in accordance with 40 CFR Part 258.21. 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 Sub-item (4)(a) of this Rule are met. The type and frequency of monitoring must be determined based on the following factors:
    - (i) Soil conditions;
    - (ii) The hydrogeologic conditions surrounding the facility;
    - (iii) The hydraulic conditions surrounding the facility; and
    - (iv) The location of facility structures and property boundaries.
 The minimum frequency of monitoring shall be quarterly.
  - (c) If methane gas levels exceeding the limits specified in Sub-item (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, as provided in 40 CFR Part 258.23;
  - (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.
- Based on the need for an extension demonstrated by the operator, the Division may establish alternative schedules for demonstrating compliance with Sub-item (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, as provided for in 40 CFR Part 258.24, 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 provide fire-fighting services as soon as 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 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.
  - (e) Signs providing information on dumping procedures, the hours during which the site is open for public use, the permit number and the 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 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 within a lined disposal cell or leachate collection and storage system. All leachate shall be treated, as required by the receiving facility, prior to discharge. An NPDES permit may be required prior to the discharge of leachate to surface waters, as provided by 40 CFR Parts 258.26 and 258.27.
  - (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 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 of the unit, 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 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 including 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) 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 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.

*History Note: Authority G.S. 130A-294;  
Eff. October 9, 1993;  
Amended Eff. May 1, 2011.*

**15A NCAC 13B .1635 ASSESSMENT OF CORRECTIVE MEASURES**

- (a) Within 90 days of finding that any of the constituents listed in Appendix II exceeded the ground-water protection standards, the owner or operator shall initiate assessment of corrective action measures. Such an assessment must be completed within 120 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, as provided for in 40 CFR 258:
  - (1) The performance, reliability, ease of implementation, and potential impacts of 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 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 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:
- (1) a legal advertisement placed in a newspaper or newspapers serving the county; and
  - (2) provision of a news release to at least one newspaper, one radio station, and one television station serving the county.

*History Note: Authority G.S. 130A-294;  
Eff. October 9, 1993;  
Amended Eff. May 1, 2011.*

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**15A NCAC 27 .0301 APPLICATION FOR CERTIFICATION**

- (a) The Commission shall accept applications for certification as a well contractor from any person who is at least 18 years of age and whose application meets all the following conditions:
  - (1) Each application shall be submitted on current forms provided by the Commission, which are designed for requesting certification as a well contractor by way of examination or reexamination and must be completed and submitted with the appropriate fee(s) to the Commission office;
  - (2) Incomplete applications and applications not accompanied by the appropriate fee(s) and attachments shall not be processed and shall be returned to the applicant;
  - (3) Each application shall contain proof of experience as provided in Paragraph (d) of this Rule and proof of completion of coursework as provided in Paragraph (e) of this Rule if applicable; and
  - (4) Except for those applications where renewal of certification is requested, each application shall include a request for the well contractor examination.
- (b) The Commission shall not schedule an applicant to take the required examination until the application has been reviewed

and the applicant has met all other conditions for certification. The applicant must pass the examination within three consecutive attempts or within a one year period of time after application submittal, whichever expires first, or a new application shall be required. An applicant who has failed the examination after three consecutive attempts shall be required to obtain eight CEUs prior to resubmittal of an application for certification.

(c) A certification shall not be issued until all applicable fees have been received, the applicant passes the field observation for Level A if required, the applicant passes the required written examination, and a photograph is obtained of the applicant by a representative of the Commission.

(d) Proof of full-time equivalent experience meeting the requirements specified in Rule .0702 of this Chapter in level specific well contractor activities obtained within seven years prior to application submittal or previous certification by examination at a comparable or higher level, shall be demonstrated by providing one of the following:

- (1) An affidavit on a form provided by the Commission from at least one currently North Carolina certified well contractor who has not committed any violation of either 15A NCAC 02C or this Chapter, or any county well ordinance within the past two years, attesting that the applicant has been working in well contractor activities under the supervision of a certified well contractor of the desired level or higher for a minimum of the required quantity of experience and submits appropriate payroll records as proof;
- (2) Proof of previous certification by examination as a well contractor in North Carolina at a comparable or higher level;
- (3) Proof of individual certification as a well contractor in another state with comparable licensing or certification requirements for a minimum of the required quantity of experience for the level being sought and of activities appropriate to the level being sought and submits appropriate payroll records as proof. A letter of good standing from that state's well contractor licensing or certification organization must be included showing the applicant has not violated well construction or licensing rules of that State in the past five years; or
- (4) Any other specific proof of working in well contractor activities for a minimum of the required quantity of experience. At a minimum, the proof submitted shall demonstrate that the applicant has received a level of instruction in well construction techniques and practices appropriate for the level being sought.

(e) The Commission shall approve a course of study whose educational materials and program meets technical aspects of well construction. The course of study shall provide needs-to-know education for the level being sought. The experience

requirements for an applicant may be reduced up to three months and the Level A field observation may be waived for successful completion of the course.

*History Note: Authority G.S. 87-98.5; 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440; Temporary Adoption Eff. December 15, 1998; Eff. August 1, 2000; Codifier determined that findings did not meet criteria for temporary rule on July 12, 2002; Temporary Adoption Eff. September 12, 2002; Amended Eff. May 1, 2011; May 1, 2008; August 1, 2004.*

## **15A NCAC 27 .0702 REQUIREMENTS OF CERTIFICATION**

(a) Level A- To obtain Level A certification, an applicant must:

- (1) Submit proof of 18 months of level specific well contractor experience as specified in Rule .0110 of this Chapter or submit a combination of proof of successful completion of approved training as specified in Paragraph (e) of Rule .0301 with proof of level specific well contractor experience;
- (2) Satisfactorily complete the well contractor certification field observation or submit proof of successful completion of approved training as specified in Paragraph (e) of Rule .0301; and then
- (3) Pass the Level A written examination.

(b) Level B- To obtain Level B certification, an applicant must:

- (1) Submit proof of 12 months experience in level specific well contractor activities as specified in Rule .0110 of this Chapter or submit a combination of proof of successful completion of approved training as specified in Paragraph (e) of Rule .0301 with proof of level specific well contractor experience; and
- (2) Pass the Level B written examination.

(c) Level C- To obtain Level C certification, an applicant must:

- (1) Submit proof of six months experience in level specific well contractor activities as specified in Rule .0110 of this Chapter or submit a combination of proof of successful completion of approved training as specified in Paragraph (e) of Rule .0301 with proof of level specific well contractor experience; and
- (2) Pass the Level C written examination.

(d) Level D- To obtain Level D certification, an applicant must:

- (1) Submit proof of six months experience in level specific well contractor activities as specified in Rule .0110 of this Chapter or submit a combination of proof of successful completion of approved training as specified in Paragraph (e) of Rule .0301 with proof of level specific well contractor experience; and
- (2) Pass the Level D written examination.

(e) If a certificate issued under this Section is not renewed under G.S. 87-98.7, or is revoked, the well contractor must apply for certification by examination in order to be recertified.



*History Note:* Authority G.S. 87-98.5; 143B-301.11;  
*Eff. May 1, 2008;*  
*Amended Eff. May 1, 2011.*

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

### **CHAPTER 16 – BOARD OF DENTAL EXAMINERS**

#### **21 NCAC 16A .0101 DEFINITIONS**

As used in this Chapter:

- (1) "Applicant" means a person applying for any license or permit issued by the Board;
- (2) "Board" means the North Carolina State Board of Dental Examiners;
- (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry or dental hygiene in North Carolina;
- (4) "Current license" means a license that is renewed by the licensing board as required;
- (5) "CPR certification" means that the licensee has successfully completed a CPR course that meets American Red Cross or American Heart Association standards for certification and that provides manikin testing on the subjects of cardio-pulmonary resuscitation. The course must also cover the use of an automatic external defibrillator, unconscious and conscious choking and rescue breathing, provided that the foregoing requirements shall not be interpreted in any way that violates the Americans with Disabilities Act. The manikin testing must be provided by an instructor who is physically present with the students;
- (6) "Internship" means practice in an educational training program. Internship does not mean practice under an intern permit while holding an unrestricted general dental or dental specialty license issued by a state, U.S. territory or the District of Columbia; and
- (7) "Unrestricted license" means a license that is not under suspension or inactivation, or subject to the terms of a consent order or other disciplinary action imposed by the jurisdiction that issued the license, or limited by supervision or location requirements.

*History Note:* Authority G.S. 90-26; 90-28; 90-29(a); 90-29.3; 90-29.4; 90-29.5; 90-30; 90-37.1; 90-43; 90-48; 90-224; 90-224.1; 90-226;  
*Eff. September 3, 1976;*  
*Readopted Eff. September 26, 1977;*  
*Amended Eff. May 1, 1991; May 1, 1989; September 1, 1988; October 1, 1986;*  
*Temporary Amendment Eff. January 1, 2003;*  
*Amended Eff. May 1, 2011; January 1, 2004.*

#### **21 NCAC 16F .0103 CORPORATE OR LIMITED LIABILITY COMPANY NAME**

Corporation or limited liability company designations shall consist only of the use of the words "Professional Association," "P.A.," "Professional Corporation," or "P.C." for professional corporations and "Professional Limited Liability Company", or "P.L.L.C." for professional limited liability companies.

All names shall also contain only the name or surname of one or more of the shareholders or members and may include the words:

- (1) "Associate(s);" "D.D.S.;" "D.M.D.;" and
- (2) the geographic location of the company.

The company name may not be false, deceptive or misleading.

*History Note:* Authority G.S. 55B-5; 57C-2-01; 90-48;  
*Eff. September 3, 1976;*  
*Readopted Eff. September 26, 1977;*  
*Amended Eff. May 1, 2011; August 1, 2009; August 1, 2002; April 1, 1994; May 1, 1989.*

#### **21 NCAC 16M .0101 DENTISTS**

(a) The following fees shall be payable to the Board:

- |      |   |           |
|------|---|-----------|
| (1)  | Application for general dentistry license   | \$ 395.00 |
| (2)  | Renewal of general dentistry license  | \$ 289.00 |
| (3)  | Application for instructor's license or renewal thereof                                       | \$ 140.00 |
| (4)  | Application for provisional license   | \$ 100.00 |
| (5)  | Application for intern permit or renewal thereof  | \$ 150.00 |
| (6)  | Certificate of license to a resident dentist desiring to change to another state or territory | \$ 25.00  |
| (7)  | Duplicate license   | \$ 25.00  |
| (8)  | Reinstatement of license  | \$ 225.00 |
| (9)  | Fee for late renewal of any license or permit   | \$ 50.00  |
| (10) | Application for license by credentials  | \$2000.00 |
| (11) | Application for limited volunteer dental license  | \$ 100.00 |
| (12) | Renewal of limited volunteer dental license   | \$ 25.00  |
| (13) | Board conducted examination processing fee  | \$ 805.00 |

(b) Each dentist renewing a license to practice dentistry in North Carolina shall be assessed a fee of forty dollars (\$40.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

*History Note:* Authority G.S. 90-28; 90-39; 90-48; 150B-19(5);  
*Eff. September 3, 1976;*  
*Readopted Eff. September 26, 1977;*  
*Amended Eff. August 1, 1998; December 1, 1994; May 1, 1989; March 1, 1988; May 1, 1987;*  
*Temporary Amendment Eff. October 28, 1998;*  
*Amended Eff. August 1, 2000;*

*Temporary Amendment Eff. January 1, 2003;  
Amended Eff. May 1, 2011; April 1, 2006; March 1, 2004;  
January 1, 2004; April 1, 2003.*

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## **CHAPTER 32 – MEDICAL BOARD**

### **21 NCAC 32F .0103 FEE**

*History Note: Authority G.S. 90-12; 90-15.1;  
Eff. February 1, 1976;  
Amended Eff. December 1, 1995; October 1, 1994; November 1, 1991; May 1, 1989;  
Temporary Amendment Eff. November 25, 1996;  
Temporary Amendment Eff. November 25, 1996 expired on September 12, 1997;  
Temporary Amendment Eff. January 1, 1998;  
Amended Eff. April 1, 2005; May 1, 1999;  
Repealed Eff. May 1, 2011.*

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## **CHAPTER 33 – MIDWIFERY JOINT COMMITTEE**

### **21 NCAC 33 .0108 SUSPENSION OF AUTHORITY TO EXPEND FUNDS**

In the event the Midwifery Joint Committee's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Committee shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Committee for this purpose. Once the Committee's authority is restored, the funds shall be moved from the escrow account into the general operating account.

*History Note: Authority G.S. 93B-2;  
Eff. May 1, 2011.*

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## **CHAPTER 40 - BOARD OF OPTICIANS**

### **21 NCAC 40 .0214 COMPLAINTS; PRELIMINARY DETERMINATIONS**

- (a) Complaints may be lodged against any dispensing optician or Board registrant, including registered and non-registered businesses, and shall be submitted to the Board in writing with complainant's name, address, and contact information.
- (b) A complaint shall be handled initially by the Board's Director, who may recommend to the Board to dismiss it as unfounded or trivial.

(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, the Director shall notify the accused of the complaint in writing. Correspondence from the Board shall be deemed to have been received if mailed to either the home or business address of the dispensing optician or Board registrant provided by the individual and shown in the records of the Board, or by available public record for non-registered businesses. The correspondence shall require a written response within 20 days from the date of the Board's notification to the accused.

(d) If the accused does not respond to or denies the circumstances and accusations, the Board's Director shall investigate the allegations contained in the complaint, and may recommend to the Board to dismiss the complaint as unfounded or trivial, or may refer the complaint to a Disciplinary Committee for review. The Chair of the Board shall appoint a Disciplinary Committee of no less than two licensee Board members, who shall hear the Director's initial review of complaints and, if determined by the Director to be more than unfounded or trivial, shall hear the complaint, evidence and investigative findings and make preliminary determinations and recommendations to the Board that one of the following actions be taken:

- (1) the charges be dismissed as unfounded or trivial;
- (2) a Board reprimand be issued to the accused, in a case of admission of guilt;
- (3) if the accused is willing, a compromise be accepted which may include probation, civil penalty, disciplinary action, other penalties as permitted in G.S. 90-249.1 or a combination thereof; or
- (4) the case be presented to the Board, excluding Board members on the Disciplinary Committee, for a contested case hearing.

(e) The Board is not required to follow the recommendations of the Disciplinary Committee.

(f) Probation cessation shall be conditioned upon the optician or registrant's compliance with all provisions of G.S. 90, Article 17, or Title 21, Chapter 40, of the North Carolina Administrative Code for the period imposed, with suspension, revocation, or refusal to renew or reinstate a license, or loss of registrant's training time or revocation of registration upon failure to comply with the conditions.

*History Note: Authority G.S. 90-239; 90-249(8); 90-249.1;  
Eff. March 1, 1993;  
Amended Eff. August 1, 1998;  
Amended Eff. Pending Legislative Review.*

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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday June 16, 2011 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 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

### **RULES REVIEW COMMISSION MEMBERS**

#### **Appointed by Senate**

Jim R. Funderburk - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Ralph A. Walker  
Jerry R. Crisp  
Jeffrey P. Gray

#### **Appointed by House**

Jennie J. Hayman - Chairman  
Daniel F. McLawhorn  
Curtis Venable  
Ann Reed  
George Lucier

#### **COMMISSION COUNSEL**

Joe Deluca (919)431-3081  
Bobby Bryan (919)431-3079

### **RULES REVIEW COMMISSION MEETING DATES**

June 16, 2011                      July 21, 2011  
August 18, 2011                  September 15, 2011

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### **AGENDA**

#### **RULES REVIEW COMMISSION**

**Thursday, June 16, 2011 9:00 A.M.**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
  - A. Board of Podiatry Examiners – 21 NCAC 52 .0206 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between April 21, 2011 and May 20, 2011
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
  - Next meeting: July 21, 2011

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### **Commission Review**

#### **Log of Permanent Rule Filings**

**April 21, 2011 through May 20, 2011**

### **MEDICAL CARE COMMISSION**

The rules in Chapter 13 are from the Medical Care Commission.

The rules in Subchapter 13P concern emergency medical services and trauma including definitions (.0100); ems systems (.0200); specialty care transport programs (.0300); medical oversight (.0400); ems personnel (.0500); ems educational institutions (.0600); enforcement (.0700); trauma system definitions (.0800); trauma center standards and approval (.0900); trauma center designation enforcement (.1000); trauma system design (.1100); and recovery and rehabilitation of chemically dependent ems personnel (.1400).

Medical Ambulance/Evacuation Bus: Vehicle and Equipment R...  
Adopt/\*

10A NCAC 13P .0217

<u>Pediatric Specialty Care Ground Ambulance: Vehicle a...</u> Adopt/*	10A NCAC 13P	.0218
<u>Staffing for Medical Ambulance/Evacuation Bus Vehicles</u> Adopt/*	10A NCAC 13P	.0219
<u>Staffing for Pediatric Specialty Care Ground Ambulances</u> Adopt/*	10A NCAC 13P	.0220

### **MENTAL HEALTH, COMMISSION FOR**

The rules in Chapter 26 are from the Mental Health, Developmental Disabilities and Substance Abuse Services Commission.

The rules in Subchapter 26F concern controlled substances including schedules of controlled substances (.0100).

<u>Schedule III</u> Amend/*	10A NCAC 26F	.0104
<u>Schedule IV</u> Amend/*	10A NCAC 26F	.0105

### **INSURANCE, DEPARTMENT OF**

The rules in Chapter 16 are from the Actuarial Division and relate to fire and casualty statistical data (.0100); individual accident and health insurance (.0200); credit life, accident, and health rate deviation (.0400); credit unemployment minimum loss ratio standard (.0500); health maintenance organization filings and standards (.0600); health maintenance organization claim reserve data requirements (.0700); and small employer group health insurance actuarial certification (.0800).

<u>Applicability</u> Amend/*	11 NCAC 16	.0101
<u>Loss Reserves</u> Repeal/*	11 NCAC 16	.0102
<u>Professional Liability Insurance</u> Repeal/*	11 NCAC 16	.0104
<u>Minimum Incurred Loss Ratio; Alternate Maximum Rate</u> Amend/*	11 NCAC 16	.0501
<u>General Submission Requirements</u> Amend*	11 NCAC 16	.0503

### **PRIVATE PROTECTIVE SERVICES BOARD**

The rules in Subchapter 7D cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator and counterintelligence (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); courier (.1200); and continuing education (.1300).

<u>Application for Licenses and Trainee Permits</u> Amend/*	12 NCAC 07D	.0201
<u>Application for Unarmed Security Guard Registration</u> Amend/*	12 NCAC 07D	.0701
<u>Experience Requirements for Courier License</u> Repeal/*	12 NCAC 07D	.1201

### **LABOR, DEPARTMENT OF**

The rules in Chapter 13 concern boiler and pressure vessel including definitions (.0100); administration (.0200); enforcement of standards (.0300); general requirements (.0400); non-standard boilers and pressure vessels (.0500); hot

water vessels used for heating or for storage of hot water (.0600); nuclear energy systems (.0700); and forms (.0800).

<u>Definitions</u>	13	NCAC	13	.0101
Amend/*				
<u>Incorporated - Standards</u>	13	NCAC	13	.0103
Amend/*				
<u>Inspector Qualifications</u>	13	NCAC	13	.0202
Amend/*				
<u>North Carolina Commission</u>	13	NCAC	13	.0203
Amend/*				
<u>Conflict of Interest</u>	13	NCAC	13	.0204
Amend/*				
<u>Insurance Companies to Notify Chief Inspector</u>	13	NCAC	13	.0208
Amend/*				
<u>Installers to Notify Chief Inspectors</u>	13	NCAC	13	.0209
Amend/*				
<u>Certificate Inspections</u>	13	NCAC	13	.0211
Amend/*				
<u>Preparation for Inspection</u>	13	NCAC	13	.0212
Amend/*				
<u>Extended Pressure Equipment Operating</u>	13	NCAC	13	.0214
Adopt/*				
<u>Inspection Documentation</u>	13	NCAC	13	.0301
Amend/*				
<u>Design and Construction Standards</u>	13	NCAC	13	.0401
Amend/*				
<u>Controls and Safety Devices</u>	13	NCAC	13	.0404
Amend/*				
<u>High Pressure or Temperature Limit Control</u>	13	NCAC	13	.0406
Amend/*				
<u>Gauge Glasses and Water Columns</u>	13	NCAC	13	.0408
Amend/*				
<u>Automatic Low-Water Fuel Cutoff Controls and Water-Feedin...</u>	13	NCAC	13	.0409
Amend/*				
<u>Temperature Gauges/Thermometers/Temperature Sensors</u>	13	NCAC	13	.0410
Amend/*				
<u>Valves, Drains and Bottom Blowoffs</u>	13	NCAC	13	.0411
Amend/*				
<u>Expansion Tanks</u>	13	NCAC	13	.0412
Amend/*				

## **WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 concern wildlife resources and water safety.

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC	10C	.0305
Amend/*				
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u>	15A	NCAC	10C	.0401
Amend/*				

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

<u>Town of Emerald Isle</u>	15A	NCAC	10F	.0376
Amend/*				

### **CHIROPRACTIC EXAMINERS, BOARD OF**

The rules in Chapter 10 include organization of the Board (.0100); the practice of chiropractic (.0200); rules of unethical conduct (.0300); rule-making procedures (.0400); investigation of complaints (.0500); contested cases and hearings in contested cases (.0600-.0700); and miscellaneous provisions (.0800).

<u>Escrow Account</u>	21	NCAC	10	.0105
Adopt/*				
<u>Renewal of License</u>	21	NCAC	10	.0205
Amend/*				
<u>Agreements to Provide Financing or Management Services</u>	21	NCAC	10	.0211
Adopt/*				
<u>Medical College Transfer Credits</u>	21	NCAC	10	.0212
Adopt/*				

### **ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS FOR**

The rules in Chapter 18 are from the State Board of Examiners of Electrical Contractors.

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

<u>Reference to State Building and Elevator Codes</u>	21	NCAC	18B	.0102
Amend/*				
<u>Organization</u>	21	NCAC	18B	.0103
Amend/*				
<u>Joint Resolution and Agreements</u>	21	NCAC	18B	.0106
Repeal/*				
<u>Examinations</u>	21	NCAC	18B	.0204
Amend/*				
<u>Minimum Passing Grade</u>	21	NCAC	18B	.0205
Repeal/*				
<u>Regular Examinations</u>	21	NCAC	18B	.0206
Repeal/*				
<u>Application for Regular Examinations</u>	21	NCAC	18B	.0207
Repeal/*				
<u>Specially Arranged Examinations</u>	21	NCAC	18B	.0208
Repeal/*				
<u>Fees</u>	21	NCAC	18B	.0209
Amend/*				
<u>Applications Duly Filed</u>	21	NCAC	18B	.0210
Amend/*				
<u>Waiting Period Between Examinations</u>	21	NCAC	18B	.0211
Amend/*				
<u>License Name Requirements</u>	21	NCAC	18B	.0402

Amend/*				
<u>Licenses Expiring and Individuals Qualified/July 1, 1970</u>	21	NCAC	18B	.0601
Repeal/*				
<u>Qualified Individuals Listed Prior to July 1, 1970</u>	21	NCAC	18B	.0602
Repeal/*				
<u>Scope of SP-SFD License</u>	21	NCAC	18B	.0803
Amend/*				
<u>Scope of SP-FA/LV License</u>	21	NCAC	18B	.0804
Amend/*				
<u>Permits and Inspections</u>	21	NCAC	18B	.0909
Adopt/*				
<u>Minimum Requirements for Course Sponsor Approval</u>	21	NCAC	18B	.1102
Amend/*				
<u>Minimum Requirements for Course Instructor Approval</u>	21	NCAC	18B	.1103
Amend/**				

### **IRRIGATION CONTRACTORS' LICENSING BOARD**

The rules in Chapter 23 are from the Irrigation Contractors' Licensing Board and concern licensing (.0100); hearing rules of the North Carolina Irrigation Contractors' Licensing Board (0200); irrigation record drawing minimum standards (.0300); irrigation design minimum standards (.0400); irrigation system installation minimum standards (.0500); irrigation system management for water efficiency minimum standards (.0600); and fees (.0700).

<u>Direct Supervision</u>	21	NCAC	23	.0101
Adopt/*				
<u>Surety Bonds and Legal Status</u>	21	NCAC	23	.0102
Adopt/*				
<u>Licensing</u>	21	NCAC	23	.0103
Adopt/*				
<u>Continuing Education</u>	21	NCAC	23	.0104
Adopt/*				
<u>Licensing Renewals and Reinstatement</u>	21	NCAC	23	.0105
Adopt/*				
<u>Notice of Hearing: Answer</u>	21	NCAC	23	.0201
Adopt/*				
<u>Right to Hearing</u>	21	NCAC	23	.0202
Adopt/*				
<u>Location of Hearing</u>	21	NCAC	23	.0203
Adopt/*				
<u>Intervention; Discovery</u>	21	NCAC	23	.0204
Adopt/*				
<u>Subpoenas</u>	21	NCAC	23	.0205
Adopt/*				
<u>Conduct of Hearing</u>	21	NCAC	23	.0206
Adopt/*				
<u>Decision of Board</u>	21	NCAC	23	.0207
Adopt/*				
<u>Irrigation Record Drawing</u>	21	NCAC	23	.0301
Adopt/*				
<u>System Design Objectives and Requirements</u>	21	NCAC	23	.0401
Adopt/*				
<u>Piping</u>	21	NCAC	23	.0402
Adopt/*				

<u>Water Source</u>	21	NCAC	23	.0403
Adopt/*				
<u>Water Pressure</u>	21	NCAC	23	.0404
Adopt/*				
<u>Drip/Microirrigation</u>	21	NCAC	23	.0405
Adopt/*				
<u>Components and Zone Designs</u>	21	NCAC	23	.0406
Adopt/*				
<u>Irrigation System Disclosure Checklist</u>	21	NCAC	23	.0407
Adopt/*				
<u>General Requirements</u>	21	NCAC	23	.0501
Adopt/*				
<u>Site Considerations</u>	21	NCAC	23	.0502
Adopt/*				
<u>Water Supply</u>	21	NCAC	23	.0503
Adopt/*				
<u>System Layout</u>	21	NCAC	23	.0504
Adopt/*				
<u>Trenching and Piping</u>	21	NCAC	23	.0505
Adopt/*				
<u>Electrical</u>	21	NCAC	23	.0506
Adopt/*				
<u>Grounding</u>	21	NCAC	23	.0507
Adopt/*				
<u>Sprinklers</u>	21	NCAC	23	.0508
Adopt/*				
<u>Controller</u>	21	NCAC	23	.0509
Adopt/*				
<u>Initial System Start Up</u>	21	NCAC	23	.0510
Adopt/*				
<u>Owner's Manual</u>	21	NCAC	23	.0511
Adopt/*				
<u>Purpose</u>	21	NCAC	23	.0601
Adopt/*				
<u>Basic System Maintenance Practices</u>	21	NCAC	23	.0602
Adopt/*				
<u>Scheduling</u>	21	NCAC	23	.0603
Adopt/*				
<u>Fee Schedule</u>	21	NCAC	23	.0701
Adopt/*				

## **MARRIAGE AND FAMILY THERAPY LICENSURE BOARD**

The rules in Chapter 31 are from the Marriage and Family Therapy Board and concern application for certification (.0200); examination (.0300); renewal (.0400); definitions (.0500); code of ethical principles (.0600); continuing education (.0700); associate status (.0800); and reciprocity (.0900).

<u>Credentials Required</u>	21	NCAC	31	.0201
Amend/*				
<u>Review Procedure</u>	21	NCAC	31	.0202
Amend/*				
<u>Written Examination</u>	21	NCAC	31	.0301
Amend/*				



<u>First Reexamination</u>	21	NCAC	31	.0302
Repeal/*				
<u>Reporting of Scores</u>	21	NCAC	31	.0303
Repeal/*				
<u>Licensure Renewal Form</u>	21	NCAC	31	.0401
Amend/*				
<u>Appropriate Course of Study</u>	21	NCAC	31	.0501
Amend/*				
<u>Ongoing Supervision</u>	21	NCAC	31	.0502
Amend/*				
<u>Equivalency</u>	21	NCAC	31	.0503
Amend/*				
<u>Alternative to Clinical Practicum</u>	21	NCAC	31	.0504
Amend/*				
<u>Direct Client Contact</u>	21	NCAC	31	.0506
Amend/*				
<u>Ethical Principles</u>	21	NCAC	31	.0609
Amend/*				
<u>Requirements for Continuing Education</u>	21	NCAC	31	.0701
Amend/*				
<u>Licensed Marriage and Family Therapy Associate Credential...</u>	21	NCAC	31	.0801
Amend/*				
<u>Licensed Marriage and Family Therapy Associate</u>	21	NCAC	31	.0802
Adopt/*				
<u>Reciprocal License</u>	21	NCAC	31	.0901
Repeal*				
<u>Fees</u>	21	NCAC	31	.1001
Adopt/*				
<u>Fund Suspension</u>	21	NCAC	31	.1002
Adopt/*				

## **PHARMACY, BOARD OF**

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

<u>Return of Outdated Drugs</u>	21	NCAC	46	.2901
Amend/*				

## **SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

The rules in Chapter 63 deal with Social Work Certification including general rules (.0100); certification (.0200); examinations (.0300); renewal of certification (.0400); ethical guidelines (.0500); disciplinary procedures (.0600); adoption of rules (.0700); and professional corporations and limited liability companies.

<u>Definitions</u>	21	NCAC	63	.0102
Amend/*				
<u>General</u>	21	NCAC	63	.0106
Adopt/*				
<u>Renewal of Certification</u>	21	NCAC	63	.0406

Adopt/\*

Reporting of Disciplinary Actions

21 NCAC 63 .0609

Amend/\*

**SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR**

The rules in Chapter 64 are from the Board of Examiners for Speech and Language Pathologists and Audiologists and include general provisions (.0100); interpretative rules (.0200); code of ethics (.0300); rulemaking petitions (.0400); notice of rulemaking (.0500); conduct of rulemaking hearings (.0600); declaratory rulings (.0700); contested case hearings (.0800); other matters relating to administrative hearings (.0900); and use of speech/language pathology assistants (.1000).

Other Misconduct

21 NCAC 64 .0307

Adopt/\*

**BUILDING CODE COUNCIL**

2009 NC Building Code - Fire Door and Fire Shutter Fire P...

Table 715.4

Amend/\*

2012 NC Building Code - Fire Door and Fire Shutter Protec...

Table 715.4

Amend/\*

2011 NC Electrical Code

Amendments to 2011 NEC

Adopt/\*

2012 NC Fire Code - Appendices

101.2.1

Amend/\*

2012 NC Mechanical Code - Minimum Ventilation Rates

Table 403.3

Amend/\*

2012 NC Mechanical Code - Zone Outdoor Airflow

403.3.1.3

Amend/\*

2012 NC Mechanical Code - Outdoor Air Intake Flow Rate

403.3.2.3.4

Amend/\*

2012 NC Plumbing Code - Rainwater Collection and Distribu...

Appendix C-1

Amend/\*

2012 NC Residential Code - Egress Door

R311.2

Amend/\*

2009 NC Residential Code - Smoke Alarm Location

R313.2

Amend/\*

2012 NC Residential Code - Smoke Alarm Location

R314.3

Amend/\*

2012 NC Residential Code - Minimum Width of Footings

Table R403.1

Amend/\*

2012 NC Residential Code - Concrete Masonry Foundation De...

Figure R 403.3(1)

Amend/\*

2012 NC Residential Code - Foundation Vent Sizing

R408.1.1

Amend/\*

2012 NC Residential Code - Ground Vapor Retarder

R408.2

Amend/\*

2012 NC Residential Code - Framing Details

R802.3

Amend/\*

2012 NC Residential Code - Attic Access

R807.1

Amend/\*

2012 NC Residential Code - Attic Hatches and Doors

Appendix N1102.2.3

Amend/\*

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
ABC Commission v. Fusion Foods, Inc., T/A Coastal Blue	09 ABC 4672	11/08/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	04/19/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)	09 ABC 5422	06/09/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	04/21/10	
ABC Commission v. Startown Lounge, Inc. T/A 5 O'clock Somewhere	10 ABC 0153	06/25/10	
ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6	10 ABC 0576	07/09/10	
ABC Commission v. Talmar Inc. D/B/A E-City Restaurant and Lounge, Mary Ann Davidson and Ratanya Walker			
ABC Commission v. Scooby's Bar & Restaurant, Sherri Lynn Bridgeman	10 ABC 2512	08/02/10	
Melvin Lewis, JA's Inc. T/A PAPA Ja's Fine Family Dining v. ABC Commission	10 ABC 2603	12/08/10	
ABC Commission v. Alpha 3 Enterprises LLC, T/A Liquid Room	10 ABC 2659	07/14/10	
ABC Commission v. Taqueria Guadalajara II, Inc, Jaime Fuentes Vice President	10 ABC 3107	07/15/10	
ABC Commission v. AMR Bowling Centers, Inc. T/A AMF Winston-Salem Lanes 123	10 ABC 3716	04/13/11	
ABC Commission v. Ab3 LLC T/A On the Roxx	10 ABC 4120	10/08/10	
ABC Commission v. El Corona Mexican Restaurant Inc., T/A Corona II	10 ABC 4122	09/24/10	
ABC Commission v. Partnership T/A La Poblana	10 ABC 4235	02/09/11	
ABC Commission v. Speed Dee Superette, Tonya Marchisella	10 ABC 4583	11/04/10	
ABC Commission v. Ben Long Wang, T/A Sapporo Bistro	10 ABC 4843	10/15/10	
Bobby Larry Avery Jr. Larry's v. State of North Carolina ABC Commission	10 ABC 5360	12/14/10	
ABC Commission v. Clifton Ballard T/A Club Phoenix 1	10 ABC 5543	03/11/11	
ABC Commission v. Lourdes, Inc, T/A, El Gavilan	10 ABC 6372	01/13/11	
ABC Commission v. Centro Cervesera La Zaona, LLC, T/A Centro Cervesera LA Saona	10 ABC 9704	03/31/11	
ABC Commission v. El Azteca Mexican Grill Inc, T/A Taqueria El Azteca	11 ABC 0358	04/19/11	
ABC Commission v. Michael and Michelle Inc, T/A Misundries	11 ABC 1454	04/20/11	
ABC Commission v. Kyle Thuy Nguyen	11 ABC 1784	04/19/11	
<b><u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u></b>			
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	06/25/10	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>			
Tammy S. Barbone v. Crime Victims Compensation Comm.	08 CPS 2667	07/16/10	
Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	03/31/10	
William G. Fisher v. Victims and Justice Services	09 CPS 4024	11/15/10	
Terry L. Schermerhorn v. North Carolina State Highway Patrol	09 CPS 4547	10/21/10	
William Pickard Trucking, Inc., William Pickard v. Dept. of Crime Control and Public Safety, State Highway Patrol	09 CPS 4692	06/09/10	

## CONTESTED CASE DECISIONS

California Overland Ltd., NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5225	05/12/10	
Earl Stanley Peters III v. Victims Compensation Service Division	09 CPS 5444	08/30/10	
John Rose (Flipstastic, Inc) v. Department of Crime Control and Public Safety	09 CPS 5985	08/25/10	25:11 NCR 1345
Lynch's Auto Sales Salvage & Wrecker Service, inc v. Crime Control and Public Safety, Division of State Highway Patrol	09 CPS 6158	09/10/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	04/01/10	
Marius A. Christian v. State Highway Patrol	09 CPS 6368	08/13/10	
Jose H. Geronimo Ramirez v. Victims and Justice Services	09 CPS 6454	06/23/10	
Neill Grading and Construction Co., Inc., v. North Carolina State Highway Patrol Motor Carrier Enforcement Section	09 CPS 6516	11/24/10	
David Leon Darby v. Division of Crime Control and Public Safety	09 CPS 6703	08/17/10	
Selective Clearing and Grading, Inc., Danny Creech, Lynn Creech v. Crime Control and Public Safety	09 CPS 6726	07/29/10	
Harry L. Foy Jr., Department of Crime Control and Public Safety, Div. of State Highway Patrol Motor Carrier Enforcement Section	09 CPS 6728	08/17/10	
James M. Abdella v. Department of Crime Control and Public Safety v. Motor Carrier Enforcement Div	09 CPS 6740	08/18/10	
AD Gustafson Inc., Andrew Gustafson v. State Highway Patrol	10 CPS 0071	07/30/10	
Covenant Trucking Company, Inc v. Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	10 CPS 0212	10/21/10	
Benjamin C. Simmons III, Precision Custom Farming, LLC v. DMV	10 CPS 0419	06/29/10	25:04 NCR 515
Keon J. Jones v. Victims Compensation Commission	10 CPS 0848	07/26/10	
X&M Trucking, Xavier Artis v. Dept State Highway Patrol, DMV	10 CPS 0855	07/20/10	
Preferred Materials Inc v. Department of Crime Control & Public Safety, DMV	10 CPS 0931	08/30/10	
AD Gustafson, Inc., Andrew Gustafson v. Secretary of Crime Control	10 CPS 2072	06/15/10	
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Michael A. Rossi Sr., v. Dept. of Crime Control and Public Safety, Div. of Victims Compensation Services	10 CPS 2478	08/30/10	
McLain, LLC, Phillip McLain v. NC State Highway Patrol	10 CPS 2515	07/02/10	
Vincent John Hall v. Crime Victims Compensation Commission, Maxton Police Department, Officer Duron Burney	10 CPS 2811	10/04/10	
Anne F. Palmer v. Victim and Justice Services	10 CPS 3604	09/08/10	
Nivia Velandra v. Crime Victims Compensation Commission	10 CPS 4061	11/15/10	
Tinita Vick v. Crime Victims Compensation Commission	10 CPS 7825	01/14/11	

### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Stevie Lawrence v. DHHS, Division of Health Service Regulation	09 DHR 1462	04/20/11	
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Vance County Home Health, Nwa Kpuda v. DHHS	09 DHR 2815	10/27/10	
C&W Alternative Family Living Facility, Inc., v. CenterPoint Human Services and DHHS	09 DHR 3377	06/16/10	
Kevin Summers v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry	09 DHR 3766	08/12/10	
Ward Drug Co. of Nashville Gary Glisson v. DHHS	09 DHR 3830	04/29/10	
Mekre Francis v. DHHS, Div. of Health Service Regulation	09 DHR 3935	05/27/10	
Mattie Lowe/Angela Lowe, Lowe Family Care Home #3 v. DHHS, Division of Health Service Regulation	09 DHR 4148	08/27/10	
Kid Ventures Inc., d/b/a Health Park Child Development Center v. Div. of Child Development DHHS	09 DHR 4887	06/22/10	
Nicol Smith v. DHHS	09 DHR 4932	09/01/10	25:11 NCR 4932
Kimberly N. Carter (Davis) v. DHHS, Div. of Health Service Regulation	09 DHR 5133	08/03/10	
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A+ Child Development Center LLC, v. DHHS, Division of Child Development	09 DHR 5443	04/27/10	
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Jacksonville Diagnostic Imaging, LLC d/b/a Coastal Diagnostic Imaging v. DHHS, Division of Health Service Regulation, CON Section and Onslow MRI, LLC	09 DHR 5638	06/24/10	
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University of North Carolina Hospitals at Chapel Hill, and Rex Hospital, Inc. d/b/a Rex Healthcare and Wake Radiology Oncology Services, PLLC v. DHHS	09 DHR 5770	07/20/10	
Wake Radiology Oncology Services, PLLC and University of North Carolina Hospitals at Chapel Hill and Rex Hospital, Inc. d/b/a Rex Healthcare v. DHHS, Division of Health Service Regulation, CON Section and Parkway Urology, P.A. d/b/a Cary Urology, P.A.	09 DHR 5785	07/20/10	
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Esther K. Dunn v. Dept. of Commerce, Div. of Tourism, Film and Sports Development	09 OSP 3582	08/24/10	
Alanda A. Vance v. Beth Wood, NC Office of State Auditor	09 OSP 3649	01/07/11	
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Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center	10 OSP 2909	06/29/10	
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Sabir M. Rashidi v. DOT	10 OSP 8005	02/07/11	
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Ralph Gable v. Board of Elections	10 OSP 8462	04/11/11	
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Jenny S. Thompson v. Department of SOS	09 SOS 2342	03/17/10
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Seaton W. Howell v. Dept. of SOS	10 SOS 1350	11/08/10
James D. Harrison v. Notary Public Commission	10 SOS 1515	06/15/10

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**CONTESTED CASE DECISIONS**

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Donald R. Beason and Mark C. Beason v. Dept. of SOS	10 SOS 1913	11/22/10	25:16 NCR 1931
Alden Briscoe, Brakeley Briscoe, Inc v. Dept. of SOS	10 SOS 5697	01/25/11	
Dawn M. Dressler v. SOS	10 SOS 7459	03/16/11	
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**TEACHING FELLOWS COMMISSION**

Elizabeth Danial Dominique v. NC Teaching Fellows Commission	09 TFC 6833	09/24/10	25:11 NCR 1366
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**UNC HOSPITALS**

Alexander Lee v. UNC Hospitals	10 UNC 1095	08/30/10	
Edwin Matthews v. UNC Hospitals	10 UNC 2576	09/13/10	

Filed

STATE OF NORTH CAROLINA

2011 MAR -4 AM 8:59

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
10 DST 5350

COUNTY OF WAKE

Office of

Administrative Hearings

Martin H. Beach,  
Petitioner

vs.

North Carolina Department of Treasurer,  
Retirement System Division,  
Respondent.

**DECISION**

**THIS MATTER** came on for hearing before Beecher R. Gray, Administrative Law Judge, on February 9, 2011, in Raleigh, North Carolina. After considering the Petition and all matters of Record, the testimony of the witnesses, the exhibits admitted, and arguments of counsel, the undersigned makes the following **DECISION**:

**APPEARANCES**

For Petitioner: E.D. Gaskins, Jr., Esq.  
Everett Gaskins Hancock LLP  
Raleigh, North Carolina

For Respondent: Robert M. Curran, Esq.  
Susannah P. Holloway, Esq.  
North Carolina Department of Justice  
Raleigh, North Carolina

**ISSUES**

Whether Respondent erroneously determined that Petitioner was "restored to service as an employee" under N.C. Gen Stat. § 128-24(5)d, as defined by N.C. Gen Stat. § 128-21(10) and 20 NCAC 02C.0802.

**APPLICABLE STATUTES AND RULES**

N.C. Gen. Stat. § 128-21  
N.C. Gen. Stat. § 128-24(5)d  
20 NCAC 02C.0802

**EXHIBITS**

**Respondent's Exhibits B, J, K, and N are under SEAL as confidential.**

The following exhibits offered by Petitioner were received into evidence:

1. Letter from Debra Bryan to Mr. Beach responding to Mr. Beach's letter dated July 28, 2010
2. Letter from Garry Austin to Mr. Beach dated July 14, 2010
3. Draft Affidavit to one of the members of the Burgaw Board of Commissioners

The following exhibits offered by Respondent were received into evidence:

- A. Town of Burgaw File
- B. Town of Burgaw Personnel File of Mr. Beach (*Marked Confidential*)**
- C. Affidavit of Sylvia Raynor, Town Clerk of the Town of Burgaw
- D. Affidavit of Publication regarding Employment Opportunity (Town Manager)
- E. Town of Burgaw Public Employees Salaries
- F. Letter from Mr. Beach to the Retirement Systems Division (July 28, 2010)
- G. Town of Burgaw Town Managers Listing
- H. Town of Burgaw Public Employees Salaries
- I. Letter from the Retirement Systems Division to Mr. Beach (August 24, 2010)
- J. Request for Employment Information in Connection with Claim for Disability Benefits (September 29, 2008) (*Marked Confidential*)**
- K. Letter to the VA Disability Section from Mr. Beach (March 10, 2008) (*Marked Confidential*)**
- L. Letter from Sylvia Raynor regarding questions about Martin Beach (July 6, 2010)
- M. Town of Burgaw Policy Manual
- N. Personnel File of Mr. Beach (*Marked Confidential*)**
- O. Petitioner's Responses to Respondent's First Request for Admissions
- P. Petitioner's Responses to Respondent's First Set of Interrogatories and First Requests for Production of Documents

**WITNESSES**

Petitioner called as witnesses:

1. Garry Austin
2. Petitioner Martin H. Beach
3. Mayor Kenneth T. Cowan

Respondent called as witnesses:

1. Chad McEwen
2. Sylvia Raynor
3. Sheryl Swinson

4. Garry Austin

**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 makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the undersigned makes the following Findings of Fact, Conclusions of Law and Decision, which is tendered to the Board of Trustees of the North Carolina Local Government Employees' Retirement System for a final decision.

**FINDINGS OF FACT**

1. Petitioner Martin Beach was County Manager, Pamlico County, NC 1996-98 and County Manager, Pender County, NC 1999-2003.
2. While holding these positions he was a member of the North Carolina Local Governmental Employees' Retirement System ("LGERS").
3. Petitioner served as Interim Town Manager, Topsail Beach, NC, for a number of months in 2003-2004.
4. Petitioner was hired as Interim Town Manager, Burgaw, N.C. beginning on October 4, 2004, initially for a term of 90 days. He remained in that position through a series of contract extensions until his resignation on December 31, 2010
5. Mr. Beach was informed by letter from Respondent (*Petitioner's Exhibit 2*) that he had been "restored to service as an employee", and thus should not have received employment benefits from February 1, 2005 through June 30, 2010 and had been overpaid as a result by \$22,849.12.
6. Petitioner appealed and received a second letter from Respondent (*Petitioner's Exhibit 1*) stating there was "ample evidence you were regularly employed by the Town [of Burgaw]".
7. Petitioner appealed from that decision which led to this hearing.
8. Petitioner is a graduate of the University of Georgia, a 27 year veteran of the United States Army, having retired as a full Colonel, and is a disabled Vietnam Veteran.
9. Petitioner did not want to work full-time because
  - He is 80% disabled;

- He was caring for his elderly mother; and
  - He had several farms in Robeson County to attend to.
10. Petitioner initially was hired to help the Town of Burgaw for 90 days while they sought a permanent replacement. Having found no suitable candidate, the Commissioners asked him to continue as interim manager.
  11. Petitioner was not required to work any particular hours – just do the job.
  12. Petitioner worked no more than four (4) days per week and set his own schedule (*Respondent's Exhibit A, pp. 15-16*); worked less than 8 hours per day (*Respondent's Exhibit K*); and took vacation, holidays, and substantial sick leave.
  13. It is uncontested that Petitioner worked no more than:
    - 4 days a week with no hourly requirement (*Respondent's Exhibit A, pp. 15-16*).
    - He did not record hours worked nor did anyone keep up with his time worked, and that he took extensive time off for illness (366 hours in one 12-month-period). (*Respondent's Exhibit J*)
  15. The only calculation of time actually worked was by Petitioner in 2008 which showed that from September 2007 to September 2008 he worked 982 hours. (*attached to Respondent's Exhibit K*)
  16. Burgaw Mayor Kenneth Cowan testified that Mr. Beach would not agree to a permanent position and that he made it clear that he would not work regular hours. The Mayor was not concerned with hours worked but with doing the job. Even though he was paid a substantial salary, the Town considered Petitioner worth it because he saved a \$3 million dollar grant that was in jeopardy of being lost and acquired other substantial grants of approximately \$10 million dollars for the Town during his tenure. The Town hired Petitioner into his interim manager's position because of his unique experience, contacts, ability, and knowledge.
  17. Mayor Cowan's testimony was persuasive, as were the minutes of a meeting of the Town Commissioners which reflected the following:

*Attorney Kenan addressed the Board concerning a call he received from Susannah Holloway, Assistant Attorney General, who is assigned to the North Carolina State Treasurer's Office, Retirement System Section. Mr. Kenan advised the Board that Mr. Beach has decided to contest the penalty imposed by the retirement system due to failure to pay retirement on wages that he received while employed as the Town's interim manager with the contested case captioned, Martin H. Beach vs. NC Department of Treasurer, Retirement System Division, filed in the Office of the Administrative Hearings and assigned the File Number 2010 DST 5350 scheduled to be heard sometime in January 2011. Mr. Kenan advised the Board that Ms. Holloway had requested the Board Members to consider signing individually an affidavit that Mr. Beach has worked in the*

*position as Town Manager since 2004 to present and that [he] works more than 1,000 hours per calendar year. Thereafter, Mr. Kenan presented an affidavit to each Board Member for their respective consideration that Ms. Holloway had previously emailed to Mr. Kenan. The consensus of Board members was that they were each reluctant to sign the affidavit because they are not sure how many hours Mr. Beach has worked per calendar year since 2004, as well as some of the Board members were not serving on the Board at the time that Mr. Beach was hired in 2004. The Board members stated that Mr. Beach was hired to do the job as Town Manager and the hours worked was not an issue with them. (Respondent's Exhibit A, p. 11) (See also draft affidavit, Petitioner's Exhibit 3)*

18. No substantial evidence was presented that Petitioner's position as Burgaw interim town manager required him to work at least 1,000 hours per year. Indeed, there was substantial evidence to the contrary.
19. North Carolina General Statute Section 160A-150 **Interim City Manager** provides, in pertinent part: "[w]hen the position of city manager is vacant, the council shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled."
20. North Carolina General Statute Section 128-21(10) defines employee as follows, in pertinent part: "[e]mployee shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section...."
21. North Carolina General Statute Section 128-21(10) also provides, in pertinent part: "[i]n all cases of doubt the Board of Trustees shall decide who is an employee."
22. North Carolina General Statute Section 128-28(g) provides, in pertinent part: "[t]he Board of Trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this Chapter."
23. The Board of Trustees has promulgated a rule entitled **REGULARLY EMPLOYED** which defines the phrase as "[a]n officer or employee in a regular position, the duties of which require not less than 1,000 hours of service per year shall be an employee as defined in G.S. 128-21(10)". N.C. Admin. Code tit. 20, r. 02C.0802 (February 1977).

### CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Petitioner was not "regularly employed" as that term is defined in 20 NCAC 02C.0802 because his duties never required 1,000 or more hours of service per year; thus he was not an "employee" as defined by N.C. Gen. Stat. § 128-21(10); and therefore, was not "restored to service as an employee" under N.C. Gen. Stat. § 128-

24(d). Respondent is bound by its own rule which it promulgated under the authority granted it by G.S. 128-28(g) in the matter of determination of which persons are employees for purposes of the Local Government Employees' Retirement System.

3. Petitioner was not overpaid retirement benefits in the amount of \$22,849.12 for the period February 01, 2005 through June 30, 2010 and Respondent is not entitled to recover or recoup such funds from Petitioner.

### **DECISION**

Based upon the evidence produced in this contested case hearing, Petitioner was not regularly employed by the Town of Burgaw, was not an employee of the Town as defined by G.S. 128-21(10), and was not restored to service as an employee, requiring that he make contributions to the State Local Government Employees' Retirement System. Respondent's decision to order a payback from Petitioner of overpaid retirement benefits in the amount of \$22,849.12 is not supported by the evidence and is REVERSED. Based upon the evidence and decision in this contested case, Respondent is to cease recovering any funds from Petitioner in order to satisfy this erroneous claim of overpayment from the period February 1, 2005, through June 30, 2010.

### **NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency that will make the final decision in this contested case is the Board of Trustees of the North Carolina Local Governmental State Employees' Retirement System. The Board is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties, furnish a copy to the parties' attorneys of record, and furnish a copy to the Office of Administrative Hearings.



This the 04 day of March, 2011.



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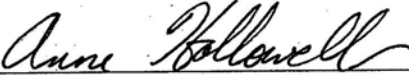
Beecher R. Gray  
Administrative Law Judge

A copy of the foregoing was mailed to:

Ed Gaskins, Jr.  
James M Hash  
Everett, Gaskins, Hancock LLP  
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ATTORNEYS FOR PETITIONER

Susannah P. Holloway,  
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ATTORNEY FOR RESPONDENT

This the 4<sup>th</sup> day of March, 2011.

  
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