

NORTH CAROLINA REGISTER

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(919) 733-0640 FAX

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osbmruleanalysis@osbm.nc.gov

(919) 807-4740

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215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

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scollins@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

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NORTH CAROLINA REGISTER
Publication Schedule for January 2014 – December 2014

| FILING DEADLINES | | | NOTICE OF TEXT | | PERMANENT RULE | | | TEMPORARY RULES |
|-----------------------|------------|---------------------|----------------------------------|--------------------------------|--|--------------------------------------|---|--|
| Volume & issue number | Issue date | Last day for filing | Earliest date for public hearing | End of required comment Period | Deadline to submit to RRC for review at next meeting | Earliest Eff. Date of Permanent Rule | Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning: | 270 th day from publication in the Register |
| 28:13 | 01/02/14 | 12/06/13 | 01/17/14 | 03/03/14 | 03/20/14 | 05/01/14 | 05/2014 | 09/29/14 |
| 28:14 | 01/15/14 | 12/19/13 | 01/30/14 | 03/17/14 | 03/20/14 | 05/01/14 | 05/2014 | 10/12/14 |
| 28:15 | 02/03/14 | 01/10/14 | 02/18/14 | 04/04/14 | 04/21/14 | 06/01/14 | 01/2015 | 10/31/14 |
| 28:16 | 02/17/14 | 01/27/14 | 03/04/14 | 04/21/14 | 05/20/14 | 07/01/14 | 01/2015 | 11/14/14 |
| 28:17 | 03/03/14 | 02/10/14 | 03/18/14 | 05/02/14 | 05/20/14 | 07/01/14 | 01/2015 | 11/28/14 |
| 28:18 | 03/17/14 | 02/24/14 | 04/01/14 | 05/16/14 | 05/20/14 | 07/01/14 | 01/2015 | 12/12/14 |
| 28:19 | 04/01/14 | 03/11/14 | 04/16/14 | 06/02/14 | 06/20/14 | 08/01/14 | 01/2015 | 12/27/14 |
| 28:20 | 04/15/14 | 03/25/14 | 04/30/14 | 06/16/14 | 06/20/14 | 08/01/14 | 01/2015 | 01/10/15 |
| 28:21 | 05/01/14 | 04/09/14 | 05/16/14 | 06/30/14 | 07/21/14 | 09/01/14 | 01/2015 | 01/26/15 |
| 28:22 | 05/15/14 | 04/24/14 | 05/30/14 | 07/14/14 | 07/21/14 | 09/01/14 | 01/2015 | 02/09/15 |
| 28:23 | 06/02/14 | 05/09/14 | 06/17/14 | 08/01/14 | 08/20/14 | 10/01/14 | 01/2015 | 02/27/15 |
| 28:24 | 06/16/14 | 05/23/14 | 07/01/14 | 08/15/14 | 08/20/14 | 10/01/14 | 01/2015 | 03/13/15 |
| 29:01 | 07/01/14 | 06/10/14 | 07/16/14 | 09/02/14 | 09/22/14 | 11/01/14 | 01/2015 | 03/28/15 |
| 29:02 | 07/15/14 | 06/23/14 | 07/30/14 | 09/15/14 | 09/22/14 | 11/01/14 | 01/2015 | 04/11/15 |
| 29:03 | 08/01/14 | 07/11/14 | 08/16/14 | 09/30/14 | 10/20/14 | 12/01/14 | 01/2015 | 04/28/15 |
| 29:04 | 08/15/14 | 07/25/14 | 08/30/14 | 10/14/14 | 10/20/14 | 12/01/14 | 01/2015 | 05/12/15 |
| 29:05 | 09/02/14 | 08/11/14 | 09/17/14 | 11/03/14 | 11/20/14 | 01/01/15 | 01/2015 | 05/30/15 |
| 29:06 | 09/15/14 | 08/22/14 | 09/30/14 | 11/14/14 | 11/20/14 | 01/01/15 | 01/2015 | 06/12/15 |
| 29:07 | 10/01/14 | 09/10/14 | 10/16/14 | 12/01/14 | 12/22/14 | 02/01/15 | 05/2016 | 06/28/15 |
| 29:08 | 10/15/14 | 09/24/14 | 10/30/14 | 12/15/14 | 12/22/14 | 02/01/15 | 05/2016 | 07/12/15 |
| 29:09 | 11/03/14 | 10/13/14 | 11/18/14 | 01/02/15 | 01/20/15 | 03/01/15 | 05/2016 | 07/31/15 |
| 29:10 | 11/17/14 | 10/24/14 | 12/02/14 | 01/16/15 | 01/20/15 | 03/01/15 | 05/2016 | 08/14/15 |
| 29:11 | 12/01/14 | 11/05/14 | 12/16/14 | 01/30/15 | 02/20/15 | 04/01/15 | 05/2016 | 08/28/15 |
| 29:12 | 12/15/14 | 11/20/14 | 12/30/14 | 02/13/15 | 02/20/15 | 04/01/15 | 05/2016 | 09/11/15 |

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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

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

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

Application by: Dave Lentz
Infiltrator Systems Inc
PO Box 768
Old Saybrook, CT 06475

For: Modification of Innovative Approval for Infiltrator gravelless subsurface wastewater systems

DHHS Contact: Nancy Deal
1-919-707-5875
Fax: 919-845-3973
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting the applicant or Nancy Deal, Branch Head, at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Ms. Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rule cited as 02 NCAC 090 .0103.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
☒ RRC certified on: June 18, 2014
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncagr.gov/ProposedRules/index.htm>

Proposed Effective Date: November 1, 2014

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than July 30, 2014 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: This amendment prohibits grocery stores and other retail businesses in NC that sell eggs from repackaging eggs for sale when there are cracked or leaking eggs. Retailers do this in order to consolidate non-damaged eggs and create full cartons. When repackaged, however, eggs from various suppliers can be combined into the same carton and traceability is lost. This amendment maintains the State's high food safety standards and retains traceability in the event of a foodborne illness outbreak attributed to eggs.

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001; Phone (919) 707-3013; Email tina.hlabse@ncagr.gov

Comment period ends: September 15, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the

Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
☐ Environmental permitting of DOT affected
☐ Analysis submitted to Board of Transportation
☐ Local funds affected
☐ Substantial economic impact (≥\$1,000,000)
☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 09 – FOOD AND DRUG PROTECTION

SUBCHAPTER 090 – MARKETING OF SHELL EGGS

SECTION .0100 – DEFINITIONS AND STANDARDS

02 NCAC 090 .0103 STANDARDS FOR SHELL EGGS

(a) The United States Standards, Grades, and Weight Classes for Shell Eggs, adopted by the Agricultural Marketing Service of the United States Department of Agriculture as AMS-56, are incorporated by reference, including subsequent amendments and editions, and shall apply to all shell eggs sold, offered for sale, or advertised for sale in the state except the term "ungraded eggs" may be used to designate eggs exempt from grading pursuant to G.S. 106-245.15. Copies of this document may be obtained at no cost from the Division of Marketing, North Carolina Department of Agriculture and Consumer Services.

(b) Title 9, Code of Federal Regulations, Part 590, Inspection of Eggs and Egg Products, is incorporated by reference, including subsequent amendments and editions. Copies may be obtained at no cost from the United States Government Printing Office website at <http://www.gpoaccess.gov/cfr/index.html>.

(c) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use, except an "institutional consumer," as defined in G.S. 106-245.14. Said sales shall be made only at the premises of production or processing.

(d) Cracked or checked eggs may also be sold to a processing plant by a producer or processor for further processing.

(e) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet except as permitted by 02 NCAC 090 .0101(4) and Paragraph (a) of this Rule.

(f) It shall be unlawful to repackage eggs at any retail outlet to be offered for sale.

Authority G.S. 106-245.16; 106-245.21.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rule cited as 02 NCAC 20B .0413.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☒ RRC certified on: *June 18, 2014*
- ☐ Not Required

Proposed Effective Date: *November 1, 2014*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than July 30, 2014 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001*

Reason for Proposed Action: *This amendment defines the parameters for alcohol sale, use, and consumption on State Fair property. This would include the annual NC State Fair, the Annual Got to be NC Festival, as well as all contracted events on State Fair property throughout the year.*

Comments may be submitted to: *Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001; Phone (919) 707-3013; Email tina.hlabse@ncagr.gov*

Comment period ends: *September 15, 2014*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 20 – STATE FAIR

SUBCHAPTER 20B – REGULATIONS OF THE STATE FAIR

SECTION .0400 – OPERATION OF STATE FAIR FACILITIES

02 NCAC 20B .0413 ALCOHOLIC BEVERAGES

~~(a) A person shall not sell, offer for sale, or possess for the purpose of sale, any alcoholic beverage on State Fair property, except as permitted under this Rule.~~

~~(b) A person shall not possess or consume any alcoholic beverage at ticketed, commercial events that are open to the public on State Fair property except as permitted under this Rule.~~

~~(c) Except during the annual State Fair, beer and unfortified wine may be sold and consumed at the Gov. James B. Hunt, Jr. Horse Complex, subject to state alcoholic beverage control laws and regulations.~~

~~(d) Except during the annual State Fair, beer may be sold and consumed at Dorton Arena in connection with professional sporting events, subject to state alcoholic beverage control laws and regulations.~~

(a) The possession, sale or consumption of any alcoholic beverage shall be in compliance with the state alcoholic beverage control laws and regulations found in G.S. 18B.

(b) The sampling or sale of alcoholic beverages at an event on the State Fair property shall require prior approval by the State Fair Manager or his or her designee.

Authority G.S. 106-503.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Mining and Energy Commission intends to adopt the rules cited as 15A NCAC 05H .0101-.0102, .0201-.0203, .0301, .0401-.0402, .0501-.0504, .0601-.0605, .0701-.0709, .0801-.0808, .0901, .1001-.1005, .1101, .1201-.1206, .1301-.1314, .1401-.1407, .1501-.1504, .1601-.1624, .1701-.1704, .1801-.1807, .1901-.1906, .2001-.2007, .2101-.2103, and .2201 and repeal the rules cited as 15A NCAC 05D .0101 and .0103-.0111.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/mining-and-energy-commission/draft-rules>

Proposed Effective Date: *Pending legislative approval*

Public Hearings:

Date: *August 20, 2014*

Time: *10:00 a.m.-2:00 p.m.*

Location: NCSU's McKimmon Center, 1101 Gorman St., Raleigh, NC 27606

Date: August 22, 2014

Time: 5:00 p.m.-9:00 p.m.

Location: Wicker Civic Center, 1801 Nash St., Sanford, NC 27330

Date: August 25, 2014

Time: 5:00 p.m.-9:00 p.m.

Location: Rockingham County High School, 180 High School Road, Reidsville, NC 27320

Reason for Proposed Action: Session Law 2012-143 reconstituted the Mining Commission as the Mining and Energy Commission (MEC) and directed the MEC to develop and adopt a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing. As part of that directive, the MEC was charged with adopting rules that would protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expand employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. After reviewing the current regulations of the State, the mandate in SL 2012-143, and information from studies about the operation and potential impacts of modern oil and gas exploration and production activities, the MEC is proposing to adopt 126 new rules and to repeal 10 other rules in order to appropriately regulate the oil and gas industry for the purpose of oil and gas exploration and development.

Comments may be submitted to: Walt Haven, Division of Energy, Mineral and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612; email, Oil&Gas@ncdenr.gov

Comment period ends: September 15, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
☐ Environmental permitting of DOT affected

Analysis submitted to Board of Transportation

☐ Local funds affected

☐ Substantial economic impact (≥\$1,000,000)

☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 05 – MINING: MINERAL RESOURCES

SUBCHAPTER 05D – OIL AND GAS CONSERVATION

15A NCAC 05D .0101 GENERAL PROVISIONS

~~These Rules establish general and specific rules for the drilling, completion or abandonment and development of any well drilled for the production of oil or gas or any operations concerned with the production of oil and gas. No person, firm or corporation shall drill, complete or plug or produce any such well contrary to these Rules.~~

Authority G.S. 113-391.

15A NCAC 05D .0103 DEFINITIONS

~~The terms used in this Subchapter shall have the definitions assigned by G.S. 113-389. In addition, the words defined in this Rule shall have the following meanings:~~

- ~~(1) "Director" means the Director of the Division of Energy, Mineral, and Land Resources.~~
- ~~(2) "Drilling unit" means the area which can be efficiently and economically drained by one well.~~
- ~~(3) "Pooled unit" means one or more tracts of land, on which mineral ownership is different, that are consolidated and operated as a single tract for production of oil or gas either by voluntary agreement or by order of the department.~~
- ~~(4) "Protection of correlative rights of equity" means that action or regulation by the department which affords a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas under his tract or tracts without being required to drill unnecessary wells or incur unnecessary expenses to recover such oil or gas.~~
- ~~(5) "Well spacing" means the pattern of minimum distances on the surface from lease boundary lines and from other wells drilling to or producible from the same pool.~~

Authority G.S. 113-391.

15A NCAC 05D .0104 REGISTRATION

~~Prior to making any drilling exploration in this state for oil and gas, persons, firms or corporations must register with the department and furnish bond in the amount of five thousand dollars (\$5,000) running to the State of North Carolina, conditioned that any well opened or caused to be opened by an operator shall upon abandonment be plugged in accordance with the rules of the department. Forms for registration and posting of bond may be obtained by application to the Director, Division~~

of Energy, Mineral, and Land Resources, P.O. Box 27687, Raleigh, N.C. 27611.

Authority G.S. 113-391.

15A NCAC 05D .0105 DRILLING PERMITS

Registration as required by the statutes shall be by application to the director for a drilling permit, upon a form specified by the director, accompanied by a fee of fifty dollars (\$50.00) and a bond as set forth in Rule .0004 of this Subchapter.

Authority G.S. 113-391; 113-395.

15A NCAC 05D .0106 WELL SPACING

(a) ~~The director shall not issue a permit for the drilling, deepening or plugging back of any well for the production of oil or gas unless the proposed well location and spacing conform to the rules of the department. These Rules do not apply to wells drilled for geological information, stratigraphic testing, fluid injection or disposal or storage of natural hydrocarbons.~~

(b) ~~Upon completion of a discovery well within a new pool or reservoir, the department shall consider and adopt after public hearing, temporary well spacing and drilling units. The rule shall be designed to result in drilling the smallest number of wells necessary to determine within the shortest possible time, all information pertaining to the reservoir and its contained fluids, in order to determine the proper permanent plan of drilling wells on, and allocating production to the various separate leaseholds within the reservoir. When such information has been obtained and after public hearing, the department shall adopt permanent rules including:~~

- ~~(1) minimum size unit on which one well may be drilled,~~
- ~~(2) method of determining total allowable for the pool,~~
- ~~(3) method of allocating and distributing total allowable among various separate leaseholds on pooled units so that correlative rights and equity will be protected,~~
- ~~(4) minimum distance from separate leasehold or pooled unit and between wells to the same reservoir.~~

(c) ~~An exception to the general rules or special rules may be granted by the director upon application and after public hearing, if it is shown that more hydrocarbons can be recovered under the lease hold by such exceptions. The exceptions may be granted because of:~~

- ~~(1) topographical conditions, both natural and manmade;~~
- ~~(2) geologic conditions, faults, etc.;~~
- ~~(3) other conditions accepted as pertinent by the director.~~

(d) ~~The allowable of such off pattern wells may be adjusted to protect the correlative rights of offset operators and land owners and to conserve the resource.~~

(e) ~~When separately owned tracts are embraced within a single drilling unit, the involved persons may pool their interests or in the absence of voluntary pooling, the director, for the prevention of waste or to avoid drilling unnecessary wells, may order~~

~~pooling of all interests. Each such pooling order shall be made after a public hearing held by the director which shall determine the following:~~

- ~~(1) equitable share of oil or gas in the pool for each owner,~~
- ~~(2) operator of pooled interest,~~
- ~~(3) drilling and operating costs and provision for equitable distribution of the costs among owners,~~
- ~~(4) penalty allowable of any owner who refused to pay his share accordingly.~~

Authority G.S. 113-391.

15A NCAC 05D .0107 DRILLING AND COMPLETION

(a) ~~Unless altered or changed by special rules, the following rules on drilling procedure shall apply to all wells drilled.~~

(b) ~~All fresh water strata shall be protected by suitable and sufficient casing and cement. The casing shall extend from the surface to the first impervious layer not less than 50 feet below all fresh water strata. The casing shall be so centralized and the annulus of such size that cement can be injected to fill the entire annular space behind the casing back to the surface.~~

(c) ~~If a flow or producing string of casing is set, it shall be cemented with sufficient volume to fill the annular space back of the casing to a point at least 500 feet above the casing shoe and at least 50 feet above the producible reservoir nearest to the surface. If drilling is to continue following cementing operations, the cement shall set a minimum of 24 hours before the plug is drilled. The flow string shall be tested by either of the two methods below:~~

- ~~(1) Pressure Test. If a pressure test is used, the pressure should be raised to a pressure calculated by multiplying the length of casing in feet by 0.2 not to exceed 1,500 psi and after 30 minutes if the pressure has dropped 10 percent or more, the casing has failed to meet the requirements.~~
- ~~(2) Bailer Test. If the bailer test is used, the fluid level shall be lowered to a point midway between the casing base and the top of cement column behind such casing, and if after 12 hours the fluid level rises or subsides two percent or more of the length of the water column, the casing has failed to meet the requirements.~~

(d) ~~In all proven areas, the use of blowout preventers shall be in accordance with practice established in drilling the pool under development. In unproven areas, all drilling wells should be equipped with a master gate or equivalent, an adequate blowout preventer and a properly sized flow line valve. "Adequate" shall be taken to mean that consideration has been given to the depth of the test and pressures likely to be encountered at those depths. The entire control equipment shall be in good working condition at all times and shall have been tested to working pressures at least 50 percent above the hydrostatic pressures anticipated in the well.~~

(e) ~~All wells shall be drilled in such a manner so that vertical deviation of the hole does not exceed three degrees between the~~

bottom of the hole and the top of hole, and shall not deviate in such a manner as to cross property or unit lines, unless an exception is granted by the director. An inclination survey shall be filed with the director for each well subsequently produced for oil or gas.

(f) ~~Slush or mud pits shall be constructed prior to commencement of drilling operations and should be of adequate size to confine all anticipated drilling mud and cuttings. Precautions should be taken to prevent the contamination of streams and potable water. All such pits should be refilled or otherwise returned to prior condition upon termination of drilling operations.~~

(g) ~~The operator shall not, except in extreme emergencies or with permission of the director, permit oil or salt water to be temporarily stored in earthen reservoirs.~~

(h) ~~Any rubbish or debris shall be disposed of so as not to constitute a fire hazard.~~

(i) ~~Christmas tree fittings or well head connections, flow lines and treating facilities, shall have a working pressure in keeping with anticipated working pressures generated by the well as determined from drillstem tests or other pressure testing procedures acceptable to the director.~~

Authority G.S. 113-391.

15A NCAC 05D .0108 COMPLETION REPORT

(a) ~~Within 30 days after the completion of a producing well drilled for oil or gas, or the recompletion of a producing well into a different formation, or where the producing interval is changed, a completion report shall be filed with the director on a form prescribed by the director. The information required shall include the following:~~

- ~~(1) name, number and location of the well;~~
- ~~(2) lease name;~~
- ~~(3) date of completion and date of recompletion;~~
- ~~(4) total depth;~~
- ~~(5) record of stimulation;~~
- ~~(6) initial potential test and method;~~
- ~~(7) casing and tubing size and weight;~~
- ~~(8) cement record including squeeze jobs or remedial cementing;~~
- ~~(9) types of borehole geophysical logs run. (Copies of logs not previously furnished should be included.)~~

(b) ~~If such information is of a confidential nature, then upon request of the operator, the director will hold such information in confidence for a period of one year. Extensions of this confidentiality shall be allowed up to a maximum of one year at the discretion of the director.~~

Authority G.S. 113-391.

15A NCAC 05D .0109 PLUGGING OF WELLS

(a) ~~The operator or owner shall not permit any well drilled for oil or gas or any other purpose in connection with the production of oil or gas to remain unplugged for a period exceeding 30 days from termination of drilling activities without prior approval. Prior to this date, the operator must submit to the director his intention to plug and abandon or complete the well. A written~~

~~request on the form prescribed, accompanied by a fee of fifteen dollars (\$15.00) must be submitted prior to commencement of plugging operations. The form shall contain the following information:~~

- ~~(1) location of well, name and number of well;~~
- ~~(2) name of operator;~~
- ~~(3) projected plugging date;~~
- ~~(4) casing, cement, pipe to remain in the hole;~~
- ~~(5) types of borehole geophysical logs run;~~
- ~~(6) proposed plugging procedure.~~

(b) ~~The director shall determine the proper plugging procedure to be used and will provide a representative to witness the plugging operation.~~

(c) ~~If the well is a dry hole, written notification can be waived in favor of verbal notification at the discretion of the director. However, the written forms must be submitted following plugging operations prior to release of the bond.~~

(d) ~~Upon the director finding that all the rules regarding the plugging of such wells have been complied with, the bond, referred to in Regulation .0004 of this Subchapter, given to guarantee proper plugging, may be released.~~

Authority G.S. 113-391; 113-395.

15A NCAC 05D .0110 FILING OF THE LOG OF DRILLING

(a) ~~Within 30 days of the termination of drilling operations of any oil or gas well, the operator must file with the director a complete log of the drilling of the well. The record shall include the following:~~

- ~~(1) copy of the driller's log;~~
- ~~(2) a set of drill cuttings at 10 foot intervals;~~
- ~~(3) a copy of all borehole geophysical logs run on the well;~~
- ~~(4) all oil or gas show reports and a copy of the mud log if run;~~
- ~~(5) results of tests such as drill stem tests, bailer tests, etc.;~~
- ~~(6) core descriptions and analyses.~~

(b) ~~Upon request by the operator, this information will be kept confidential for a period of one year after completion or abandonment of the well. Extensions of this confidentiality shall be allowed up to a maximum of one year at the discretion of the director.~~

(c) ~~No bond shall be released until this Regulation has been complied with.~~

(d) ~~The operator shall cause a driller's log to be kept at the drill site during drilling operations which shall include the following:~~

- ~~(1) formations penetrated;~~
- ~~(2) drilling depth;~~
- ~~(3) fluids encountered;~~
- ~~(4) tests performed.~~

~~This record shall be available to an authorized representative of the department at all reasonable times.~~

Authority G.S. 113-391.

15A NCAC 05D .0111 LIMITATION OF PRODUCTION AND ALLOCATION

~~(a) The department has the authority to limit production for the purpose of prevention of waste, both above and below ground, and the protection of correlative rights. The department reserves the right upon public hearing, held by the director, to determine the amount of oil which can be produced without waste from each designated pool. The director shall consider the following factors:~~

- ~~(1) ——— productive capacities,~~
- ~~(2) ——— effective pay thicknesses,~~
- ~~(3) ——— permeability and porosity,~~
- ~~(4) ——— type of drive mechanism,~~
- ~~(5) ——— size and content of reservoir,~~
- ~~(6) ——— bottom hole pressures,~~
- ~~(7) ——— gas-oil ratios,~~
- ~~(8) ——— water-oil ratios.~~

~~(b) Operators shall maintain a record of decline of production and of pressure for each well. The pressure decline may be based either on bottom hole pressure tests or on shut in pressure tests which should be run every 120 days.~~

~~(c) The department has the authority to limit production, set allowables and allocate allowables, whenever the total amount of oil and/or gas which all of the pools in the state can produce, exceeds the amount reasonably required to meet market demand. Such proration and allocation will be done only after a public hearing is held by the director.~~

Authority G.S. 113-391.

SUBCHAPTER 05H – OIL AND GAS CONSERVATION

SECTION .0100 – TERMS OF REFERENCE

15A NCAC 05H .0101 PURPOSE AND SCOPE

The rules of this Subchapter regulate the management of oil or gas exploration and development to protect public health, welfare, and the environment.

Authority G.S. 113-391(a).

15A NCAC 05H .0102 TERMS OF REFERENCE AND DEFINITIONS

The terms as used in this Subchapter shall have the definitions in G.S. 113-389. In addition, the following terms shall have the following meaning:

- (1) "7Q10 flow" when used in reference to surface water, refers to the minimum average flow for a period of seven consecutive days that has an average occurrence of once in 10 years.
- (2) "Abandon" means to temporarily or permanently cease production from an oil or gas well or to cease further drilling operations.
- (3) "Additive(s)" means any chemical substance or mixture of substances.
- (4) "Affected reach" means the portion of a stream channel where the hydrology may be significantly affected by the cumulative effects of the proposed water withdrawal in

combination with existing water withdrawals and point source discharges.

- (5) "Annular flow" means the flow of formation fluids from the formation into a space or pathway in an annulus within an oil or gas well.
- (6) "Annulus" means the space around a pipe in a wellbore, sometimes termed the annular space.
- (7) "API number" means a unique, permanent, American Petroleum Institute numeric identifier assigned by the North Carolina Geological Survey to each well drilled for oil or gas production.
- (8) "Applicant" means the person who submits an Oil or Gas Well Permit Application.
- (9) "Barrel" means 42 U.S. gallons at 60° F at atmospheric pressure.
- (10) "Blowout" means an uncontrolled flow of gas, oil, or other wellbore fluids from the oil or gas well.
- (11) "Blowout preventer (BOP)" means one or more valves installed at the wellhead to prevent the escape of pressure from the annular space or the escape of pressure from the open or cased hole:
 - (a) "Annular blowout preventer" means a large valve that forms a seal in the annular space between the pipe and wellbore.
 - (b) "Shear ram blowout preventer" means a closing element fitted with hardened tool steel blades designed to cut the drill pipe when closed.
- (12) "Brine" means a liquid solution with a concentration of dissolved salts greater than 35 grams of dissolved constituents per kilogram of water.
- (13) "Bull plug" means a pressure-containing closure for a female-threaded end or outlet connection, which may have an internal counter bore or test port.
- (14) "Casing" means steel pipe placed in a wellbore to prevent the wall of the wellbore from caving in and to prevent movement of fluids from one formation to another.
- (15) "Casing string" means the entire length of all the connected joints of casing inserted into the wellbore.
- (16) "Cellar" means a dug-out area that provides additional height between the drilling rig floor and the wellhead to accommodate the installation of blowout preventers.
- (17) "Cement basket" means a slip-on style device made of high strength, flexible steel staves, mounted on a steel slip-on ring with heavy-duty canvas liners riveted to staves.
- (18) "Cement bond log (CBL)" means an acoustic survey or sonic-logging method that records the quality or hardness of the cement used in

- the annulus to bond the casing and the formation.
- (19) "Centralizer" means a mechanical device used to position the casing concentrically in the wellbore.
- (20) "Chemical(s)" means any element, chemical compound, or mixture of elements or compounds that has its own specific name or identity such as a Chemical Abstracts Service Registry Number.
- (21) "Chemical Abstracts Service" is a division of the American Chemical Society.
- (22) "Chemical Abstracts Service Registry Number" or "CAS Registry Number" means the unique identification number assigned to a chemical by the Chemical Abstracts Service.
- (23) "Chemical classification" means a grouping that relates a chemical to others with similar features.
- (24) "Chemical disclosure registry" means the chemical registry website known as FracFocus.org developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.
- (25) "Conductor casing" means a casing string used to support unconsolidated surface deposits.
- (26) "Completion" means the activities that render an oil or gas well capable of producing oil or gas through the wellhead equipment from a producing zone after the production casing string has been set.
- (27) "Containment system" means a synthetic liner, coating, storage structure, other material, or structure used in conjunction with a primary container that prevents any spills onto the ground or spills from leaving the drilling site.
- (28) "Contaminant" means any substance occurring in groundwater, surface water, or soil in concentrations which exceed the standards specified in 15A NCAC 02B, 15A NCAC 02L .0202, or 15A NCAC 02L .0411.
- (29) "Conventional reservoir" means an accumulation of hydrocarbons that are localized in structural or stratigraphic traps.
- (30) "Deepen" means an operation where an oil or gas well is drilled beyond the originally permitted depth of the oil or gas well.
- (31) "Deviated well" means an oil or gas well that is purposely deviated from the vertical using directional drilling methods to reach the objective location other than directly below the surface location.
- (32) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources.
- (33) "DLIS" means Digital Log Information Standard.
- (34) "Drill pipe" means the pipe used to rotate the drill bit and circulate the drilling fluid.
- (35) "Drill stem test" means a method of formation testing consisting of a packer or packers, valves, or ports that may be opened or closed from the surface and two or more pressure recording devices.
- (36) "Drilling unit" means an area established by the Commission, which can be efficiently and economically drained by one or more oil or gas wells.
- (37) "Dry hole" means any oil or gas well that does not produce oil or gas in commercial quantities.
- (38) "Emergency responder" means an emergency medical technician, fire fighter, law enforcement officer, public works employee, emergency manager, fire marshal, HAZMAT coordinator, technical specialist, incident commander, fire chief, or a member of State Emergency Management who provides, plans, or directs emergency health or safety services.
- (39) "Exploration and production (E & P) waste" means wastes associated with the exploration, development, and production of oil or gas, which are not regulated by the Subtitle C of the Federal Resource Conservation and Recovery Act, and may include the following: produced brine, sand, and water; drill cuttings; water-based drilling fluids; flowback fluids; stormwater in secondary containment and pits at the well site; and any other deposits or residuals from exploration and production activities.
- (40) "Float collar" means a component that is installed near the bottom of the casing string on which wiper plugs land during the primary cementing operation.
- (41) "Float shoe" means a rounded profile component attached to the down-hole end of the production casing string to prevent reverse flow of cement slurry into the casing string.
- (42) "Flowback fluid" means liquids, and mixtures thereof, consisting of drilling fluid, silt, sand and other proppants, debris, water, brine, oil, paraffin, produced water, or other materials that are removed from the wellbore during the completion or recompletion of an oil or gas well, other additives that flow from an oil or gas well following well stimulation, or during production of an oil or gas well.
- (43) "Floodplain" as defined in 44 CFR 59.1.
- (44) "Floodway" as defined in 44 CFR 59.1.
- (45) "Flow rate" means the volume per unit time of a fluid moving past a fixed point.
- (46) "Formation Integrity Test (FIT)" means a pressure test applied to the formation directly below the base of the casing string to

- determine the maximum pressure that may be applied without risk of formation breakdown.
- (47) "Fresh groundwaters" means those groundwaters having a chloride concentration equal to or less than 250 milligrams per liter.
- (48) "FRO" means Financial Responsibility Ownership.
- (49) "Green completion" means an oil or gas well completion following fracturing or refracturing where gas flowback that is otherwise vented is captured, cleaned, and routed to the flow line or collection system, re-injected into the oil or gas well or another oil or gas well, used as an on-site fuel source, or used for other useful purpose that a purchased fuel or raw material would serve, with no direct release to the atmosphere.
- (50) "Groundwaters" means those waters occurring in the subsurface under saturated conditions.
- (51) "Hazardous chemicals" as defined in 29 CFR 1900.1200(c).
- (52) "Health professional" means a licensed physician, physician's assistant, industrial hygienist, toxicologist, epidemiologist, nurse, nurse anesthetist, or nurse practitioner; or a local health director.
- (53) "High occupancy building" means any operating public school, nursing facility, hospital, life care institution, or correctional facility, provided that the facility or institution served 50 or more persons, or an operating child care center as defined in G.S. 110-86.
- (54) "Hydraulic fracturing" means oil or gas well stimulation by the application of hydraulic pressure using fluids, proppants, and additives under pressure to create artificial fractures or to open existing fracture networks in the formation for the purpose of improving the capacity to produce hydrocarbons.
- (55) "Hydraulic fracturing stage" means the portion of a wellbore that is isolated by setting packers or plugs during well stimulation operations.
- (56) "Intermediate casing" means a casing string that is set in place after the surface casing and before the production casing.
- (57) "Intermittent stream" as determined by North Carolina Division of Water Quality Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11, Effective Date: September 1, 2010.
- (58) "Joint" means a length of drill pipe or casing.
- (59) "Kelly bushing" means a device that is fitted to the rotary table through which the kelly passes and the means by which the torque of the rotary table is transmitted to the kelly and the drill string.
- (60) "Kickoff point" means the depth in a vertical wellbore in which a deviation is initiated.
- (61) "LAS" means Log ASCII Standard.
- (62) "Licensed Geologist" means a person who has been duly licensed as a geologist in accordance with the requirements of G.S. 89E.
- (63) "LiDAR" means Light Detection And Ranging.
- (64) "LIS" means Log Information Standard.
- (65) "Lost hole" means an oil or gas well that could not be drilled to the originally permitted total depth.
- (66) "Master valve" means a large valve located on the wellhead and used to control the flow of oil or gas from a well.
- (67) "Mechanical bridge plug" means a downhole tool, composed primarily of slips, a plug mandrel, and a rubber sealing element, that is run and set in casing to isolate a lower zone while an upper section is being tested or cemented.
- (68) "Mousehole" means a shallow boring under the drilling rig floor, lined with casing, in which joints of drill pipe are temporarily suspended for future connection to the drill string.
- (69) "NC UCC" means the North Carolina Uniform Commercial Code.
- (70) "Occupied dwelling" means a private residence, existing inhabited structure, or a public building that may be used as a place of assembly, education, entertainment, lodging, trade, manufacture, repair, storage, or occupancy by the public, including any outdoor recreational facility, State Park as defined in G.S. 113-44.9, or historic property acquired by the State pursuant to G.S. 121-9 or listed in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1. This definition does not apply to a building or other structure that is incidental to agricultural use of the land on which the building or other structure is located unless the building or other structure is used as an occupied private dwelling or for retail trade.
- (71) "Packer" means a piece of downhole equipment that consists of a sealing device, a holding or setting device, and may contain an inner passage for fluids.
- (72) "Perennial stream" means a channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year as indicated on the most recent versions of U.S.G.S 1:24,000 (7.5 minute) scale topographic maps.
- (73) "Permittee" means a person to whom the Department has issued an Oil or Gas Well Permit.

- (74) "Pit" means any natural or man-made depression in the ground used for storage of liquids.
- (75) "Produced water" means the water that exists in subsurface formations and is brought to the surface during oil or gas production.
- (76) "Plug and abandon" means to place cement plugs into a wellbore and abandon it.
- (77) "Plug back" means to place cement in or near the bottom of an oil or gas well to sidetrack or to produce from a formation higher in the oil or gas well.
- (78) "Production casing" means a casing string that is set across the reservoir interval, within which the completion components are installed.
- (79) "Production facility" means all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with production at oil or gas wells.
- (80) "Production zone" means the rock stratum that will yield hydrocarbons.
- (81) "Professional engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors pursuant to G.S. 89C.
- (82) "PSI" means pounds per square inch.
- (83) "Rathole" means a hole in the drilling rig floor that is lined with casing into which the kelly is temporarily placed.
- (84) "Reclamation" means the process of returning or restoring disturbed land to its condition prior to the commencement of oil or gas operations.
- (85) "Reenter" means accessing a previously completed wellbore.
- (86) "Residuals" means any solid, semisolid, or liquid waste, other than effluent or residues from agricultural products and processing, generated from a wastewater treatment facility, water supply treatment facility, or air pollution control facility permitted under the authority of the Environmental Management Commission.
- (87) "Rotating diverter system" means a system that provides an annular seal around the drill pipe during drilling operations.
- (88) "Safety data sheet" means written or printed materials containing all the information specified in 29 CFR 1900.1200(g), which is incorporated by reference including subsequent amendments for regulated hazardous substances.
- (89) "Service company" means a person that conducts work onsite related to the drilling, completion, or production of an oil or gas well.
- (90) "Setback" means the horizontal separation distance, in feet, between the surface location of well site structures and adjacent structures and land features.
- (91) "Shut-in" means to close the valves on a wellhead so that production ceases.
- (92) "Sidetrack" means to use a downhole motor to drill around the original planned path of the oil or gas well.
- (93) "SPCA" means the Sediment Pollution Control Act of 1973.
- (94) "Spud" means to start the oil or gas well drilling process by removing rock, dirt and other sedimentary material with the drill bit.
- (95) "Sub-base" means the layer of material laid on the subgrade.
- (96) "Subgrade" means the native material at the bottom of a subgrade.
- (97) "Surface casing" means a large diameter, casing string set in shallow yet competent formations used to protect groundwaters.
- (98) "Tank" means a stationary vessel constructed of non-earthen materials used to contain fluids.
- (99) "Tank battery" means a group of tanks that are connected to receive production fluids from an oil or gas well or a producing lease.
- (100) "Tracer technology" means technology used to trace well stimulation fluid back to the oil or gas well where fluid was injected.
- (101) "Trade name" means the common name given by industry or a manufacturer to a chemical or product.
- (102) "Trade secret" as defined in G.S. 66-152(3).
- (103) "Unconventional reservoir" means a resource whose porosity, permeability, fluid trapping mechanism, or other characteristics differ from conventional reservoirs.
- (104) "Vendor" means a company that sells or provides a substance or product for use in oil or gas exploration or production.
- (105) "Water source" means any of the following:
 - (a) waters of the State;
 - (b) a source of water supply used by a water purveyor;
 - (c) mine pools and discharges; and
 - (d) any other waters that are used for drilling, completing, and stimulating an oil or gas well.
- (106) "Water supply well" as defined in G.S. 87-85(13).
- (107) "Water or waters of the State" as defined in G.S. 143-212.
- (108) "Well" as defined in G.S. 87-85(14).
- (109) "Wellbore" means a borehole drilled by a bit.

- (110) "Wellhead" means the upper terminal of the oil or gas well, including adapters, ports, valves, seals, and other attachments.
- (111) "Well pad" means the area that is cleared or prepared for the drilling of one or more oil or gas wells.
- (112) "Well site" means the areas that are directly disturbed during the drilling and subsequent operation of any oil or gas well and its associated well pad.
- (113) "Well spacing" means the minimum distance from any wellbore in the drilling unit to the boundary of the drilling unit.
- (114) "Well stimulation" means any of several operations or processes to initiate or increase the production of oil or gas from a well, including acidizing, hydraulic fracturing, or other methods.
- (115) "Wetland" as defined in 40 CFR 230.3.
- (116) "Wiper plug" means a rubber plug used to separate the cement slurry from other fluids.
- (117) "Wireline log" means the recording of information about subsurface geologic formations using tools lowered into the wellbore on a wire line.
- (118) "Withdrawal" means the removal of water from a water body, well, or other fluid storage structure.
- (119) "Workover" means the performance of one or more of a variety of operations on a producing oil or gas well to attempt to increase production.

Authority G.S. 113-391.

SECTION .0200 – ADMINISTRATIVE RULES

15A NCAC 05H .0201 FORMS

(a) An applicant or permittee shall use the following forms, as provided by the Department:

- (1) Form 1 – Financial Responsibility Ownership;
- (2) Form 2 – Oil or Gas Well Permit Application;
- (3) Form 3 – Well Construction Design;
- (4) Form 4 – Water Management Plan;
- (5) Form 5 – Waste Management Plan;
- (6) Form 6 – Well Site Reclamation Plan;
- (7) Form 7 – Irrevocable Letter of Standby Credit;
- (8) Form 8 – Surety Bond;
- (9) Form 9 – Assignment of Savings;
- (10) Form 10 – Cash Deposit;
- (11) Form 11 – Required Notifications to the Department;
- (12) Form 12 – Well Drilling Report;
- (13) Form 14 – Plugging and Abandonment;
- (14) Form 15 – Oil or Gas Well Status;
- (15) Form 16 – Mechanical Integrity Test Results;
- (16) Form 17 – Notification of Return of Oil or Gas Well to Active Status;
- (17) Form 18 – Well Stimulation Report;

- (18) Form 19 – Chemical Disclosure Report;
- (19) Form 20 – Trade Secret Claim;
- (20) Form 21 – Water Supply Investigation Request;
- (21) Form 22 – Water Supply Testing Report;
- (22) Form 23 – Annual Water Use Report;
- (23) Form 24 – Annual E & P Waste Management Report;
- (24) Form 25 – Pit Closure Report;
- (25) Form 26 – Spill and Release Report;
- (26) Form 27 – Site Investigation and Remediation Work Plan;
- (27) Form 28 – Monthly Production Report; and
- (28) Form 29 – Well Site Inspection Report.

(b) The use of any forms other than those provided by the Department is prohibited.

Authority G.S. 113-391.

15A NCAC 05H .0202 RECORD KEEPING & REPORTING

(a) The Department shall collect data, retain records, and produce reports pursuant to G.S. 113-391(b).

(b) If information collected during predrilling exploration activities or geophysical surveys related to oil or gas exploration and development is of a confidential nature, then upon request of the permittee, the State Geologist shall hold such information in confidence until the information is no longer confidential in accordance with Rule .0707 of this Subchapter.

(c) The permittee shall retain all data, records, reports, logs, and samples associated with oil or gas well drilling, completion, production, and plugging and abandonment for a period of five years following the release of an Oil or Gas Permit in accordance with Rule .1314 of this Subchapter.

Authority G.S. 113-391(b); 113-391(b1).

15A NCAC 05H .0203 INSPECTIONS

(a) Each permittee shall, upon notice, make available to the Department for inspection the well site, any other area encompassed by the permit, and any records maintained pursuant to the provisions of this Subchapter.

(b) Authorized representatives of the Department may copy any record required to be kept pursuant to provisions of this Subchapter.

(c) Any notice of violation resulting from an inspection shall be issued pursuant to Rule .0901 of this Subchapter.

Authority G.S. 113-391(b).

SECTION .0300 - VARIANCES

15A NCAC 05H .0301 VARIANCE PROCEDURES

(a) The Commission may grant a variance, grant a variance with conditions, or deny a variance in writing to any Commission rule for which a variance may be requested pursuant to this Subchapter. The applicant or the permittee requesting the variance shall make a showing that it has made a good faith effort to comply, or is unable to comply, with the specific

requirements contained in the rule or rules from which it seeks a variance and that the requested variance does not violate the basic intent of the Oil and Gas Conservation Act in G.S. 113, Article 27.

(b) The applicant or permittee shall request the variance by submitting a written request to the Commission. A request for a variance shall include the following information:

- (1) the name and address of the requesting party;
- (2) the statute or rule authorizing the request for a variance;
- (3) all information required by the statute or rule authorizing the request for a variance;
- (4) a statement of whether an oral argument before the Commission is desired, and if so, the reason(s) for requesting such an oral argument;
- (5) a concise statement of the matter to be presented, including the nature and duration of the variance requested;
- (6) arguments or data that support the requesting party's position;
- (7) a statement of the consequences of failure to grant relief in favor of the requesting party; and
- (8) any other information believed by the applicant or permittee to be pertinent to the request.

(c) The variance request may be submitted with the Form 2 – Oil or Gas Well Permit Application, which is governed by Rule .1304 of this Subchapter. If the variance request is submitted separate from the application, it shall be submitted no less than 30 days before the next regularly scheduled Commission meeting.

(d) Any hearing on the variance request shall be denied or conducted in accordance with Section .0700 of this Subchapter.

Authority G.S. 113-391(a).

SECTION .0400 – DECLARATORY RULING

15A NCAC 05H .0401 PROCEDURE FOR SUBMISSION OF PETITION

(a) All requests shall be filed in writing and electronically as follows:

- (1) with the Director of the Division by filing one paper copy for each Commissioner plus five additional copies with the Recording Clerk of the Commission at the following address: 1612 Mail Service Center, Raleigh, NC 27699-1612; and
- (2) the electronic submission shall be in .pdf format and sent to the Division at Oil&Gas@ncdenr.gov.

(b) All requests shall include the following:

- (1) the name and address of petitioner(s);
- (2) the statute, rule, or order upon which a ruling is desired;
- (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the

applicability of a statute, rule, or order to a given factual situation;

- (4) arguments or data demonstrating that the petitioner is aggrieved by the statute, rule, or order or its potential application to the petitioner;
- (5) a statement of the consequences of failure to issue a declaratory ruling in favor of the petitioner;
- (6) a draft of the desired outcome; and
- (7) a statement of whether an oral argument is desired, and if so, the reason(s) for requesting such an oral argument.

(c) A petitioner may request a declaratory ruling on the applicability of a statute, rule, or order to the petitioner, or on the validity of a Commission rule. The petitioner may request both types of declaratory ruling in a single request. A request on the applicability of a statute, rule, or order shall include a detailed statement of the facts and documentation supporting such facts, in addition to the requirements of Paragraph (b) of this Rule. A request to determine the validity of a Commission rule shall state the petitioner's reason(s) for the request and a written argument, in addition to the requirements of Paragraph (b) of this Rule.

(d) Any other person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. The Chair of the Commission shall determine whether to grant the motion to intervene in accordance with Rule 24 of the North Carolina Rules of Civil Procedure.

Authority G.S. 113-391(a)(14); 150B-4.

15A NCAC 05H .0402 DISPOSITION OF PETITION

(a) The Chair of the Commission shall make a determination on the completeness of the request for declaratory ruling based on Rule .0401 of this Section.

(b) The Chair of the Commission shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.

(c) Before deciding the merits of the request, the Commission may:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from Division staff or any other person; and
- (3) hear oral arguments from the petitioner(s) and Division staff or their legal counsel.

(d) The Commission shall decline to issue a declaratory ruling if it finds any of the following:

- (1) that there has been a similar determination in a previous contested case or declaratory ruling;
- (2) that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (3) that no genuine controversy exists as to the application of a statute, order, or rule to the specific factual situation presented; or
- (4) that the factual situation presented as the subject of the declaratory ruling was specifically considered upon the adoption of

the rule being questioned, as evidenced by the rulemaking record.

(e) The Commission shall keep a record of each request for declaratory ruling, which shall include at a minimum the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the facts on which the ruling was based;
- (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
- (5) any other information such as documents, photographs, recordings, maps, plats, articles, and studies considered by the Commission in making its decision; and
- (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the reasons therefore.

(f) The Commission shall notify the petitioner in writing of the Commission's decision on the request for declaratory ruling, including the basis for the Commission's decision.

(g) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
- (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling to be plainly irreconcilable with the declaratory ruling; or
- (3) any court sets aside the declaratory ruling in litigation between the Commission or the Department and the party requesting the ruling.

(h) Any Division of the Department may be a party to any request for declaratory ruling upon written request. Such request shall be made to the Chair of the Commission within five days of receipt of notice of the request for a declaratory ruling.

(i) Upon written request, the requesting party and the Division each may be allowed to present oral arguments to the Commission. No party may offer testimony or conduct cross-examination before the Commission.

(j) The petitioner may agree to allow the Commission to issue a written ruling to grant or deny consideration of the request beyond 30 days of receipt of the request and may agree to allow the Commission to issue a written ruling on the merits of the request beyond the 45 days allowed by G.S. 150B-4.

(k) A declaratory ruling is subject to judicial review as provided in G.S. 150B-4(a1).

Authority G.S. 113-391(a)(14) and (a4); 150B-4.

SECTION .0500 – PETITION FOR RULEMAKING

15A NCAC 05H .0501 FORM AND CONTENTS OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall petition the Director by

submitting the information required in Paragraph (b) of this Rule. The petitioner shall submit one paper copy of the petition for each Commissioner plus five additional copies and a copy in .pdf form to the Recording Clerk of the Commission:

Recording Clerk

Division of Energy, Mineral, and Land Resources

1612 Mail Service Center

Raleigh, North Carolina 27699-1612

Oil&Gas@ncdenr.gov.

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s);
- (2) a statement of the reasons for adoption of the proposed rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) any documents and data supporting the proposed rule(s);
- (5) the name(s) and address(es) of the petitioner(s); and
- (6) a request to present the petition to the committee in accordance with Rule .0502 of this Section, if desired.

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rule(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors; and
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

(d) Petitions failing to contain the required information shall be returned by the Commission.

Authority G.S. 143B-282; 150B-20.

15A NCAC 05H .0502 REVIEW BY A COMMITTEE OF THE COMMISSION

(a) The Chair of the Commission shall refer complete petitions to the appropriate subject area committee of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to all members of the committee of the Commission.

(b) Within 10 days of the assignment of the complete petition, the Chair of the committee assigned to review the submitted petition shall announce the date of a meeting to consider the petition.

(c) At least 15 days before the committee meeting, notice of the committee meeting shall be sent to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) The petitioner shall be afforded the opportunity to present the petition to the committee. The Director, through staff, may make a presentation to the committee.

(e) The Chair of the committee shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Chair of the committee shall determine whether additional interested persons are permitted to make oral presentations before the committee. Interested persons shall request the opportunity to make a presentation to the committee through the Director. The request shall:

- (1) state the interest of the person in the petition for rulemaking;
- (2) state the person's position on the petition; and
- (3) be accompanied by supporting materials.

(f) During the committee's review, members of the Commission, other than committee members, who are present may participate as a member of the committee in discussions of the petition but shall not vote on the recommended action on the petition.

Authority G.S. 143B-282; 150B-20.

15A NCAC 05H .0503 PRESENTATION TO THE COMMISSION

(a) Petitions for rulemaking, after review by the appropriate committee under Rule .0502 of this Section, shall be presented to the Commission for its consideration and determination at a regularly scheduled meeting of the Commission within 120 days following the date of submission. The Petition for Rulemaking and the committee's recommended action shall be presented through the Chair of the committee or other designated member of the committee during the business session of the Commission. Unless the Chair of the Commission rules otherwise, discussion on the petition shall be limited to the members of the Commission, counsel to the Commission, and the Director.

(b) Within 120 days following the date of submission of the petition to the appropriate committee, the Commission shall:

- (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; or
- (2) deny the petition in writing, stating the reason(s) for the denial, and send the written denial by certified mail with return receipt to the person(s) who submitted the petition.

Authority G.S. 143B-282; 150B-20.

15A NCAC 05H .0504 RECOURSE FOR DENIAL OF PETITION

If the Commission denies the Petition for Rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4.

Authority G.S. 143B-282; 150B-20.

SECTION .0600 – RULEMAKING HEARINGS

15A NCAC 05H .0601 PURPOSE OF THIS SECTION

These Rules authorize the designation of certain employees of the Department as hearing officers, set out the types of hearings which the designated employees are authorized to conduct,

delineate, and reference the rules of procedure for conducting public rulemaking hearings.

Authority G.S. 113-391(b).

15A NCAC 05H .0602 PROCEDURES FOR PUBLIC COMMENT FOR RULEMAKING HEARINGS

(a) Any person desiring to comment on the proposed rulemaking action may do so either in writing during the comment period or by oral presentation at the hearing held to take public comments. Any person may file a written statement or argument concerning the proposed rulemaking action prior to the close of the record on the date indicated in the notice published in the North Carolina Register.

(b) The Commission shall consider all written and oral submissions and submit recommendations concerning the proposed rulemaking action to the Commission following the close of the record as provided in Paragraph (a) of this Rule.

(c) Requests for a statement of the Commission's reasons for adoption of the proposed rule or against adoption of the proposed rule shall be responded to in accordance with G.S. 150B-21.2(h).

Authority G.S. 150B 21.2(h); 113-391(b).

15A NCAC 05H .0603 REQUIREMENTS OF RULEMAKING HEARING OFFICER OR PANEL

The Chair of the Commission may designate one or more Commission members to serve as hearing officers for rulemaking hearings, with the exception of hearings related to receiving public comments on regulations necessary to administer the provisions of the Mining Act of 1971 for which the Chair of the Mining Committee shall appoint the hearing officer(s).

Authority G.S. 113-391(b).

15A NCAC 05H .0604 DELEGATION FOR RULEMAKING HEARINGS

The Commission may delegate to the Director the authority to take administrative actions related to rulemaking hearings, including designating hearing officers in accordance with this Section. If the Director is authorized to designate hearing officers, establish the hearings, issue notices and perform other administrative functions related to rulemaking hearings in accordance with this Section, the Director shall advise the Commission at its regularly scheduled meetings of any rulemaking public hearings held or scheduled since the Commission's last regularly scheduled meeting.

Authority G.S. 113-391(b).

15A NCAC 05H .0605 AUTHORIZED HEARING OFFICERS

Any employee of the Department of the grade of regional engineer or above may be designated as a hearing officer for rulemaking hearings held pursuant to this Section.

Authority G.S. 113-391(b); 150B 32(f).

SECTION .0700 – HEARINGS FOR DRILING UNITS, VARIANCES, AND CONFIDENTIAL INFORMATION

15A NCAC 05H .0701 OPPORTUNITY FOR HEARING

(a) The Commission shall conduct hearings when establishing drilling units and considering an application for a variance. Such hearings shall be conducted pursuant to the rules of this Subchapter.

(b) Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the Commission. No party shall offer testimony or conduct cross-examination before the Commission.

Authority G.S. 113-391(a); 113-391(b); 113-392; 113-393.

15A NCAC 05H .0702 PARTIES

(a) Any person authorized by statute or rule to request a hearing before the Commission shall be a party to any hearing granted. The Division also shall be a party to any hearing granted. The Chair of the Commission shall rule on motions by any other persons seeking leave to intervene in the pending proceeding or seeking leave to file *amicus curiae* briefs. Persons seeking to intervene shall establish through their motion that they qualify for intervention under G.S. 1A-1, Rule 24.

(b) Any Division of the Department shall be a party to the hearing upon written request. Such request shall be made to the Chair of the Commission within five days of receipt of notice of the request for hearing.

Authority G.S. 113-393(a); 150B-23(a).

15A NCAC 05H .0703 PROCEDURE FOR SUBMISSION

(a) An application to establish a drilling unit shall be submitted in accordance with Rule .1202 of this Subchapter. All other requests for a hearing shall be submitted in accordance with this Rule.

(b) All requests for a hearing shall be filed no less than 30 calendar days before the next regularly scheduled Commission meeting.

(c) All requests shall be filed in writing and electronically as follows:

- (1) with the Director of the Division by filing one paper copy for each Commissioner plus five additional copies with the Recording Clerk of the Commission at the following address: 1612 Mail Service Center, Raleigh, NC 27699-1612; and
- (2) the electronic submission shall be in .pdf format sent to the Division at Oil&Gas@ncdenr.gov by 5:00 p.m. on the date specified in Paragraph (b) of this Rule.

(d) All requests shall include the following:

- (1) the name and address of the requesting party;
- (2) the rule or statute authorizing the request for a hearing;
- (3) a statement of whether an oral argument is desired, and, if so the reason(s) for requesting an oral argument;

- (4) if requesting a variance, the rule or statute under which a variance is desired;
- (5) a concise statement of the matter to be presented;
- (6) arguments or data that support the requesting party's position; and
- (7) a statement of the consequences of failure to grant relief in favor of the requesting party.

Authority G.S. 113-391(a)(14) and (a4).

15A NCAC 05H .0704 COMPLETENESS AND REQUEST FOR ADDITIONAL INFORMATION

(a) The Chair of the Commission shall make a determination on the completeness of the request for hearing based on the requirements of this Section. Incomplete requests shall be returned to the requesting party.

(b) Before deciding the merits of the request, if necessary the Commission may:

- (1) request additional written submissions from the requesting party;
- (2) request a written response from the Division staff or any other person; and
- (3) hear oral arguments from the requesting party and Division staff or their legal counsel.

Authority G.S. 113-391(b).

15A NCAC 05H .0705 ORDER AND RECORD OF PROCEEDING

The Commission shall keep a record of each hearing, which shall include the following items:

- (1) the request for a hearing;
- (2) any written submission(s) by a party;
- (3) the facts on which the Commission's decision was based;
- (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
- (5) any other information such as documents, photographs, recordings, maps, plats, articles, and studies considered by the Commission in making the decision; and
- (6) the Commission's written decision, which shall include the reasons therefore.

Authority G.S. 113-391(b).

15A NCAC 05H .0706 ADMINISTRATIVE AND JUDICIAL REVIEW OF COMMISSION DECISION

The Commission shall notify the requesting party in writing of the Commission's decision, including information about the requesting party's right to a contested case under G.S. 150B.

Authority G.S. 150B.

15A NCAC 05H .0707 FORM AND CONTENTS OF REQUEST TO MAINTAIN CONFIDENTIAL INFORMATION

(a) Any person wishing to protect information submitted to the Commission or the Department as confidential information shall make a showing to the Commission in accordance with the requirements of G.S. 113-391.1 and this Section.

(b) The requesting party shall submit one paper copy for each Commissioner plus five additional copies with the Recording Clerk of the Commission at the following address: 1612 Mail Service Center, Raleigh, NC 27699-1612 and a copy in .pdf form submitted to Oil&Gas@ncdenr.gov.

(c) Requests shall be submitted no less than 30 calendar days prior to the next regularly scheduled Commission meeting.

(d) The request shall contain the following information:

- (1) the name and address of the requesting party;
- (2) a description of the information to be afforded confidential treatment;
- (3) a statement of whether an oral presentation is desired, and, if so, the reason(s) for requesting such an oral presentation;
- (4) an affidavit with each of the following elements:

(A) a statement of whether the confidential information is in the public domain and information illustrating the extent to which the confidential information is known outside the business;

(B) evidence that the information has been treated in the same manner as other confidential information in the company, said manner being detailed in the affidavit;

(C) agreement to notify the Commission if said information loses confidential status;

(D) if applicable to the category of information, certification that the chemical for which confidential protection is sought is not regulated under the Federal Safe Drinking Water Act's National Primary Drinking Water Standards or National Secondary Drinking Water Standards, including subsequent amendments, or if regulated is not present in concentrations greater than the EPA-listed maximum contaminant level for that chemical in any fluid inserted into the oil or gas well;

(E) if applicable to the category of information, certification and evidence that the chemical for which trade secret protection is sought meets the definition of a trade secret under the N.C. Trade Secrets Protection Act in G.S. 66-152(3), including that the chemical is not

"generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use;"

(F) which states have issued confidential information status to this specific information;

(G) which states have refused to issue confidential information status to this specific information and why was confidential information status denied;

(H) if applicable to the category of information, a list of all chemicals for which the affiant is seeking confidential protection and whether any such chemicals are prohibited in North Carolina; and

(I) if applicable to the category of information, certification that the information is protected by Federal statute, including statutory authority.

(5) if required by G.S. 113-391.1, a statement that the State Geologist has reviewed the confidential information and transmitted the certification to the requestor; and

(6) the business contact information, including the company name, name of authorized representative, mailing address, and phone number for the business organization claiming entitlement to trade secret protection on Form 20 – Trade Secret Claim.

Authority G.S. 113-391(a)(5)h; 150B.

15A NCAC 05H .0708 DISPOSITION OF CONFIDENTIAL INFORMATION REQUEST

(a) The Chair of the Commission shall make a determination on the completeness of the request. If the request is not complete, the Chair shall return the request to the requesting party.

(b) Before deciding the merits of the request, the Commission may:

(1) request additional written submissions from the requesting party;

(2) request additional information from the State Geologist or other Department staff; and

(3) hear oral presentations from the requesting party or the Department.

(c) The Commission shall consider the request in a closed session in accordance with G.S. 143-318.11.

(d) The Commission shall consider the merits of the request and may approve or deny the request.

(e) If the Commission determines that the information is not entitled to confidential protection, the Commission shall provide notice in accordance with G.S. 113-391.1(e).

(f) Confidential information so designated by the Commission shall be held by the State Geologist in accordance with G.S. 113-391.1.

Authority G.S. 113-391(a)(5)h; 150B.

15A NCAC 05H .0709 NOTICE TO THE COMMISSION OF LOSS OF CONFIDENTIAL STATUS

Any person receiving confidential information status shall provide updated information to the Commission no more than 30 calendar days of the date any of the information described in this Section becomes inaccurate or incomplete.

Authority G.S. 113-391(a)(5)h; 150B

SECTION .0800 – PREEMPTION HEARING PROCEDURE

15A NCAC 05H .0801 PURPOSE AND SCOPE

The rules of this Section establish procedures to be used by the Commission in reviewing petitions for limited preemption of a local ordinance pursuant to the authority set forth in G.S. 113-415.1.

Authority G.S. 113-415.1; 150B.

15A NCAC 05H .0802 COMMENCEMENT OF PROCEEDINGS

(a) An operator shall commence a proceeding by filing a petition with the Commission.

(b) The petition shall contain:

- (1) the name, address, and telephone number of the petitioner;
- (2) the city and county in which the oil or gas operations is or is proposed to be located; and
- (3) a statement of facts and issues, which shall include:
 - (A) the action giving rise to the petition;
 - (B) a copy of the ordinance;
 - (C) the effect of the ordinance on the proposed activities;
 - (D) identification of the provisions of the ordinance alleged to prevent the proposed activities;
 - (E) any actions taken to comply with the ordinance or any of its provisions;
 - (F) status of and compliance with all applicable state and federal permits or approvals;
 - (G) attempts made by the petitioner to resolve the issue with each city and county in which the activities are proposed;
 - (H) opportunities local citizens and elected officials have had to participate in the permitting process;
 - (I) documentation that the proposed activities will not pose an unreasonable health or environmental risk to the surrounding locality. For the purposes of filing this petition, this documentation shall be deemed

complete if it describes the information submitted for all applicable state and federal permits or approvals;

(J) measures the applicant or permittee has taken or consented to take to avoid or manage foreseeable risks and to comply to the maximum extent feasible with any applicable ordinance;

(K) metes and bounds description, site plan, maps or other information describing the facility and its location; and

(L) all other information the petitioner believes relevant and which constitutes grounds for relief under G.S. 113-415.1.

(c) Within 10 calendar days of receipt of the petition, the Chair of the Commission shall review the petition and determine whether it is complete in accordance with Paragraph (b) of this Rule. If the petition is determined to be incomplete, the Chair of the Commission shall return it to the petitioner with a statement of the reasons it is deficient. Return of the petition for incompleteness in no way precludes the petitioner from re-filing. If the petition is complete, the Chair of the Commission shall send a notice of proceeding in accordance with Rule .0803 of this Section.

Authority G.S. 113-415.1; 150B.

15A NCAC 05H .0803 NOTICE OF PROCEEDING

(a) Within five days after a petition is found complete by the Chair of the Commission, the Chair of the Commission shall serve a notice of proceeding on the petitioner and the governing board of each city and county in which the activities are proposed.

(b) The notice of proceeding shall contain:

- (1) a statement that a complete petition has been received;
- (2) a statement that a public hearing on the petition will be held on a specific date and at a specific place in accordance with G.S. 113-415.1;
- (3) a request that within 30 days of receipt, the city or county that adopted the ordinance respond to the petition. Such response shall include all information within its possession regarding the factors in G.S. 113-415.1 and any other information as to why this ordinance should not be preempted;
- (4) the name of the proceeding and the date of filing;
- (5) the address and telephone number of the Clerk of the Commission;
- (6) a citation to the relevant statutes or rules involved;
- (7) a statement of the factual allegations or issues to be determined;

- (8) a brief description of the procedure to be followed at the hearing; and
- (9) a statement of how interested persons may participate in the hearing and where additional information can be obtained.

Authority G.S. 113-415.1; 150B.

15A NCAC 05H .0804 PUBLIC HEARING TO BE HELD

When a complete petition is filed with the Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within a reasonable time but not to exceed 60 days after receipt of the petition by the Commission.

Authority G.S. 113-415.1; 150B.

15A NCAC 05H .0805 NOTICE OF PUBLIC HEARING

(a) The Commission shall publish notice of public hearing in accordance with G.S. 113-415.1(d).
(b) The Commission shall serve the parties to the proceeding with a notice of public hearing no less than 30 calendar days before the hearing. The notice shall contain the following:

- (1) the name of proceeding and the date of filing;
- (2) the date, time, and place of the hearing;
- (3) the name, address, and telephone number of the Clerk of the Commission;
- (4) a citation to the relevant statutes or rules involved;
- (5) a statement of the factual allegations or issues to be determined;
- (6) a brief description of the procedure to be followed at the hearing; and
- (7) a statement of how persons may participate in the hearing and where the information can be obtained.

Authority G.S. 113-415.1; 150B.

15A NCAC 05H .0806 CONDUCT THE HEARING

(a) In accordance with information provided in the notice of hearing, any non-party may appear before the Commission at the hearing to offer testimony or submit written evidence for its consideration.
(b) The Commission may set the order of presentation and place reasonable limits on the testimony of each person who appears before the Commission at the hearing.
(c) Commission members may ask questions of any person who appears before the Commission at the hearing.
(d) The Commission shall hold the record open for 20 days after the termination of the hearing.
(e) All parties shall have the right to present evidence, rebuttal testimony, and argument relevant to the issues.
(f) A party shall have all evidence to be presented, both oral and written, available on the date for the hearing. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the Commission.

(g) The Commission shall serve copies of all orders or decisions on all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the Commission shall simultaneously serve a copy on all other parties.

(h) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(i) Any non-party offering testimony or other evidence may be questioned by parties to the case and by the Commission.

Authority G.S. 113-415.1; 150B.

15A NCAC 05H .0807 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. Fourteen days in advance of the public hearing, parties shall serve on the Commission a witness list, a synopsis of testimony, and an estimate of the time required to hear each witness. A party may make reasonable amendments to its witness list. All oral testimony by witnesses at the hearing shall be under oath or affirmation and shall be recorded.

Authority G.S. 113-415.1; 150B.

15A NCAC 05H .0808 COMMISSION'S DECISION

(a) The Commission shall determine whether or to what extent to preempt the ordinance to allow for the construction or operation of oil or gas exploration, development, or production activities in accordance with G.S. 113-415.1. In the event the Commission makes all four findings required by G.S. 113-415.1(d) and determines that the provisions of the ordinance are severable, the Commission may determine that a specific provision, rather than the entire ordinance is preempted.

(b) A decision shall be based on:

- (1) substantial evidence admissible and arguments presented during the hearing and made part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed; and
- (4) other items in the official record.

(c) A decision shall fully dispose of all issues required to resolve the case and shall contain:

- (1) an appropriate caption;
- (2) the appearance of the parties;
- (3) a statement of the issues;
- (4) references to the specific provisions of the ordinance at issue;
- (5) findings of fact, with specific reasons given for findings on disputed facts;
- (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or regulations;
- (7) a final determination that the challenged ordinance, or specific parts thereof, is preempted with respect to the proposed activity;
- (8) in the discretion of the Commission, a memorandum giving reasons for the conclusions of law; and

- (9) a statement that each party has the right to appeal the final decision.

Authority G.S. 113-415.1; 150B.

SECTION .0900 - ENFORCEMENT

15A NCAC 05H .0901 ENFORCEMENT

(a) A violation of any provision of the Oil and Gas Conservation Act or any rule in this Subchapter may result in a notice of violation, an assessment of a civil penalty pursuant to G.S. 113-410, suspension or revocation of a permit, injunctive action, or any other remedy afforded by law.

(b) The Department shall issue a written notice of violation to the permittee for violations of any provision of the Oil and Gas Conservation Act, any rule of this Subchapter, terms and conditions of the permit, or order of the Commission.

- (1) The written notice shall specify the facts constituting the violation, corrective actions that are required to address the violation, a timeframe to implement such corrective actions, and a statement that failure to comply with the specified corrective action may result in additional enforcement actions.

- (2) The Department may extend the timeframe for corrective actions upon written request of the permittee demonstrating that the corrective action cannot be completed in the time specified in the notice of violation.

(c) Civil penalties shall be assessed in accordance with G.S. 113-410 and Section .1000 of this Subchapter.

(d) Permits shall be suspended or revoked in accordance with G.S. 150B-3 and Rule .1313 of this Subchapter.

(e) The Department shall request the Attorney General to institute an action in the North Carolina General Courts of Justice seeking injunctive relief pursuant to G.S. 113-408.

(f) The Department shall require the permittee to restore waters and land affected by a violation of any provision of the Oil and Gas Conservation Act, any rule of this Subchapter, terms and conditions of the permit, or order of the Commission so as to protect the quality of the water, air, soil, or any other environmental resource against injury, damage, or impairment.

Authority G.S. 113-408; 113-410; 113-391(a)(4).

SECTION .1000 – CIVIL PENALTIES

15A NCAC 05H .1001 PURPOSE AND SCOPE

The rules of this Section govern the Commission, the Division, and their delegates of assessment of civil penalties. They also govern permittee remission and appeal of those penalties.

Authority G.S. 113-410.

15A NCAC 05H .1002 NOTICE OF ASSESSMENT

For all violations for which a penalty is assessed, a notice of such action shall be sent to the violator by U.S. mail, certified mail, or other means calculated to provide actual notice. The notice shall describe the violation, advise that the penalty is due,

and provide the violator of the right of appeal as specified in G.S. 150B, Article 3 and the right to request remission in G.S. 143B-293.6 and Rule .1004 of this Section.

Authority G.S. 113-410(a) and (c).

15A NCAC 05H .1003 PAYMENT OF ASSESSMENT

An assessed penalty shall be paid within 60 days of service of notice, unless the violator files a contested case pursuant to G.S. 150B, Article 3 or requests remission pursuant to G.S. 113-410(d) and Rule .1004 of this Section.

Authority G.S. 113-410(d).

15A NCAC 05H .1004 ADMINISTRATIVE REMEDIES

(a) A person who has received a civil penalty assessment may file a contested case petition at the Office of Administrative Hearings pursuant to G.S. 150B, Article 3.

(b) A person who has received a civil penalty assessment may request remission of the civil penalty.

- (1) A request for a civil penalty remission shall be submitted in writing to the Director at the following address: 1612 Mail Service Center, Raleigh, NC 27699-1612.

- (2) The request shall be considered only if the person requesting remission of a civil penalty stipulates that no facts are in dispute and waives his right to an administrative hearing.

- (3) In determining whether to approve the remission request, the Commission shall consider the factors in G.S. 143B-293.6.

Authority G.S. 113-410(d).

15A NCAC 05H .1005 REPORT TO THE COMMISSION

The Department shall report any action taken under this Section to the Commission at the Commission's next regularly scheduled meeting. Such reports shall include the following information:

- (1) the person(s) issued letter(s) of proposed assessment;
- (2) the person(s) assessed a civil penalty;
- (3) the person(s) who have paid a penalty as assessed, requested remission, or requested an administrative hearing;
- (4) the person(s) who have failed to pay; and
- (5) cases referred to the Attorney General for collection.

Authority G.S. 113-391(a) and (a4); 113-410(d).

SECTION .1100 – EXPLORATION AND GEOPHYSICAL SURVEYS

15A NCAC 05H .1101 EXPLORATION AND GEOPHYSICAL SURVEYS

(a) Any person conducting predrilling exploration activities or geophysical surveys related to oil or gas exploration and development shall be in accordance with 15A NCAC 05C.

(b) Notification of exploration activities in accordance with G.S. 113-420(b2).

Authority G.S. 113-391(a)(1).

SECTION .1200 – DRILLING UNITS AND WELL SPACING

15A NCAC 05H .1201 SCOPE

The rules of this Section establish the requirements for petitioning the Commission for permission to create or modify a drilling unit. These rules also set forth oil or gas well spacing requirements for conventional and unconventional reservoirs.

Authority G.S. 113-391; 143B-293.1(b).

15A NCAC 05H .1202 APPLICATION FOR DRILLING UNIT REQUIREMENTS

(a) An application shall be submitted to the Commission for permission to do any of the following:

- (1) create a drilling unit; or
- (2) modify an existing drilling unit.

(b) Applications submitted to the Commission no less than 60 calendar days before the next regularly scheduled Commission meeting shall be considered for hearing provided the docket has not been filled. Once the date for hearing has been set by the Commission, the applicant will be notified and instructed to begin the part of the public notification process that requires publishing notice in a newspaper, which is set out in Rule .1203 of this Section.

(c) The applicant shall submit the original application and one paper copy for each Commissioner plus five additional copies to the Recording Clerk of the Commission at the following address: 1612 Mail Service Center Raleigh, NC 27699-1612. In addition, the applicant shall submit an electronic copy in .pdf format with the Commission at Oil&Gas@ncdenr.gov.

(d) Applicants or permittees petitioning the Commission for the creation of drilling units or modifications of existing drilling units shall be persons who own or have leased an interest in the mineral estate underlying the tract or tracts within the drilling unit.

(e) Any application for the creation of a drilling unit or modification of an existing drilling unit shall include the following information:

- (1) a letter to the Commission describing the intent of the application;
- (2) a list of mineral rights owners within the land area of the proposed drilling unit. The list of mineral rights owners shall include the name, physical address, and mailing address for each owner;
- (3) a map of the proposed or current drilling unit boundary, along with all property boundaries that occur within the land area of the proposed or current drilling unit, as well as locations of existing oil or gas wells within the proposed drilling unit boundary;
- (4) copies of lease agreements, affidavits, or pooling orders showing that the applicant has

obtained legal rights to recover oil or gas resources within the proposed drilling unit;

(5) documentation showing that all mineral rights owners were notified by the applicant of the applicant's intent to establish the proposed drilling unit pursuant to Rule .1203(a)(2) of this Section;

(6) at least one subsurface geological map showing the structural configuration of the top of the objective formation within the proposed drilling unit and at least one geological cross-section derived from the geological map showing the stratum or strata from which the applicant expects to extract hydrocarbon resources;

(7) a written statement signed by the applicant, supported by geological and engineering data, that the proposed drilling unit would result in optimal and efficient recovery of hydrocarbons;

(8) documentation from the applicant(s) or their representative(s) demonstrating prior work experience in the exploration, drilling, and production of oil or gas relevant to the application; and

(9) additional information requested by the Commission at the hearing to evaluate the application.

(f) The Commission shall assign a new docket number to each application submitted.

(g) The Commission shall approve, deny, or modify drilling units pursuant to G.S. 113-392(b) within 30 calendar days after conducting the hearing on the application for creating or modifying a drilling unit.

(h) If the Commission approves an application, a drilling unit number shall be issued to the applicant. The drilling unit number is required in accordance with Rule .1304(a)(5) of this Subchapter.

(i) The Commission approved drilling units shall expire 36 months after the approval date, if the applicant has not spud the first oil or gas well on the well pad.

Authority G.S. 113-392(b).

15A NCAC 05H .1203 DRILLING UNIT PUBLIC NOTIFICATION REQUIREMENTS

(a) Public notice of each application shall be circulated in the geographical areas pertaining to the creation of a drilling unit, or the modification of an existing drilling unit, at least 30 calendar days prior to the next regularly scheduled Commission meeting for which the applicant proposes the application to be docketed. The applicant or permittee shall make notice of each drilling unit application by:

- (1) publishing the notice one time in newspaper(s) having general circulation in the county or counties where the drilling unit, either proposed or existing, is located; and

- (2) providing direct notice to all mineral rights owners within the land area of the proposed or existing drilling unit.

(b) The notice shall include the following:

- (1) the name, address, and telephone number, fax number, and e-mail address of applicant or permittee;
- (2) a description of the intent of the application;
- (3) the date the Commission is scheduled to review the application; and
- (4) the location and time of the Commission meeting.

(c) The applicant or permittee shall submit a newspaper certified copy of the public notice published in the newspaper, as certified by the newspaper, to the Department at least 15 calendar days prior to the next regularly scheduled Commission meeting for which the applicant proposes the application to be docketed.

Authority G.S. 113-393(a).

15A NCAC 05H .1204 DENIAL OR MODIFICATION OF DRILLING UNIT APPLICATION

(a) The Commission shall deny a request for the creation of a drilling unit or deny a request to modify an existing drilling unit to any person on finding that the proposed or existing drilling unit is in violation of any of the rules contained in this Subchapter or that establishment or modification would result in a violation of this Subchapter or other applicable law or rule.

(b) The Commission may also deny a request according to these criteria:

- (1) the application is incomplete pursuant to Rule .1202(e) of this Section; or
- (2) the application contains erroneous information.

(c) The Commission may modify a drilling unit application based on geologic, geographic, and environmental factors or to satisfy conflicting interests between adjacent drilling unit applicants or permittees.

Authority G.S. 113-392(b); 143B-293.1(b).

15A NCAC 05H .1205 WELL SPACING REQUIREMENTS FOR RESOURCES IN UNCONVENTIONAL RESERVOIRS

(a) The drilling of a new oil or gas well in an unconventional reservoir, the reopening of an oil or gas well temporarily abandoned pursuant to Rule .1621 of this Subchapter, the deepening, plugging back, or sidetracking of an existing oil or gas well shall conform to the requirements in this Section.

(b) No portion of the wellbore recovering hydrocarbons shall be less than 500 horizontal feet from the boundary of the drilling unit.

(c) A variance may be granted by the Commission to reduce the distance from the boundary of the drilling unit based on reservoir characteristics including permeability, porosity, and surrounding production history to optimize production and minimize waste.

Authority G.S. 113-391(a)(12); 143B-293.1(b).

15A NCAC 05H .1206 WELL SPACING REQUIREMENTS FOR RESOURCES IN CONVENTIONAL RESERVOIRS

(a) The drilling of a new oil or gas well in a conventional reservoir, the reopening of an oil or gas well temporarily abandoned pursuant to Rule .1621 of this Subchapter, the deepening, plugging back, or sidetracking of an existing oil or gas well shall conform to the requirements in this Section.

(b) In conventional reservoirs, no portion of the wellbore shall be less than 200 horizontal feet from the boundary of the drilling unit.

(c) A variance may be granted by the Commission to reduce the distance from the boundary of the drilling unit based on reservoir performance to optimize production and minimize waste of the reservoir.

Authority G.S. 143B-293.1(b); 113-391(a)(12).

SECTION .1300 - PERMITTING

15A NCAC 05H .1301 SCOPE

The rules of this Section set forth the registration and permitting requirements for new oil or gas wells. These rules also establish procedures for review, modification, transfer, expiration, suspension or revocation, and release of an Oil or Gas Well Permit.

Authority G.S. 113-391; 113-395; 113-410.

15A NCAC 05H .1302 OIL OR GAS OPERATIONS FINANCIAL RESPONSIBILITY OWNERSHIP

(a) The applicant or permittee, and all service companies who are conducting oil or gas exploration or development activities, shall either be incorporated under the laws of North Carolina or, if a foreign corporation, obtain a certificate of authority from the North Carolina Secretary of State. If the applicant or permittee is a partnership or other person engaging in a business in this State under an assumed name, the applicant or permittee shall have filed a certificate of assumed name in the county in which it is doing business.

(b) The applicant or permittee, and any person providing financial assurance for oil or gas operations, shall submit the completed Form 1 – Financial Responsibility Ownership (FRO) with the Department. The Form 1 – FRO shall include the following information:

- (1) the applicant or permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the lease name and the oil or gas well name and number;
- (5) the Commission issued drilling unit number;

- (6) the approximate date that land disturbing activity will commence;
- (7) the total acreage of disturbed or uncovered areas;
- (8) the person to contact onsite if any problems occur with erosion control, stormwater, and any well site operations;
- (9) the name, address, telephone number, fax number, and email address for person(s) who are financially responsible for the oil or gas operations;
- (10) a copy of the Certificate of Assumed Name if the financial responsible party is a partnership or other person engaging in business under an assumed name;
- (11) the signature of the financially responsible party; and
- (12) the seal of a Notary Public of North Carolina.

(c) The applicant or permittee shall list all Employees approved to submit documents on behalf of the applicant or permittee on a completed Form 1 – FRO. A person other than the applicant or permittee may be designated as an agent of the financially responsible party, and person's representatives shall be listed on the completed Form 1 – FRO.

(d) If the applicant or permittee is not a resident of North Carolina, the applicant or permittee shall designate a North Carolina agent for the purpose of receiving notices from the Commission or the Department.

(e) All changes of address for the parties required to submit a Form 1 – FRO shall be reported within 14 calendar days of the change by submitting a new Form 1 – FRO. All changes to reported agent information shall be reported within 14 calendar days of the change by submitting a Form 1 – FRO.

Authority G.S. 113-391(a)(5)a.

15A NCAC 05H .1303 OIL OR GAS WELL PERMIT APPLICATION

(a) The applicant or permittee shall submit Form 2 – Oil or Gas Well Permit Application to the Department prior to commencement of the following operations: drilling, recompleting, re-stimulating, deepening, reentering, sidetracking, plugging back, or revising the location of any oil or gas well.

(b) The applicant or permittee shall submit the fee for a new Oil or Gas Well Permit as indicated on Form 2 – Oil or Gas Well Permit Application in accordance with Rule .1306 of this Section.

(c) The applicant or permittee shall submit an environmental compliance history to the Department in accordance with G.S. 113-395.3.

Authority G. S. 113-391(a)(5)a; 113-395.

15A NCAC 05H .1304 CONTENTS OF OIL OR GAS WELL PERMIT APPLICATION

(a) All applications to drill, recomplete, re-stimulate, deepen, reenter, sidetrack, plug and abandon, plug back, or revise a location shall be submitted using a Form 2 – Oil or Gas Well

Permit Application. The Form 2 – Oil or Gas Well Permit Application shall include the following:

- (1) the applicant or permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is proposed to be located or is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the proposed or existing well pad;
- (4) the lease name and the oil or gas well name and number for the proposed or existing oil or gas well;
- (5) the Commission issued drilling unit number;
- (6) any variance request(s) approved by the Commission;
- (7) the latitude and longitude (in decimal degrees) of the proposed or existing oil or gas well location(s) with a minimum of five decimal places of accuracy and precision using the North American Datum (NAD) of 1983. The location coordinates shall be a field measurement and not a calculated or conversion measurement;
- (8) the name of any incorporated city, town, village or respective extra-territorial jurisdiction, if the oil or gas well is proposed to be located or is located within its limits;
- (9) if known, the name(s) of the proposed drilling contractor, cementing service company, and well stimulation company at the time of application submittal;
- (10) an indication that the local emergency management coordinator has received an emergency response plan in accordance with Rule .1305 of this Section;
- (11) an indication that the applicant or permittee intends to scan all equipment at the well site to measure for methane emissions;
- (12) an indication that the applicant or permittee plans to address methane emissions detected; and
- (13) an indication that the applicant or permittee is submitting an estimate of the number and type of engine(s) to be used onsite, the size of engine(s), and the fuel source of engine(s) that will be used during drilling or completion activities.

(b) The following plat(s) and maps shall be attached to Form 2 – Oil or Gas Well Permit Application:

- (1) A plat showing:
 - (A) the subject drilling unit on which the oil or gas well is to be drilled and the property lines with surface and mineral owner name(s);
 - (B) the location of the proposed oil or gas well in the drilling unit, based on a

- field survey showing the distances in feet from the proposed well site to the boundary lines of the drilling unit;
- (C) the location and distances of the nearest buildings, public roads, railroads, private water supply wells, public water supply sources, surface water bodies, utility rights-of-way, and drilling or producing oil or gas wells from the proposed oil or gas well in accordance with Rule .1601 and Rule .1205 or .1206 of this Subchapter; and
- (D) any areas with known environmental contamination within the area of influence in accordance with Rule .1901 of this Subchapter.
- (2) All plats submitted as a part of the application for a Form 2 – Oil or Gas Well Permit Application shall contain the following identifying information and be signed and sealed by a Professional Land Surveyor (PLS) or Professional Engineer (PE) licensed by the North Carolina Board of Examiners for Engineers and Surveyors pursuant to G.S. 89C:
- (A) the name of the applicant or permittee;
- (B) the oil or gas well name and number;
- (C) a north arrow;
- (D) the county;
- (E) a map scale of 1 inch equals 50 feet to 1 inch equals 500 feet with two foot topographic contours depending on the total disturbed area;
- (F) a legend with symbols used and corresponding names;
- (G) the date the plat or map was prepared and revised; and
- (H) the name and title of person preparing the plat.
- (3) A topographic and site overlay on a base color aerial map for the well site based on a LiDAR derived map showing the location of the well site, corners of well pad, oil or gas wells, tank battery, pits, access roads, all other proposed production equipment, and any other existing structures and features onsite; and
- (4) The total estimated true vertical and measured depths of the wellbore and proposed well path report showing inclination and azimuth every 100 feet with the North American Vertical Datum of 1988 (NAVD88) as the vertical control.
- (c) The applicant or permittee shall submit the following attachments with Form 2 – Oil or Gas Well Permit Application:
- (1) Form 3 – Well Construction Design that includes the following:
- (A) the applicant or permittee's name, address, telephone number, fax number, and email address;
- (B) the county and nearest city or town where the oil or gas well is located;
- (C) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (D) the lease name and the oil or gas well name and number;
- (E) the anticipated diameter of each wellbore segment;
- (F) the casing grade, weight, outside diameter, and setting depth for each proposed casing string;
- (G) the method of drilling, including the fluids that will be used during the drilling for each proposed casing string;
- (H) the cement type, additives, density, yield, and volume for each proposed casing string;
- (I) a list of the blowout prevention equipment and other wellhead equipment;
- (J) a wellbore diagram or other documentation detailing the proposed oil or gas well construction design; and
- (K) the method of well stimulation for the oil or gas well, the proposed number of well stimulation stages, the proposed maximum surface treating pressures, and the estimated true vertical depth to the top of fractures.
- (2) A Well Site Development Plan that includes the Sedimentation and Erosion Control and Stormwater Management Plans as a part of the site construction sheets and details for review in accordance with Section .1500 of this Subchapter;
- (3) Form 4 – Water Management Plan shall include documentations and maps in accordance with Section .1900 of this Subchapter;
- (4) Form 5 – Waste Management Plan shall include documentations and maps in accordance with Section .2000 of this Subchapter;
- (5) Form 6 – Well Site Reclamation Plan showing reclamation phases in accordance with Section .2100 of this Subchapter;
- (6) Form 1 – FRO filled out in its entirety;
- (7) any variance request(s) approved by the Commission;
- (8) a plan that mitigates damage to roads by truck traffic and heavy equipment. Plans must include at a minimum:

- (A) procedures to restore roads to their condition that existed prior to the drilling activity undertaken by the permittee or applicant;
- (B) identification of trucking routes that minimize road surface travel; and
- (C) route travel hours that avoid otherwise heavy traffic volume, to include avoidance of hours during which school buses will be traveling on the roads.
- (9) documentation that the local emergency management coordinator has received emergency response plan information in accordance with Rule .1305 of this Section;
- (10) a statement describing how often the permittee intends to scan all equipment at the well site to measure for methane emissions;
- (11) a statement that describes if methane emissions are detected and the time period during which the permittee intends to repair any leaks discovered; and
- (12) an estimate of the engine(s) to be used on site during exploration and development including the following information:
 - (A) the number and type of engine(s), such as compression ignition, two stroke lean burn ignition, four stroke lean burn ignition, rich burn spark ignition;
 - (B) the size of engine(s) (maximum site-rated horsepower); and
 - (C) the fuel source of engine(s).
- (3) development of the plans required by Item (6) of this Rule;
- (3) the emergency contacts for the well site that include the telephone numbers of the applicant or permittee, which can be accessed 24-hours per day in accordance with the Rule .0707 of this Subchapter;
- (4) identification of the types and quantities of chemicals, fuels, and wastes which will be used at a production facility in accordance with Section .1700 of this Subchapter;
- (5) identification of an emergency well control response contractor, its contact information, and the estimated time of arrival after dispatch;
- (6) plans for the following minor to catastrophic scenarios:
 - (A) Level 4: A spill onsite that requires a cleanup company to be contracted;
 - (B) Level 3: A spill on other property that requires a cleanup company to be contracted, or an uncontrolled fire adjacent to the site impacting normal operations due to smoke or chemical dispersal;
 - (C) Level 2: A spill onsite that requires a full site evacuation or an uncontrolled explosion or fire on site that does not involve any wellhead onsite, or loss of well control not involving an explosion or fire; and
 - (D) Level 1: Loss of well control involving an explosion or fire, or incidents requiring the immediate evacuation of the site.

Authority G.S. 113-391(a)(5)a; 113-391(a)(5)b ;113-391(a)(5)l; 113-391(a)(8); 113-395.

15A NCAC 05H .1305 EMERGENCY RESPONSE PLANNING

In order for State and local governments to effectively plan for emergency incidents, the applicant or permittee shall provide the following information to the local emergency management coordinator:

- (1) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad. If nearest street address is used, "nearest address" shall be designated and the latitude and longitude (in decimal degrees) with a minimum of five decimal places of accuracy and precision using the North American Datum (NAD) of 1983 of the proposed access road entrance at the ingress or egress point;
- (2) the nearby location of occupied dwellings, high occupancy buildings, streams, rivers, watercourses, ponds, lakes, or other natural and artificial bodies of water, and transportation corridors necessary for the

Authority G.S. 113-391(5)i.

15A NCAC 05H .1306 FEES

(a) The applicant or permittee shall remit the non-refundable fees in the amounts prescribed under G.S. 113-395, 113A-54.2, and 143-215.3D(e).

(b) Payment of fees shall be made payable to the "North Carolina Department of Environment and Natural Resources." The payment shall refer to the new permit or the plugging and abandonment of the oil or gas well. The payment shall include a reference to the oil or gas well name listed on the application or the API number.

Authority G.S. 113-395.

15A NCAC 05H .1307 APPLICATION REVIEW PROCESS

(a) After Department review, if the application is incomplete, the Department shall notify the applicant or permittee in writing, noting each deficiency. The applicant or permittee shall have 60 calendar days from the date the letter was sent to submit the required information to the Department or the application shall be denied.

(b) Upon receipt of a complete application for a new Form 2 – Oil or Gas Well Permit Application or for a modification of an Oil or Gas Well Permit, the Department shall send a notice of the application to each of the following agencies with a request that each agency review and provide written comment on the application within 30 calendar days of the date on which the request is made:

- (1) Division of Air Quality, Department of Environment and Natural Resources;
- (2) Division of Parks and Recreation, Department of Environment and Natural Resources;
- (3) Division of Water Resources, Department of Environment and Natural Resources;
- (4) North Carolina Geological Survey, Division of Energy, Mineral, and Land Resources, Department of Environment and Natural Resources;
- (5) Natural Heritage Program, Department of Environment and Natural Resources;
- (6) North Carolina Wildlife Resources Commission;
- (7) Office of Archives and History, Department of Cultural Resources;
- (8) United States Fish and Wildlife Service, United States Department of the Interior; and
- (9) Any other Federal or State agency that the Department determines to be appropriate based on the location of the proposed well site, including the Division of Coastal Management, Department of Environment and Natural Resources; the Division of Marine Fisheries, Department of Environment and Natural Resources; the Division of Waste Management, Department of Environment and Natural Resources; Division of Public Health; and the Department of Transportation.

(c) Pursuant to the SPCA and 15A NCAC 04, the Department shall review the erosion control plan for approval, approval with modifications, or disapproval.

(d) The Department shall have 60 calendar days from receipt of the complete application, which shall include all approved variance requests to review and approve, approve with conditions, or deny the application. The Department shall consider all input submitted by the reviewing agencies outlined in Paragraph (b) of this Rule when approving, approving with conditions, or denying any application.

(e) If the Department denies an application for a permit pursuant to Rule .1309 of this Section, the Department shall notify the applicant or permittee in writing and stating the reasons for the denial. The applicant or permittee may thereupon modify and resubmit the application or file an appeal; the Department shall have 60 calendar days from receipt of the resubmitted application to complete the review process.

(f) On approval of an application, the Department shall set the amount of the performance bond or other security that is to be required pursuant to G.S. 113-378, 113-391 (a)(13a), and 113-421(a2) and (a3)(2) and mail notice of the required bond to the applicant or permittee. The applicant or permittee shall have 60 calendar days after the Department mails the notice to deposit

the required bond or security with the Department. The Oil or Gas Well Permit shall not be issued until receipt of this deposit.

(g) On approval of a Form 2 – Oil or Gas Permit Application for a new oil or gas well the North Carolina Geological Survey shall assign an API number for the oil or gas well.

(h) The permittee shall not commence any operation at the well site prior to receiving an approved Oil or Gas Permit and meeting the requirements of this Rule.

Authority G.S. 113-391(a)(5).

15A NCAC 05H .1308 PERMIT CONDITIONS

A Form 2 – Oil or Gas Well Permit Application may be approved with conditions based on the individual well site, such as:

- (1) additional erosion control measures to be installed during oil and gas well operations;
- (2) a natural buffer to be left between any stream and the disturbed land;
- (3) visual screening such as existing natural vegetation, vegetated earthen berms, tree plantings at staggered spacing, to be installed and maintained between any disturbed land and any adjoining property containing occupied buildings or public access within view of the disturbed land;
- (4) erosion control measures to be implemented during the construction and operation of all roads to minimize off-site damage from sediment; or
- (5) other conditions as determined by the Department to safeguard public health, welfare, and the environment.

Authority G.S. 113-391(a)(5); 113-395(5)c-l.

15A NCAC 05H .1309 DENIAL OF APPLICATION

(a) The Department shall have the authority to deny a permit application to any person on finding that the well site for which a permit is requested is in violation of any of the rules contained in this Subchapter, the issuance of the permit would result in a violation of any rule of this Subchapter or other applicable law or rule, or for any of the following factors:

- (1) the permit application is incomplete and the time has lapsed for resubmission in accordance with Rule .1307 of this Subchapter;
- (2) the requirements of Section .1400 of this Subchapter have not been met;
- (3) the operation will have significant adverse effects on surface water, groundwaters, wildlife, habitats of rare and endangered flora and fauna and other critical communities, or freshwater, estuarine, or marine fisheries;
- (4) the operation will constitute a direct physical hazard to public health and safety or to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road, or other public property;

- (5) the operation will have a significant adverse effect on the uses of a publicly-owned park, forest, recreation area, or historical and archeological sites listed on the Federal or State list of historic places;
- (6) previous experience with similar operations indicates a substantial possibility that the operation will result in deposits of sediment in stream beds or lakes in violation of the Sediment Pollution Control Act of 1973 and 15A NCAC 02L .0202 and 15A NCAC 02B, landslides, or acid water pollution in violation of 15A NCAC 02L .0202 and 15A NCAC 02B; or
- (7) the Department finds that the applicant or permittee, or any parent, subsidiary, or other affiliate of the applicant or permittee has not been in compliance with the Oil or Gas Conservation Act, rules of this Subchapter, other laws or rules of this State for the protection of the environment administered by the Department, any plan approval, permit, or order issued by of the Department or has not corrected all violations that the applicant or permittee, or any parent, subsidiary, or other affiliate of the applicant, permittee, or parent may have committed under this Act or rules adopted under said Act and that resulted in:
 - (A) the revocation of a permit;
 - (B) the forfeiture of part of all of a bond or other security;
 - (C) a conviction of a misdemeanor or any other court order; or
 - (D) the final assessment of a civil penalty.

(b) In the absence of any finding set out above, or if adverse effects are mitigated by the applicant or permittee as approved by the Department, a permit shall be granted.

Authority G.S. 113-391(a)(5)a; 113-395; 113-410(a).

15A NCAC 05H .1310 PERMIT MODIFICATIONS

- (a) Any permittee may apply at any time for a modification of the permit. The application shall be in writing on Form 2 – Oil or Gas Well Permit Application in accordance with the rules of this Section.
- (b) The permittee shall provide any additional information required by the Department to satisfy application requirements in accordance with Rule .1307 of this Section. The permittee shall not be required to resubmit information that remains unchanged since the time of the prior application.
- (c) If a proposed modification of the permit affects the land area covered by the permit or the approved reclamation plan then the permittee shall propose a modification to the Reclamation Plan that meets the requirements of Rule .2102 of this Subchapter.
- (d) No modification of a permit shall become effective until any required change has been made in the performance bond or other security posted under the provisions of G.S. 113-378, 113-391, and 113-421, so as to assure the performance of obligations assumed by the permittee under the permit and reclamation plan.

(e) If at any time it appears to the Department from its inspection of the disturbed land that the activities under the Reclamation Plan and other terms and conditions of the permit are failing to achieve the purposes and requirements of this Subchapter, the Department shall give the permittee written notice of that fact, of its intention to modify the Reclamation Plan, and other terms and conditions of the permit in a stated manner.

Authority G.S. 113-391(a)(5)a; 113-395; 113-410(a).

15A NCAC 05H .1311 PERMIT TRANSFERS

(a) A permit transfer may result from a sale, assignment by a court, a change in operating agreement, or other transaction.
(b) Within 30 calendar days of the sale or other transfer, the new owner shall notify the Department, in writing, of the transfer of ownership. The notice shall include:

- (1) the names, addresses and telephone numbers of the former and new owner, and the agent if applicable. The new permittee information shall be attached to the notice on Form 1 – FRO;
- (2) the Oil of Gas Well Permit and assigned API number;
- (3) the effective date of the transfer of ownership; and
- (4) an affidavit from the new owner verifying that the information on the original application is still accurate and complete. If the information on the original application is no longer accurate or complete, then a new Form 2 – Oil or Gas Well Application shall be submitted to the Department for review and approval.

(c) The new owner shall secure the required bond prior to the Department approving the permit transfer.

(d) A permit transfer may be denied by the Department based on previous revocation, unaddressed or outstanding violations on a previous permit by the transferee, in accordance with Rule .1309(a) of this Section.

Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395; 113-410(a).

15A NCAC 05H .1312 PERMIT EXPIRATION

- (a) A permittee shall have 12 months from the date of issuance of the permit to spud an oil or gas well or the permit shall expire.
- (b) A permittee may request a one time, one-year renewal of the permit. The permittee shall provide an affidavit affirming that the information on the original application is still accurate and complete and that the oil or gas well location restrictions are still in effect. Any change in information from the original application shall be treated as a request for a permit modification pursuant to Rule .1310 of this Section. The permittee shall submit the request so that it is received by the Department at least 30 calendar days prior to the expiration of the original permit.

Authority G.S. 113-391(a)(5)a; 113-395.

15A NCAC 05H .1313 PERMIT SUSPENSION OR REVOCATION

- (a) The Department may suspend or revoke a permit if:
- (1) the permittee fails to meet the conditions specified in the permit;
 - (2) the permittee falsified or otherwise withheld necessary information required in the application; or
 - (3) if the Department issued the permit in error because the submitted information was incorrect and the error was not identified during the Department's review but came to light after the permit was issued and the correct information affected the validity of the issued permit.
- (b) Notification of suspension or revocation of the permit, including specific justification for the revocation, shall be issued in writing. The permittee shall temporarily abandon the oil or gas well pursuant to Rule .1621 of this Subchapter until final disposition of appeal. If the revocation is upheld the permittee shall permanently plug and abandon the oil or gas well pursuant to Rule .1618 of this Subchapter.

Authority G.S. 113-391(a)(5)a; 113-395; 113-410(a).

15A NCAC 05H .1314 PERMIT RELEASE

- (a) The permittee may request the Department to release the oil or gas well and all affected areas associated within the well site and return any remaining bond in accordance with Rule .1406 of this Subchapter.
- (b) The Department shall not approve an oil or gas well permit release unless the requirements for Rule .1406 of this Subchapter have been met and all oil or gas well plugging and abandonment fees and notices have been received.
- (c) The Department shall release any remaining bond to the permittee on finding that that the well site has been reclaimed as stated in the Reclamation Plan.

Authority G.S. 113-391(a6).

SECTION .1400 – FINANCIAL ASSURANCE

15A NCAC 05H .1401 SCOPE

Each applicant or permittee for a permit, modification, or transfer of an Oil or Gas Well Permit shall file and maintain in force a bond in favor of the State of North Carolina or surface owner, executed by a surety approved by the Commissioner of Insurance, based on the requirements set forth in the rules of this Section.

Authority G.S. 113-391(a)(5)l; 113-421(a3).

15A NCAC 05H .1402 BONDING REQUIREMENTS

- (a) After an application for a permit, a modification, or a transfer of an Oil or Gas Well Permit is considered complete by the Department, the applicant or permittee shall provide an approved financial assurance instrument to the Department or each surface owner, as applicable in accordance with Rules.1403, .1404, and .1405 of this Section. The applicant or

permittee shall not commence operations to drill, recomplete, restimulate, deepen, reenter, sidetrack, plug and abandon, plug back, or revise the location of any oil or gas well prior to providing an approved financial assurance instrument to the Department or surface owner(s).

- (b) The permittee shall submit financial assurance to the Department using one of the following forms:

- (1) Form 7 – Irrevocable Letter of Standby Credit shall include the following information:
 - (A) the applicant or permittee's name, address, telephone number, fax number, and email address as needed;
 - (B) the letter of credit number, effective date, and amount;
 - (C) the name and address for the issuing institution;
 - (D) the date of expiration and date and frequency of renewals; and
 - (E) the issuing institution's representative's dated and notarized signature.
- (2) Form 8 – Surety Bond shall include the following information:
 - (A) the applicant or permittee's name, address, telephone number, fax number, and email address as needed;
 - (B) the name and the principal and local address of the issuing surety company;
 - (C) the bond number as assigned by the surety company;
 - (D) the amount of bond to be held by the State of North Carolina;
 - (E) the seal of the surety company;
 - (F) the signatures by the secretary or assistant secretary; principal; president, vice president, partner, or owner of the surety company;
 - (G) the signature of the resident agent of North Carolina and the agent or attorney in fact.
- (3) Form 9 – Assignment of Savings Account shall include the following information:
 - (A) the applicant or permittee's name, address, telephone number, fax number, and email address as needed;
 - (B) the name, address, and county of the bank;
 - (C) the dollar amount to be held to be payable to the Department on demand of the Department;
 - (D) the method and a copy of the instrument of assignment such as a passbook or deposit book;
 - (E) the signature, date, and notary seal for the applicant or permittee; and
 - (F) an acknowledgement of the bank on the assignment that includes the date of assignment, signature of

authorized agent of the bank, date of signature, and notarization.

(4) Form 10 – Cash Deposit shall include the following information:

(A) the applicant or permittee's name, address, telephone number, fax number, and email address as needed;

(B) the county and nearest city or town where oil or gas well is located;

(C) the lease name and the oil or gas well name and number;

(D) the Commission issued drilling unit number; and

(E) a cashiers or certified checks made payable to the North Carolina Department of Environment and Natural Resources.

(c) The amount of the bond shall be determined by the Department or the Commission consistent with Rules .1403, .1404, and .1405 of this Section.

(1) If the Oil or Gas Well Permit is modified to increase the total depth of the oil or gas well or the total disturbed land acreage increases, the bond shall be increased in accordance with Rules .1403 and .1404 of this Section, respectively; and

(2) As areas at a well site are reclaimed in accordance with the Reclamation Plan required by Section .2100 of this Subchapter and approved and released by the Department, the permittee may substitute a new bond for the bond previously filed in an amount covering the remaining oil or gas wells and disturbed land acreage at the site.

(d) If the applicant, permittee, or surface owner disagrees with the bond amount determined by the Commission, the applicant, permittee, or surface owner may appeal the bond amount pursuant to G.S. 113-421(a3)(1).

(e) The bond herein provided shall be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only on 60 days written notice thereof to the Department or surface owner and to the permittee.

(f) The bond shall be conditioned on the faithful performance of the requirements set forth in the rules of this Subchapter. On filing the bond with the Department, the permittee shall lose all right, title, and interest in the bond while the bond is held by the Department. Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved Reclamation Plan or acceptance by the Department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this Section.

(g) In lieu of the surety bond required by this Section, the permittee may file with the Department a cash deposit, an irrevocable letter of credit, a guaranty of payment in a form that is reasonably acceptable to the Department and held by a financial institution consistent with the Uniform Commercial Code of North Carolina (NC UCC). Alternatively, a permittee may file with the Department an assignment of a savings account in a financial institution consistent with the NC UCC.

Cash deposits, irrevocable letters of credit, guaranties of payment, and assignments of savings accounts shall be filed using forms in accordance with Paragraph (b) of this Rule. Security shall be subject to the release provisions of Rule .1406 of this Section.

(h) If the Commissioner of Insurance suspends or revokes the license to do business in North Carolina of any surety on a bond filed pursuant to this Subchapter, the permittee shall, within 60 calendar days after receiving notice thereof, substitute for the surety a good and sufficient corporate surety authorized to do business in this State. On failure of the permittee to substitute sufficient surety within the time specified, the permit shall be revoked.

Authority G.S. 113-391(a)(5)l; 113-421(a2).

15A NCAC 05H .1403 OIL OR GAS WELL PLUGGING AND ABANDONMENT BOND

(a) The applicant or permittee shall submit an oil or gas well plugging and abandonment bond in the amount of five thousand dollars (\$5,000) plus one dollar (\$1.00) per linear foot of the permitted oil or gas well pursuant to G.S. 113-378.

(b) The oil or gas well plugging and abandonment bond may be submitted as a separate bond or as an aggregate bond amount with the environmental damage bond, as required by Rule .1405 of this Section.

(c) The permittee may request this bond to be released by the Department when final site reclamation is completed in accordance with Section .2100 of this Subchapter and for which the oil or gas well is permanently plugged and abandoned in accordance with Rule .1618 of this Subchapter.

Authority G.S. 113-378; 113-391(a)(5)l; 113-421(a2).

15A NCAC 05H .1404 DISTURBED LAND BOND

(a) The permittee shall provide to each surface owner a bond that is sufficient to cover the cost of completing the requirements of the approved Reclamation Plan in accordance with Rule .2102 of this Subchapter and any reclamation conditions of the approved permit.

(b) The bond amount for disturbed land shall be based on costs for corrective action(s) that the Department may require to include costs to reclaim well site features, such as the haul road, drainage and roadway ditches and berms, pits, stockpiles, and production facilities at the well pad as set out in the Reclamation Cost Table approved by the Commission.

Authority G.S. 113-391(a)(5)l; 113-391(a)(13a); 113-421(a2).

15A NCAC 05H .1405 ENVIRONMENTAL DAMAGE BOND

(a) The applicant or permittee shall submit an environmental damage bond in the amount pursuant to G.S. 113-421(a3)(2).

(b) The environmental damage bond may be submitted as a separate bond or as an aggregate bond amount with the oil or gas well plugging and abandonment bond, as required by Rule .1403 of this Section.

(c) If the Commission determines that an operation would be sited in an environmentally sensitive area, the Commission may

increase the bond amount pursuant to G.S. 113-421(a3)(2). In making the determination the Commission shall consider the following factors:

- (1) the proximity of the oil or gas well or well site to the environmentally sensitive area;
- (2) the character of the environmentally sensitive area;
- (3) the topography of the environmentally sensitive area;
- (4) special soil or geologic conditions in the environmentally sensitive area; and
- (5) any other factors the Commission determines to be relevant in determining an environmentally sensitive area.

Authority G.S. 113-391(a)(5)l; 113-421(a3)(2).

15A NCAC 05H .1406 INSPECTION AND APPROVAL OF RECLAMATION FOR BOND RELEASE OR FORFEITURE

(a) The permittee shall proceed with reclamation as scheduled in the approved Reclamation Plan pursuant to Rule .2102 of this Subchapter.

(b) The permittee shall notify the Department in writing that it has completed reclamation of an area of disturbed land in accordance with Rule .2103 of this Subchapter.

(c) On receipt of notice as required by Paragraph (b) of this Rule, and at any other time the Department may elect, the Department shall conduct an inspection in accordance with Rule .0203 of this Subchapter to determine whether the permittee has complied with the Reclamation Plan, the rules of this Subchapter, the statute, and the terms and conditions of the Oil or Gas Well Permit.

- (1) If the Department determines from its inspection of the area in accordance with this Rule that reclamation has been properly completed, it shall notify the permittee in writing.
- (2) If the Department determines from its inspection of the area that reclamation is deficient based on Rule .2102 of this Subchapter, then the Department shall notify the permittee in writing of all such deficiencies. The permittee shall thereupon commence action within 30 days to rectify these deficiencies and shall take corrective actions until the deficiencies have been corrected.

(d) The Department shall initiate enforcement actions if it finds any of the following conditions in accordance with Rule .0901 of this Subchapter:

- (1) the reclamation of the disturbed land within the permitted area is not proceeding in accordance with the Rule .2103 of this Subchapter or the Reclamation Plan;
- (2) the permittee has failed within 30 days after notice to commence corrective action; or

- (3) the final reclamation has not been properly completed in conformance with the Reclamation Plan and G.S. 113-421(a3).

Authority G.S. 113-391(a)(5)l; 113-391(b); 113-410;113-421(a3).

15A NCAC 05H .1407 BOND FORFEITURE PROCEEDINGS

(a) If the Department determines there is a violation necessitating bond forfeiture or the revocation of a permit, it shall send the permittee and surety a written notice. Upon receipt of the written notice of violation, the permittee shall have 60 calendar days to take corrective action. If the permittee does not correct the violation within the 60 day period, the Department may request the Attorney General to initiate forfeiture proceedings against the bond or other security filed by the permittee in accordance with Rule .0901 of this Subchapter.

(b) Such proceedings shall be brought in the name of the State of North Carolina for the face amount of the bond or other security, less any amount already released by the Department, shall be treated as liquidated damages and subject to forfeiture.

(c) All funds collected as a result of such proceedings shall be placed in a special fund and used by the Department to carry out, to the extent possible, the required final reclamation which the permittee has failed to complete. If the amount of the bond or other security filed pursuant to this Section proves to be insufficient to complete the required final reclamation pursuant to the approved Reclamation Plan, the permittee shall be liable to the Department for any excess above the amount of the bond or other security which is required to defray the cost of completing the required final reclamation.

(d) If a permit is revoked by the Department, the Department shall proceed with efforts to collect the bond(s) or other financial assurance that was submitted to the Department at the time of permitting for oil or gas well plugging and abandonment and environmental damage in accordance with the rules of this Section.

Authority G.S. 113-391(a)(5)l; 113-421(a2).

SECTION .1500 – SITE INFRASTRUCTURE AND CONSTRUCTION STANDARDS

15A NCAC 05H .1501 SCOPE

The rules in this Section establish requirements for well site construction standards.

Authority G.S. 113-391(a)(4); 113-391(a)(5)c.

15A NCAC 05H .1502 WELL SITE CONSTRUCTION STANDARDS

(a) The applicant or permittee shall submit a Well Site Development Plan to the Department pursuant to Rule .1304(c)(2) of this Subchapter. The Well Site Development Plan shall be signed and sealed by a North Carolina Professional Engineer and shall include the following information:

- (1) the name, address, telephone number, fax number, and email address of applicant or permittee;
- (2) the lease name and the oil or gas well name and number;
- (3) the name and address of surface and mineral owners;
- (4) the latitude and longitude (in decimal degrees) of the proposed access road entrance, corners of the well pad, wellhead(s), tank battery, pits, and all other production equipment reported to five decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);
- (5) a well site location map depicting the well pad and access road using a scale of one inch equals 2,000 feet;
- (6) maps depicting the proposed well site, well pad, tank battery, pits, access road, and topsoil stockpiles along with existing roads, surface water bodies, wetlands, and other surface features affected by the construction using a scale ranging between one inch equals 50 feet to one inch equals 500 feet with two foot topographic contours, depending on the total disturbed area;
- (7) the details of the leak detection system, either electrical or piped, that will be installed on any proposed pit including a plan of action to mitigate leakage;
- (8) the proposed cut and fill areas with two foot grading contours depicting slope ratios and identifying elevation at the top and bottom of slopes using the North American Vertical Datum of 1988 (NAVD88);
- (9) the cross-sections of the length and width of the well site, well pad, and access road that include cut and fill volumes posted in cubic yards;
- (10) a description of the well site construction sequence and stabilization techniques;
- (11) the erosion and sedimentation control measures that are designed and constructed to prevent sedimentation to water bodies and adjacent properties from any land disturbing activities related to the construction of the well site in accordance with the SPCA and 15A NCAC 04, and the "North Carolina Erosion and Sediment Control Planning and Design Manual," which is incorporated by reference, including subsequent amendments and editions. The North Carolina Erosion and Sediment Control Planning and Design Manual may be viewed online at <http://portal.ncdenr.org/web/lr/publications>;
- (12) the stormwater management control measures shall be designed and constructed in accordance with 15A NCAC 02H and the "North Carolina Division of Water Quality

Stormwater Best Management Practices Manual," which is incorporated by reference, including subsequent amendments and editions. The Stormwater Best Management Practices Manual may be viewed online at <http://portal.ncdenr.org/web/lr/bmp-manual>;

- (13) the maintenance procedures for the access road and well pad; and
- (14) the pre-construction conditions at the proposed well site, including aerial photographs, topographic maps, and pre-construction site inspection data.

(b) The permittee shall notify the Department at least 48 hours via telephone or email prior to the commencement of construction of a new well site or prior to the implementation of an approved permit modification. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and e-mail address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name and the oil or gas well name and number; and
- (5) the scheduled date and approximate time of day for commencement of construction activities.

(c) Well site disturbed areas shall be minimized. Taking into consideration the geologic target, setbacks, and safety, the well site shall be located in accordance with API Recommended Practice 51R "Environmental Protection for Onshore Oil and Gas Production Operations and Leases," and the United States Department of the Interior, Bureau of Land Management (BLM) "Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development, the Gold Book," which are incorporated by reference, including subsequent amendments and editions. Recommended Practice 51R, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>.

(d) Well sites shall be designed and located pursuant to G.S. 113A, Article 4 and in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual.

(e) All topsoil shall be stockpiled for reuse during reclamation. Topsoil shall be segregated and stored separately from subsurface materials. Stockpiles shall be located and protected to minimize wind and water erosion in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual.

(f) Well pads shall be designed and constructed to support the maximum weight of all vehicles, equipment, and material on the site.

(g) Well pads shall be designed and constructed using surface or subsurface containment systems that prevent spills or releases of any substances from escaping the well pad.

- (1) Containment systems shall be required on the well pad for all equipment used for any phase of drilling, casing, cementing, hydraulic fracturing or flowback operations and for all substances including drilling mud, drilling mud additives, hydraulic oil, diesel fuel, hydraulic fracturing additives or flowback fluid.
- (2) Containment systems shall have a coefficient of permeability no greater than 1×10^{-10} centimeters per second (cm/sec) and shall be at least 30 millimeters (mils) in thickness.
- (3) Adjoining sections of containment systems shall be sealed together in accordance with the manufacturer's directions to prevent leakage.
- (4) All components of the containment system that could potentially come into direct contact with any substances shall be compatible with those substances and be resistant to physical, chemical and other failure during handling, installation and use pursuant to American Society for Testing and Materials (ASTM) D5747/D5747M-08 (2013) e1 "Standard Practice for Tests to Evaluate the Chemical Resistance of Geomembranes to Liquids," which is incorporated by reference, including subsequent amendments and editions. This document, published by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428, may be purchased at a cost of forty-two dollars (\$42.00) at <http://www.astm.org/Standards/D5747.htm>.
- (5) The permittee shall inspect all containment systems with sufficient regularity to ensure integrity is maintained. Containment systems shall be maintained in such manner to prevent an impact to public health, welfare, and the environment. Containment system inspection and maintenance records shall be available at the well site for review by the Department.
- (6) The permittee shall notify the Department if a spill or release occurs at the well site and take necessary remedial actions in accordance with Rule .2005 of this Subchapter.
- (7) The permittee shall provide primary and secondary containment when storing additives, chemicals, oils, or fuels. The secondary containment shall have the capacity to contain 110 percent of the volume being stored.

(h) Well sites shall be constructed to prevent stormwater runoff from entering the well pad. All stormwater control measures shall be designed and managed in accordance with 15A NCAC 02H and the "North Carolina Division of Water Quality Stormwater Best Management Practices Manual."

(i) All erosion control or stormwater measures shall be maintained according to the approved Well Site Development Plan.

Authority G.S. 113-391(a)(4); 113-391(a)(5)l; 150B-2(8a)h.

15A NCAC 05H .1503 ACCESS ROAD CONSTRUCTION STANDARDS

(a) Prior to construction of the access road, the permittee shall post an identification sign pursuant to Rule .1615 of this Subchapter.

(b) Access roads shall be located, designed, and constructed to minimize environmental impact and meet the requirements of the SPCA, 15A NCAC 04, "North Carolina Erosion and Sediment Control Planning and Design Manual," 15A NCAC 02H, "North Carolina Division of Water Quality Stormwater Best Management Practices Manual," and the North Carolina Department of Transportation "Standard Specifications for Roads and Structures," which are incorporated by reference, including subsequent amendments and editions. The "North Carolina Erosion and Sediment Control Planning and Design Manual," may be viewed online at no charge at <http://portal.ncdenr.org/web/lr/publications>. The Stormwater Best Management Practices Manual may be viewed online at no charge at <http://portal.ncdenr.org/web/lr/publications>. The Standard Specifications for Roads and Structures, published by the Department of Transportation, may be viewed online at no charge at http://www.ncdot.org/doh/preconstruct/ps/specifications/specifications_provisions.html.

- (1) Existing roads shall be used as access routes when feasible.
- (2) Access roads shall be constructed and maintained so emergency response vehicles may enter the well site at all times.
- (3) Public roads shall be kept clear of mud and debris from the well site.
- (4) Turnarounds or pull-off areas shall be installed for single-lane access roads exceeding 150 feet in length.

Authority G.S. 113-391(a)(4); 391(a)(5)j.

15A NCAC 05H .1504 PIT AND TANK CONSTRUCTION STANDARDS

(a) All pits, series of pits, tanks, and tank batteries shall be constructed and maintained to contain all Exploration and Production (E & P) wastes from the drilling, completing, recompleting, producing, servicing, and plugging of an oil or gas well.

(b) The pit, series of pits, tanks, and tank batteries shall be installed and maintained in accordance with the following requirements:

- (1) the location of pit(s) and tanks(s) shall be in accordance with the minimum setbacks as required in Rules .1601 and .1602 of this Subchapter, or in an approved variance pursuant to Rule .1603 of this Subchapter;
- (2) pits shall be located in cut material to the fullest extent possible. Pits shall be constructed adjacent to the high wall for sloping well sites. If the pit cannot be constructed in cut material, at least 50 percent of the pit shall be constructed below original ground level to prevent failure of the pit dike.

Pit dikes constructed of fill material shall be compacted according to soil texture and moisture content pursuant to 15A NCAC 02K .0208, which is incorporated by reference, including subsequent amendments and editions;

- (3) all pits and open tanks shall maintain a minimum of two feet of freeboard at all times;
- (4) if Paragraph (3) of this Rule is violated, the permittee shall notify the Department within two hours of discovery and take the necessary actions to ensure the structural stability of the pit or open tank, prevent spills, and restore the two feet of freeboard; and
- (5) tank design, installation, and use shall comply with API Specifications 12B "Specification for Bolted Tanks for Storage of Production Liquids," Specification 12D "Specification for Field Welded Tanks for Storage of Production Liquids," and Specification 12F "Specification for Shop Welded Tanks for Storage of Production Liquids," which are incorporated by reference, including subsequent amendments and editions. Specifications 12B, 12D, and 12F, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>.

(c) Any pit that contains E & P waste shall comply with the following standards:

- (1) pits shall have an upper and lower synthetic liner;
- (2) each synthetic liner shall have a coefficient of permeability no greater than 1×10^{-10} cm/sec and shall be at least 30 mils in thickness for polyvinyl chloride or at least 40 mils in thickness for high-density polyethylene;
- (3) each synthetic liner shall be designed, constructed and maintained so that the physical and chemical characteristics of the liner are not adversely affected by the E & P waste or by ultraviolet light pursuant to ASTM D5747/D5747M-08 (2013) e1 "Standard Practice for Tests to Evaluate the Chemical Resistance of Geomembranes to Liquids," which is incorporated by reference, including subsequent amendments and editions. This document, published by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428, may be purchased at a cost of forty-two dollars (\$42.00) at <http://www.astm.org/Standards/D5747.htm>;
- (4) the synthetic liner shall be resistant to failures or damage during transportation, handling, installation, and use;
- (5) adjoining sections of synthetic liners shall be sealed together to prevent leakage in accordance with the manufacturer's directions;
- (6) the synthetic liner shall be trenched and anchored into the top of the berm;

(7) the pit shall be constructed with a leak-detection zone between the upper and lower synthetic liners designed to:

- (A) reduce the maximum predicted head acting on the lower membrane liner to less than one inch and to detect a leak within 24 hours;
 - (B) function without damaging the liners; and
 - (C) designed to allow permittee to monitor, record, and remove any leakage within the zone.
- (8) the liner sub-base shall be smooth, uniform, and free from debris, rock, and other materials that may puncture, tear, cut, or otherwise cause the liner to fail. The liner sub-base and subgrade shall be capable of bearing the weight of the material above the liner without causing settling that may affect the integrity of the liner;
 - (9) the pit shall have a perimeter berm that is a minimum of two feet in width along the crest of the berm, to prevent stormwater runoff from entering the pit; and
 - (10) the bottom of the pit shall be at least four feet above the seasonal high groundwater table and bedrock.

(d) If a liner becomes torn or otherwise loses integrity, the pit shall be managed to prevent the pit contents from leaking out of the pit, or the pit contents shall be removed and disposed of in accordance with the Waste Management Plan.

(e) If the liner drops below the two feet of freeboard, the pit shall be managed to prevent the pit contents from leaking from the pit and the two feet of lined freeboard shall be restored.

(f) The permittee shall provide and maintain secondary containment for all pits, tanks, and production equipment of sufficient capacity to contain 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater. Secondary containment structures shall be constructed of a material compatible with the fluids being stored and maintained to prevent loss of fluids.

(g) Tanks for the storage of produced hydrocarbons shall not be buried and shall contain the following components:

- (1) activated charcoal filters installed on vent stacks. Activated charcoal filters shall be maintained and replaced according to manufacturer's specifications;
- (2) low-pressure relief valves installed on vent stacks. Relief valves shall remain functioning at all times;
- (3) hatch lids shall have a functioning seal and shall be secured at all times unless the permittee is on-site; and
- (4) lightning arrestors installed on each tank to comply with API Recommended Practice 2003, "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents," which is incorporated by reference, including

subsequent amendments and editions. Recommended Practice 2003, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>.

(h) The Commission may grant or deny a variance from any construction standard of this Rule. The applicant or permittee shall submit a request for a variance in accordance with Rule .0301 of this Subchapter. In granting or denying the request the Commission shall consider factors such as:

- (1) the requested variance to deviate from the standards and rule will provide equal or greater protection of public health, welfare, and the environment; and
- (2) construction in accordance with the standards of this Rule is not technically or economically feasible.

Authority 113-391(a)(5)c; 113-391(a)(5)d.

SECTION .1600 – WELL CONSTRUCTION AND COMPLETION

15A NCAC 05H .1601 SETBACK DISTANCES

(a) Each oil or gas well, tank, tank battery, or pit shall comply with the following setback distances as measured from the center of a wellhead and the edge of the pit, production facility equipment, tank, or tank battery closest to the features below:

- (1) occupied dwellings and high occupancy buildings: 650 feet;
- (2) edge of a public road, highway, utility or railroad track right-of-way, or other right-of-way: 100 feet;
- (3) a perennial stream, river, watercourse, pond, lake, or other natural and artificial bodies of water including wetlands and trout stream: 200 feet;
- (4) intermittent stream: 100 feet; and
- (5) a public or private water well intended for human consumption or household purpose: 650 feet.

(b) The permittee shall ensure a minimum setback of 100 feet from each oil or gas wellhead, tank, tank battery, or pit to the edge of the mapped 100-year floodplain and floodway.

Authority G.S. 113-391(a)(5)d.

15A NCAC 05H .1602 PRODUCTION FACILITY SAFETY SETBACK DISTANCES

(a) A pit, tank, or tank battery shall be a minimum of 75 feet from any wellhead.

(b) A tank shall be a minimum of five feet from another tank.

(c) A mechanical separator or compressor shall be located the minimum distance from any of the following:

- (1) a wellhead: 50 feet; and
- (2) a tank: 75 feet.

(d) All production facility equipment, excluding gathering lines, whose contents may be heated shall be located a minimum distance of 75 feet from a tank or a wellhead.

Authority G.S. 113-391(a)(5)d.

15A NCAC 05H .1603 VARIANCE FOR SETBACKS

(a) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a tank or tank battery, and a pit from an occupied dwelling required by Rule .1601 of this Section. Variances from setbacks established for high occupancy buildings are prohibited. The Commission shall consider the following factors in granting or denying variances:

- (1) the variances shall include additional measures that eliminate, minimize, or mitigate potential adverse impacts to public health, welfare, and the environment, such as the use of non-diesel fuels with lower emissions; and
- (2) the Commission shall require site-specific mitigation measures to address location specific considerations.

(b) The Commission shall require the following conditions in any approved variance from an occupied dwelling:

- (1) the wellhead, tank or tank battery, or production facility shall be a minimum of 400 feet from an occupied dwelling;
- (2) no variance is allowed for any E & P waste pit setback from an occupied dwelling; and
- (3) freshwater storage pits, reserve pits to drill surface casing, and emergency pits, shall be a minimum of 400 feet from an occupied dwelling.

(c) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a tank or tank battery from an intermittent stream, or a pond, or other natural or artificial water body, that is not a water of the State, wholly contained within the drilling unit required by Rule .1601 of this Section. The Commission shall consider the following factors in granting or denying variances:

- (1) the variances shall include additional measures that eliminate, minimize, or mitigate potential adverse impacts to public health, welfare, and the environment, such as the use of secondary or backup containment measures;
- (2) the measures proposed to eliminate, minimize or mitigate potential adverse impacts to public health, welfare and the environment are adequate to address all the risks at the well site and justify the reduction of setback distances as requested in the variance;
- (3) the oil or gas wellhead, freshwater storage pit, tank, tank battery, or production facility shall be a minimum of 50 feet from any intermittent stream, pond, or other natural or artificial water body, that is not a water of the State, wholly contained within the drilling unit;
- (4) no variance is allowed for any E & P waste pit setback from an intermittent stream; and
- (5) oil or gas wellheads, tanks or a tank battery, or pits less than 650 feet from, and up-gradient of, a surface water body shall use tertiary containment, such as an earthen berm.

(d) The Commission shall require green completions in any approved variance:

- (1) flow lines, separators, and sand traps capable of supporting green completions shall be installed;
- (2) uncontrolled venting shall be prohibited; and
- (3) temporary flowback flaring and oxidizing equipment shall include the following:
 - (A) adequately sized equipment to handle one and one half times the largest flowback volume of gas experienced within a 10-mile radius;
 - (B) valves and porting available to divert gas to temporary equipment or to permanent flaring and oxidizing equipment; and
 - (C) auxiliary fuel with sufficient supply and heat to sustain combustion or oxidation of the gas mixture when the mixture includes noncombustible gases.

(e) An applicant or permittee may submit a surface use agreement from a surface landowner as justification to request a variance to setback distances for the wellheads, tank or tank battery, and pits from occupied dwellings. The surface use agreement may include additional site-specific mitigation measures. The surface use agreement shall include written consent of the landowner, which may be provided by any of the following:

- (1) a copy of an original lease agreement text that provides for the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling;
- (2) a copy of a deed severing the oil and gas mineral rights, as applicable, from the owner's parcel of land as filed with the county Registrar of Deeds that expressly provides for the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling; or
- (3) a copy of a written surface use agreement signed by the property owner that consents to the proposed location of an oil or gas wellhead, well pad, tank, tank battery, or pit(s), as applicable. An applicant or permittee may submit a copy of a written statement filed with the county Register of Deeds that expressly provides for the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling in lieu of a copy of a written surface use agreement.

(f) Variance requests shall be submitted in accordance with Rule .0301 of this Subchapter. In addition to the information required by Rule .0301 of this Subchapter, any permittee seeking to use surface use agreement as a basis for a variance shall

submit a copy of the surface use agreement containing the information in Paragraph (c) of this Rule.

Authority G.S. 113-391(a)(5)d.

15A NCAC 05H .1604 DIESEL FUEL USE

(a) The Commission shall incorporate by reference, including subsequent amendments and editions, the "Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels – Draft: Underground Injection Control Program Guidance #84," published by the United States Environmental Protection Agency. Copies of this document may be obtained online at no charge at:

<http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/hfdieselfuelsguidance.pdf>.

(b) Any substance identified by one or more of the following Chemical Abstract Service Registry Numbers listed in the United States Environmental Protection Agency's "Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels" shall not be used in the subsurface:

- (1) 68334-30-5, Primary Name: Fuels, diesel;
- (2) 68476-34-6, Primary Name: Fuels, diesel, Number 2;
- (3) 68476-30-2, Primary Name: Fuel oil Number 2;
- (4) 68476-31-3, Primary Name: Fuel oil, Number 4;
- (5) 8008-20-6, Primary Name: Kerosene; and
- (6) 68410-00-4, Primary Name: Distillates (petroleum), crude oil.

Authority G.S. 113-391(a)(5)g.

15A NCAC 05H .1605 CASING AND EQUIPMENT REQUIREMENTS

(a) All casing and tubing installed in oil or gas wells shall be steel, steel alloy, or other material that has been manufactured to meet the American Petroleum Institute (API) standards. All casing and tubing material shall be manufactured according to API standards; all previously used casing shall comply with design parameters for the oil or gas well, pass a hydrostatic test, a drift test, and a wall thickness test pursuant to API Specification 5CT "Specification for Casing and Tubing," and API Specification 5B "Specification for Threading, Gauging, and Thread Inspection of Casing, Tubing, and Line Pipe Threads," which are incorporated by reference, including subsequent amendments and editions. These documents, published by API, may be purchased at a cost of two hundred thirty-seven dollars (\$237.00) at <http://www.techstreet.com/api/products/1802047> and one hundred eighteen dollars (\$118.00) at <http://www.techstreet.com/api/products/1555125> respectively, or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108. The casing shall be marked to verify the test results and the permittee shall provide a copy of the test results to the Department before the casing is installed in the wellbore.

- (1) Casing shall be designed to have a minimum internal yield pressure rating that is 20 percent greater than the maximum anticipated pressure

to which the casing may be subjected to during drilling, completion, or production operations.

- (2) Where subsurface reservoir pressure is unknown and cannot be reasonably anticipated, the permittee shall assume a pressure gradient of 0.433 pounds per square inch (psi) per foot in a fully evacuated hole, under shut-in conditions.
- (3) All casing and tubing connections shall be torqued to the manufacturer's specifications and shall comply with API Recommended Practice 5A3 "Recommended Practice on Thread Compounds for Casing, Tubing, Line Pipe, and Drill Stem Elements," and API Recommended Practice 5C5 "Recommended Practice on Procedures for Testing Casing and Tubing Connections," which are incorporated by reference, including subsequent amendments and editions. These documents, published by API, may be purchased at a cost of one hundred forty-five dollars (\$145.00) at <http://www.techstreet.com/api/products/1657246> and one hundred sixty-three dollars (\$163.00) at <http://www.techstreet.com/api/products/1087582> respectively, or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.

(b) The permittee shall verify casing integrity by pressure testing each cemented casing string greater than 200 feet in length in accordance with the following test method:

- (1) test the casing string, prior to drilling the cement plug or stimulating the oil or gas well, at a minimum pump pressure in psi, that is calculated by multiplying the length of the casing string, in feet, by 0.2; but in no event shall the pressure test exceed 1,500 psi;
- (2) this pressure test shall be conducted for 30 minutes; if the pressure has dropped by more than 10 percent, then the casing string has failed to meet the integrity requirements;
- (3) the permittee shall not drill the cement plug or stimulate the oil or gas well until the condition has been corrected; and
- (4) the casing string has met the integrity requirements if the pressure has dropped by no more than 10 percent of testing pressure.

(c) The wiper plug and float collar assembly shall be set with a minimum cement displacement pressure of 500 psi.

(d) All casing shall be centralized to allow the cement to fill the annular space to the surface in order to isolate critical zones including: aquifers, flow zones, voids, lost circulation zones, coal layers, and hydrocarbon production zones. Casing strings shall comply with API Recommended Practice 10D-2 "Recommended Practice for Centralizer Placement and Stop Collar Testing," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be purchased at a cost of seventy-seven dollars (\$77.00) at <http://www.techstreet.com/api/products/1173247> or

by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.

- (1) All bow-spring centralizers shall comply with API Specification 10D "Specification for Bow-Spring Casing Centralizers," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be purchased at a cost of eighty-nine dollars (\$89.00) at <http://www.techstreet.com/api/products/957236> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.
- (2) All rigid centralizers shall comply with API Technical Report 10TR4 "Considerations Regarding Selection of Centralizers for Primary Cementing Operations," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be purchased at a cost of sixty-one dollars (\$61.00) at <http://www.techstreet.com/api/products/1568067> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.

(e) All packers and bridge plugs shall comply with API Specification 11D1 "Packers and Bridge Plugs," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be purchased at a cost of ninety-eight dollars (\$98.00) at <http://www.techstreet.com/api/products/1634486> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.

Authority G.S. 113-391(a)(5)c .

15A NCAC 05H .1606 CEMENTING STANDARDS

(a) All cement pumped into the wellbore shall consist of cement that is manufactured and tested pursuant to API Specification 10A "Specification for Cements and Materials for Well Cementing" or the American Society for Testing and Materials (ASTM) Standard Specification "C150/C150M Standard Specification for Portland Cement," which are incorporated by reference, including subsequent amendments and editions. Specification 10A, published by API, may be purchased at a cost of one hundred forty-five dollars (\$145.00) at <http://www.techstreet.com/api/products/1757666> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108. Specification C150/C150M, published by ASTM, may be purchased at a cost of forty-one dollars (\$41.00) at <http://www.astm.org/Standards/C150.htm> or by mail at 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

(b) The permittee, or an authorized representative of the permittee, shall be on site for all cement mixing and placement operations to monitor the cement mixing equipment and to ensure that cement slurry design parameters are followed.

(c) Cement shall be pumped at a rate and in a flow regime that minimizes channeling of the cement in the annulus.

(d) Cement mixtures for which published performance data are not available shall be tested by the permittee, or the service

company. The cement test results shall be included with the Form 2 – Oil or Gas Well Permit Application confirming that the cement mixture meets API Specification 10A "Specification for Cements and Materials for Well Cementing."

(e) The Department may require, by permit condition, a specific cement mixture to be used in any oil or gas well.

(f) All cement shall reach a compressive strength of at least 500 pounds per square inch (psi) prior to conducting the casing integrity test required by Rule .1605 of this Section.

Authority G.S. 113-391(a)(5).

15A NCAC 05H .1607 WELL INSTALLATION

(a) The Department may establish, by permit conditions, additional oil or gas well construction standards that provide greater protection of human health, safety, and the environment.

(b) The permittee shall notify the Department at least 48 hours via telephone or email prior to spudding the oil or gas well. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for spudding the oil or gas well.

(c) The permittee shall notify the Department at least 48 hours prior to setting and cementing any casing string via telephone or email, in order to allow the Department to participate in pre-job safety and procedural meetings, independently test cement mix water, evaluate casing condition, and observe and document the execution of the cementing operation. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for setting and cementing any casing string.

(d) If a mousehole or rathole is used, it shall be constructed of liquid-tight steel pipe with a welded-basal plate.

(e) A wellbore shall be drilled using air, water, water-based drilling fluid, or a combination thereof until all fresh groundwaters have been isolated.

- (1) Drilling fluids that cause a violation of standards established in 15A NCAC 02L,

which is incorporated by reference including subsequent amendments, shall not be used until all groundwaters have been isolated.

- (2) Only freshwaters shall be used for mixing all drilling fluids.

(f) A wellbore shall be drilled to provide a minimum of a one-inch annulus, as measured from the casing.

(g) The wellbore shall be conditioned prior to cementing to ensure an adequate cement bond between the casing and the formation by circulating the total volume of drilling fluid in the wellbore a minimum of two times. The drilling fluid rheology shall be adjusted to optimize conditions for displacement of the drilling fluid and to ensure that the wellbore is stable.

(h) All casing strings shall be rotated and reciprocated during the emplacement of cement to circulate the cement surrounding the casing string to fill the annulus.

(i) Stormwater shall be prevented from infiltrating the wellbore by crowning the location around the wellbore to divert fluids as approved in the Well Site Development Plan.

Authority G.S. 113-391(a)(5)c .

15A NCAC 05H .1608 WELL INSTALLATION FOR CONDUCTOR CASING

(a) Conductor casing design and setting depth shall be based on the geological conditions at the wellbore location, including the presence or absence of hydrocarbons and potential drilling hazards.

(b) Conductor casing shall be cemented from bottom to top. If cement does not return to the surface, the permittee shall consult with and obtain approval from the Department to determine the appropriate method to emplace cement.

(c) Conductor casing shall:

- (1) stabilize unconsolidated sediments;
- (2) isolate and seal off shallow groundwaters zones;
- (3) isolate any shallow drilling hazards, hydrocarbon bearing zones, or coal formations;
- (4) provide a stable platform for oil or gas well construction; and
- (5) provide solid structural anchorage for a diverter system in air drilling operations.

(d) A mechanical or cement seal shall be installed at the surface to block downward migration of surface pollutants.

Authority G.S. 113-391(a)(5)c.

15A NCAC 05H .1609 WELL INSTALLATION FOR SURFACE CASING

(a) Surface casing shall be set into competent bedrock to a depth of at least 100 feet below the base of the deepest groundwaters but above any hydrocarbon strata containing fluids or gases that could negatively impact the quality of the cement or proper functioning of the oil or gas well.

(b) Surface casing shall be cemented from bottom to top. If cement does not return to the surface, the permittee shall consult with and obtain approval from the Department to determine the appropriate method to emplace cement.

(c) Surface casing shall:

- (1) isolate and seal off shallow groundwaters;
- (2) provide a stable platform for oil or gas well construction; and
- (3) contain pressures and fluids from subsequent drilling, completion, and production operations.

(d) The surface casing shall be set into competent bedrock at a depth sufficient to ensure the blowout preventer (BOP) can contain any formation pressure that may be encountered when drilling the next section of the wellbore below the base of the surface casing string.

(e) The permittee shall collect correlation logs, core samples, and drill cutting samples to identify groundwaters, zones of formational instability, and competent bedrock to be submitted to the Department with Form 12 – Well Drilling Report required in Rule .1623 of this Section.

(f) Surface casing shall be cemented before drilling through any hydrocarbon-bearing stratum.

(g) If geologic hazards such as heaving shale, abnormal pressure, annular flow or other potential flow zones are encountered, drilling shall stop, and casing shall be set and cemented before drilling continues.

(h) A formation integrity test (FIT) shall be completed after drilling out below the base of the surface casing, into at least 20 feet, but not more than 50 feet of new formation. The FIT shall be completed in accordance with API Standard 65-Part 2 "Isolating Potential Flow Zones During Well Construction," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>. If the FIT fails, the permittee shall consult with the Department to determine remedial or corrective actions necessary before operations continue.

Authority G.S. 113-391(a)(5)c.

15A NCAC 05H .1610 WELL INSTALLATION FOR INTERMEDIATE CASING

Intermediate casing shall isolate groundwaters that have not been isolated by the surface casing and isolate flow zones, lost circulation zones, or other geologic hazards in accordance with the following:

- (1) if used to isolate groundwaters, the casing shall be set into competent bedrock to a depth of at least 200 feet below the deepest groundwaters. The casing string shall be cemented from the bottom to a minimum of 100 feet above the top of the shallowest groundwaters;
- (2) if used to mitigate unanticipated geologic hazards, such as heaving shale, abnormal pressure, annular flow or other potential flow zones, the casing shall be set to a depth appropriate to mitigate the hazard. The casing string shall be cemented from the bottom to 200 feet above the base of the previous casing string;

(3) the permittee shall collect correlation logs, core samples, and drill cutting samples to identify groundwaters, zones of formational instability, and competent bedrock to be submitted to the Department with the submission of Form 12 – Well Drilling Report as required in Rule .1623 of this Section;

(4) if the intermediate wellbore penetrates one or more flow zones, the cement used to control annular gas migration from the flow zones shall be designed to comply with API Standard 65-Part 2 "Isolating Potential Flow Zones During Well Construction," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>;

(5) a cement bond log (CBL) for the intermediate casing string shall be completed after cement has reached a compressive strength of 500 psi to demonstrate the cementing operation was completed in accordance with this Rule and to locate casing collars and centralizers. Drilling shall not commence until the CBL is complete;

(6) if there is a failure to isolate groundwater zones, the permittee shall submit a plan of remediation to the Department for approval and implement such plan by performing remedial operations prior to continuing drilling operations. If the deficiencies cannot be remedied, the oil or gas well shall be plugged and abandoned in accordance with Rule .1618 of this Section;

(7) a formation integrity test (FIT) shall be completed after drilling out below the base of the intermediate casing, into at least 20 feet, but not more than 50 feet of new formation. The FIT shall be completed in accordance with API Standard 65-Part 2 "Isolating Potential Flow Zones During Well Construction," which is incorporated by reference, including subsequent amendments and edition. This document, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>. If the FIT fails, the permittee shall consult with the Department to determine remedial or corrective actions necessary before operations continue; and

(8) the permittee shall identify the top of cement and submit a plan of remediation to the Department for approval and implementation if operations, such as fluid returns, lift pressure, and displacement indicate inadequate coverage of any flow zones, lost circulation zones, or any strata containing groundwater.

Authority G.S. 113-391(a)(5)c.

15A NCAC 05H .1611 WELL INSTALLATION FOR PRODUCTION CASING

(a) Production casing shall be installed and cemented from the bottom to 200 feet above the base of the previous casing string. Notwithstanding the foregoing, a production zone may be completed using a non-cemented production liner in accordance with Paragraph (b) of this Rule. Installation of production casing or installation of production liners shall comply with the following:

- (1) logging of the wellbore shall be performed prior to installation of the production casing to measure and evaluate the rock sections;
- (2) a CBL shall be completed after the cement has reached a compressive strength of 500 psi to verify the cementing operation was completed and to locate the casing collars and centralizers. Well completion shall not commence until the CBL has been completed;
- (3) the permittee shall submit a plan of remediation to the Department for approval if the cement evaluation indicates a failure to isolate groundwater zones, and if the plan is approved, implement such plan by performing remedial operations prior to continuing drilling operations. If the deficiencies cannot be remedied, the oil or gas well shall be plugged and abandoned in accordance with Rule .1618 of this Section; and
- (4) for cemented well completions, the base of the production casing shall be cemented into or below the production zone. For open-hole well completions, the base of the production casing shall be cemented into or above the production zone.

(b) A production liner may be used as production casing if the following criteria are met:

- (1) the surface casing is used as the groundwater isolation casing;
- (2) the intermediate casing is set for a reason other than isolation of groundwater; and
- (3) the production liner shall be cemented with a minimum of 200 feet of cement above the base of the previous casing string.

(c) The production liner top shall be pressure tested to at least 500 psi, for a period of 30 minutes, above the maximum anticipated pressure in the wellbore during well completion and production operations. If after 30 minutes the pressure has dropped by more than 10 percent, the permittee shall not resume operations until the condition has been corrected and verified by a subsequent passing pressure test.

Authority G.S. 113-391(a)(5)c.

15A NCAC 05H .1612 WELL INSTALLATION VARIANCE

The applicant or permittee may request a variance from Rules .1608, .1609, .1610, or .1611 of this Section by submitting a request pursuant to Rule .0301 of this Subchapter. In granting or

denying a variance, the Commission shall consider factors such as:

- (1) increasing the oil or gas well efficiency;
- (2) minimizing waste; and
- (3) providing equal or greater protection for public health, welfare, and the environment.

Authority G.S. 113-391(a)(5)c.

15A NCAC 05H .1613 WELL STIMULATION REQUIREMENTS

(a) The applicant or permittee shall indicate on Form 2 – Oil or Gas Well Permit Application the intent to perform well stimulation operations. If well stimulation was not approved as part of the initial application, the permittee desiring to perform such operations shall submit the information required by this Rule via email, fax or mail to the Department for review and approval at least 30 calendar days prior to commencement of well stimulation operations.

(b) The production casing shall withstand the maximum anticipated treating pressure of the proposed well stimulation operations. The maximum anticipated treating pressure shall not exceed 80 percent of the minimum internal yield pressure for such production casing.

(c) Non-cemented portions of the oil or gas well shall be tested prior to well stimulation operations to ensure that the wellbore can meet one of the following conditions:

- (1) 70 percent of the lowest activating pressure for pressure actuated sleeve completions; or
- (2) 70 percent of formation integrity for open-hole completions, as determined by a formation integrity test (FIT).

(d) The permittee shall notify the Department via telephone or email a minimum of 48 hours prior to the commencement of all well stimulation operations at the oil or gas well. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for the well stimulation operations.

(e) The permittee shall monitor and record all casing annuli via pressure gauges and by visual discharge for any pressure or flow increases or discharges that would be indicative of a potential loss of wellbore integrity during the well stimulation operations. The permittee shall take remedial action to avoid the loss of wellbore integrity and shall notify the Department within 24 hours of discovery via telephone or email.

(f) If well stimulation treatment design does not allow the surface casing annulus to be open to atmospheric pressure, then the surface casing pressures shall be monitored with a gauge and

pressure relief device. The maximum set pressure on the pressure relief device shall be the lower of:

- (1) a pressure equal to: 0.70 times 0.433 times the true vertical depth of the surface casing shoe (expressed in feet);
- (2) 80 percent of the API rated minimum internal yield for the surface casing; or
- (3) 80 percent of the surface casing shoe test pressure, adjusted for fluid density.

The well stimulation treatment shall be terminated if the pressures exceed the limits set in Subparagraphs (f)(1) through (f)(3) of this Rule. Pressures on any casing string other than the surface casing shall not be allowed to exceed 80 percent of the API rated minimum internal yield pressure for such casing string throughout the stimulation treatment. The permittee shall notify the Department within 24 hours via telephone or email if treatment pressure exceeds 80 percent of the API rated minimum internal yield pressure on any casing string other than surface casing.

(g) The permittee shall monitor and record, at all times, the following parameters during well stimulation operations:

- (1) surface injection pressure, in pounds per square inch (psi);
- (2) slurry pumping rate in barrels per minute (BPM);
- (3) proppant concentration in pounds per thousand gallons;
- (4) fluid pumping rate in BPM;
- (5) identities, rates, and concentrations of additives used in accordance with Rule .1702 of this Subchapter; and
- (6) all annuli pressures.

(h) Following the notification in Paragraph (f) of this Rule, the Department may require additional documentation or oil or gas well tests to determine if the well stimulation operations potentially endanger any fresh groundwater zones. If either the permittee or the Department determines fresh groundwater zones are endangered, the Department shall require the permittee to perform remedial operations to correct any oil or gas well failure.

(i) The Department shall notify the Commission at its next regularly scheduled meeting of any remedial operations conducted pursuant to Paragraph (h) of this Rule.

Authority G.S. 113-391(a)(5)k; 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1).

15A NCAC 05H .1614 WELLHEAD REQUIREMENTS

(a) All wellhead assemblies shall be installed and maintained in accordance with API Specification 6A "Specification for Wellhead and Christmas Tree Equipment," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>.

(b) All wellhead assemblies shall be pressure rated to withstand operating pressures 100 percent above the maximum anticipated operating pressure during drilling, maintenance, remediation, stimulation, and production.

(c) All oil or gas wells shall be equipped so that no oil, gas, or condensate is able to leak.

(d) All valves shall be installed and be accessible so that pressure readings can be observed on the casing and tubing at any time by the Department. Valves shall be designed to accommodate a one-half (0.5) inch National Pipe Thread pressure connection.

(e) All intermediate and production casing annuli shall be equipped with a functioning pressure relief valve that is set at 50 percent of the maximum surface pressure recorded during the formation integrity test (FIT) at the base of the previous casing string.

(f) If the annular pressure measured at the surface exceeds 0.303 multiplied by the length of the casing string, or upon discovering the activation of the pressure relief valve, the permittee shall notify the Department within 24 hours via telephone or email to determine appropriate action to remedy annular over-pressurization.

(g) A check valve shall be installed to prevent the return of fluids into the oil or gas well.

Authority G.S. 113-391(a)(5)c; 113-391(a)(5)i.

15A NCAC 05H .1615 WELL SITE MAINTENANCE AND SECURITY

(a) A functioning blowout preventer (BOP) shall be installed and used during maintenance, remediation, and stimulation operations in accordance with Rule .1616 of this Section.

(b) The permittee shall perform well servicing, excluding workovers, and equipment maintenance operations, between the hours of 6:00 a.m. and 9:00 p.m.

(c) The permittee may perform emergency repairs at any time.

(d) A temporary work zone sign, "Authorized Personnel Only Beyond This Point" shall be posted at all ingress or egress points leading from a public road to the well pad at least 200 feet from the activity area during drilling, maintenance, remediation, and stimulation operations.

(e) Fencing no less than three feet in height shall be installed around the outer boundary of the well pad to restrict unauthorized access to the well pad during drilling and completion operations.

(f) Equipment that is not used in the production of the oil or gas well shall not be stored within the well site.

(g) Equipment, vegetation, and refuse shall be maintained in order to ensure protection of the environment, public health, and safety in accordance with API Recommended Practice 51R "Environmental Protection for Onshore Oil and Gas Production Operations and Leases," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>.

(h) A permanent fence shall be installed around the wellhead, tank battery, separator, and all associated production equipment prior to placing any oil or gas well into production. Fencing shall be:

- (1) placed no closer than 50 feet to the wellhead or any portion of the tank battery;

- (2) composed of chain link that is no less than six feet in height and shall be topped with restrictive wire to prevent unauthorized access;
- (3) securely anchored in the ground; and
- (4) gated with locks and no less than four feet in width. If there are two or more tanks in a tank battery, the permittee shall provide two gates on opposite sides of the production facility.

(i) The Commission, upon written request with justification by the permittee, may grant a variance to the permanent fencing requirements in accordance with Rule .0301 of this Subchapter. In granting or denying the variance request, the Commission shall consider factors such as:

- (1) zoning of the area;
- (2) land use; and
- (3) configuration and size of the well pad.

(j) All gates, electrical boxes, and valves shall be locked unless in use, under repair, or if the permittee or an authorized representative of the permittee is on-site. The permittee shall provide keys or combinations to the Department and local emergency responders upon request.

(k) All brine and oil pick-up lines shall be secured by bull plugs.

(l) All oil or gas wells shall have an identification sign, in accordance with Paragraph (m) of this Rule, posted in a place easily seen or noticed on or near the oil or gas wellhead or the tank battery until final abandonment, in accordance with the following:

- (1) the identification sign shall be posted within 72 hours after drilling activities cease;
- (2) if multiple oil or gas wells are produced into a tank battery, each wellhead shall be identified; and
- (3) any change of ownership shall be shown on the signs at the wellhead or tank battery no later than 60 calendar days after the date of the assignment or approval of the transfer.

(m) Identification signs shall be constructed of weatherproof and rustproof material and maintained to remain legible at all times. Each sign shall include, at a minimum, the following information in two-inch or larger letters:

- (1) the permittee's name, address, business telephone number, and emergency telephone number;
- (2) the county, city, or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad, if nearest street address is used, "nearest address" shall be designated on the sign;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the local emergency response telephone number.

(n) The identification sign shall be posted at the following locations:

- (1) the ingress or egress points leading from a public road to the well pad; and

- (2) the outside of the fence that surrounds the well pad.

(o) "Danger, Keep Out" and "No Smoking or Open Flame" signs shall be attached to each side of the fencing surrounding the wellhead and tank battery. If fencing has not been installed, the signs shall be attached to the wellhead and tank battery. A "No Smoking Beyond This Point" sign shall be posted at ingress or egress points leading from a public road to the well pad.

Authority G.S. 113-391(a)(5)i.

15A NCAC 05H .1616 WELL-CONTROL AND BLOWOUT PREVENTION

(a) During drilling, all oil or gas wells shall be equipped with a well-control system that includes a blowout preventer (BOP). The well-control system shall meet the following requirements:

- (1) be functional at all times and has been tested to working pressures at least 50 percent above the hydrostatic pressures anticipated in the oil or gas well;
- (2) BOP equipment shall be in compliance with API Standard 53 "Blowout Prevention Equipment Systems for Drilling Wells," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>;
- (3) the BOP shall be installed and tested prior to drilling the surface-casing cement plug;
- (4) during drilling operations, the shear-ram BOP shall be tested by closing the BOP at least once daily in open hole conditions; the annular BOP shall be tested by closing on the drill pipe at least once each week;

(b) The permittee shall notify the Department via telephone or email at least 48 hours prior to testing the BOP. Test results shall be posted at the well site for review and available to the Department on request. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for the BOP test.

(c) The quantity of drilling fluid of sufficient weight to maintain well control shall be located on the well site during drilling operations.

(d) If drilling with a mud system, the drilling-fluid system shall be designed to maintain control of the oil or gas well to

minimize the potential of a hydrostatic pressure surge when the drilling assembly is inserted into or removed from the wellbore.

(e) If drilling with air, a rotating diverter system shall be installed to divert any wellbore fluids away from the rig floor to a circulation pit at least 80 feet from the wellbore.

(f) The permittee shall have an individual certified from an accredited well control training program, such as International Association of Drilling Contractors (IADC) WellCAP, on site during the drilling and completion of an oil or gas well.

(g) A wellhead shall be installed after drilling operations are complete and the BOP has been removed.

Authority G.S. 113-391(a)(5)i.

15A NCAC 05H .1617 VISUAL IMPACT MITIGATION

(a) The permittee shall mitigate visual impacts using visual screening. Visual screening shall include existing natural vegetation, vegetated earthen berms, tree plantings at staggered spacing to be installed and maintained between any disturbed land and any adjoining property containing occupied buildings within view of the disturbed land.

(b) The Commission, upon written request by the applicant or permittee submitted pursuant to Rule .0301 of this Subchapter, may grant or deny a variance to the visual impact mitigation requirements. The Commission shall consider factors such as:

- (1) zoning of the area;
- (2) surface use agreements;
- (3) land use;
- (4) topography; and
- (5) configuration of the well pad.

Authority G.S. 113-391(a)(4).

15A NCAC 05H .1618 REQUIREMENTS FOR PERMANENT CLOSURE OF OIL OR GAS WELLS

(a) All lost holes, dry holes, and oil or gas wells incapable of production shall be plugged and abandoned. In addition to the requirements detailed within this Rule, all plugging and abandonment activities shall meet the standards in API Recommended Practice 51-R "Environmental Protection for Onshore Oil and Gas Production Operations and Leases," and API Bulletin E3 "Environmental Guidance Document: Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations," which are incorporated by reference, including subsequent amendments and editions. These documents, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>.

(b) The permittee shall plug and abandon lost holes and dry holes prior to releasing the drilling rig from the well pad.

(c) Non-drillable material that would prevent re-entry of an oil or gas well shall not be placed in any wellbore.

(d) Trash or refuse shall not be used as plugging and abandonment material.

(e) Conductor casing or surface casing shall not be removed from any wellbore during plugging and abandonment operations.

(f) All pits or tanks utilized during oil or gas well plugging and abandonment operations to contain waste shall conform to Rule .1504 of this Subchapter.

(g) Cement or mechanical bridge plugs shall be placed within the wellbore to isolate hydrocarbon bearing zones, prevent migration of fluids in the wellbore, protect fresh groundwater aquifers, and prevent surface water from entering the wellbore. All plugs used for plugging and abandonment shall meet the following requirements:

- (1) all cement used to plug an oil or gas well shall conform to Rule .1606 of this Section;
- (2) cement plugs shall be placed by circulation using tubing, casing, or drill pipe;
- (3) all intervals between the cement and mechanical bridge plugs shall be filled with a bentonite- based mud that has a minimum weight of nine and one half pounds per gallon;
- (4) vertical wellbores shall have cement plugs placed in the following intervals:
 - (A) from the total depth to a minimum of 100 feet above the top of the lowest hydrocarbon bearing zone or alternatively, from a minimum of 50 feet below the base of the lowest hydrocarbon bearing zone penetrated to a minimum of 100 feet above the top of the lowest hydrocarbon bearing zone;
 - (B) from a minimum of 50 feet below to a minimum of 100 feet above each succeeding hydrocarbon bearing or fresh groundwater zone, not isolated by intermediate or surface casing;
 - (C) from a minimum of 100 feet below to a minimum of 100 feet above the base of intermediate and surface casing strings; and
 - (D) from a minimum of 200 feet below ground elevation to three feet below ground elevation.
- (5) horizontal wellbores shall have cement plugs placed in accordance with Parts (g)(4)(A) through (g)(4)(D) of this Rule with the exception that the bottom plug, as outlined in Part (g)(4)(A) of this Rule, shall be placed at the depth of the well curve kick-off point and extend above that point a minimum of 200 feet; and
- (6) if mechanical bridge plugs are used, the plug shall be set directly above each zone identified in Parts (g)(4)(A) through (g)(4)(D) of this Rule and covered with a minimum of 50 feet of cement.

(h) All casing remaining in the wellbore shall be cut off three feet below ground elevation.

(i) The top of the wellbore shall be sealed with a steel plate that is welded in place and the API number for the oil or gas well shall be identifiable on the steel plate.

(j) All ratholes and mouseholes shall be filled with bentonite or cement to a depth of three feet below ground surface, and then filled to the surface with soil.

(k) All wellheads shall be disconnected from gathering lines.

Authority G.S. 113-391(a)(2).

15A NCAC 05H .1619 NOTIFICATION AND REPORTING REQUIREMENTS FOR PERMANENT CLOSURE OF OIL OR GAS WELLS

(a) The permittee shall complete and submit the intent to plug and abandon portion of Form 14 – Plugging and Abandonment, at least 30 calendar days prior to the commencement of plugging and abandonment operations. The Department shall approve or deny Form 14 – Plugging and Abandonment, in accordance with this Rule. The permittee shall submit a fee in accordance with G.S. 113-395(c) for plugging and abandonment of any oil or gas well. Approved plugging and abandonment plans shall remain valid for a period of 12 months. The permittee shall include the following with the completed Form 14 – Plugging and Abandonment:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the reason for abandonment;
- (6) identification of casing will be removed from wellbore;
- (7) the diameter of each wellbore segment;
- (8) the casing grade, weight, outside diameter, and setting depth for each casing string;
- (9) elevation of cement top and cement bottom for each casing string;
- (10) identification of the cement type, additives, density, yield, and estimated volume used for each plug;
- (11) identification of the type of plug if other than cement;
- (12) identification of non-cemented sections of casing that may be perforated;
- (13) the wellbore diagrams depicting the current oil or gas well configuration;
- (14) the wellbore diagrams depicting the proposed oil or gas well configuration with cement plugs;
- (15) the anticipated beginning and ending date for plugging and abandonment activities; and
- (16) identification of wireline and cementing contractors.

(b) The permittee shall notify the Department 72 hours via telephone or email prior to commencement of plugging and abandonment operations for all existing wells and eight hours for lost and dry holes by submitting Form 11 – Required Notifications to the Department. This notification shall be submitted to the Department by mail, email, or fax within five days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;

- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time of day for which the plugging and abandonment will be performed.

(c) The Department may deny a request to plug and abandon an oil or gas well if the request is in violation of any rule of this Subchapter or any of the following requirements have not been met:

- (1) Form 14 – Plugging and Abandonment was not complete in accordance with Paragraph (a) of this Rule; or
- (2) the well abandonment fee has not been paid.

(d) No later than 90 days after plugging and abandoning an oil or gas well, the permittee shall complete and submit Form 14 – Plugging and Abandonment, to the Department. The permittee shall include the following with the completed Form 14 – Plugging and Abandonment, confirming that the plugging and abandonment operations were conducted in accordance with the approved plan:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the reason for abandonment;
- (6) the length and type of casing that was removed from wellbore;
- (7) the diameter of each wellbore segment;
- (8) the casing grade, weight, outside diameter, and setting depth for each casing string;
- (9) the elevation of cement top and cement bottom for each casing string;
- (10) the cement type, additives, density, yield, and volume used for each plug;
- (11) the type of plug if other than cement;
- (12) identification of the non-cemented sections of casing that were perforated;
- (13) the wellbore diagrams depicting the pre-plugging oil or gas well configuration;
- (14) the wellbore diagrams depicting the final plugged oil or gas well configuration with cement plugs;
- (15) the date plugging and abandonment activities commenced and were completed;
- (16) identification of wireline and cementing contractors that were used; and
- (17) a copy of wireline logs, cementing tickets, and job summary report as supplied by the wireline and cementing contractors.

Authority G.S. 113-391(a)(2).

15A NCAC 05H .1620 REQUIREMENTS FOR SHUTTING-IN OIL OR GAS WELLS

(a) Oil or gas wells that are completed according to Rule .1607 of this Section, are equipped with a wellhead according to Rule .1614 of this Section, and are capable of production may be temporarily closed in accordance with this Rule.

(b) The permittee shall complete and submit Form 15 – Oil or Gas Well Status to the Department via mail, email or fax within 14 calendar days of closing the master valve on the wellhead. The Form 15 – Oil or Gas Well Status shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) indicate if the request is for initial shut-in status or an annual extension of shut-in status;
- (6) the type of oil or gas well;
- (7) the diameter and length for each casing string;
- (8) the diameter and length of tubing string;
- (9) the type and amount of cement used for each casing string;
- (10) the current pressure for tubing and casing strings;
- (11) the current annulus pressure between tubing and production casing;
- (12) the current annulus pressure between production casing and surface casing;
- (13) indicate if any annuli are open to atmosphere;
- (14) a description of how the current condition of the oil or gas well is capable of the following:
 - (A) preventing damage to the production zone;
 - (B) preventing surface leakage of fluids;
 - (C) protecting groundwaters; and
 - (D) protecting health and safety of persons, property or the environment.
- (15) a description of the future utilization of the oil or gas well; and
- (16) a description of how the oil or gas well is in compliance with the requirements of Rules .1614 and .1615 of this Section.

(c) The master valve shall remain closed and locked until the oil or gas well is permanently plugged and abandoned or placed into production.

(d) The permittee shall maintain bonding required by Section .1400 of this Subchapter until the oil or gas well is permanently plugged and abandoned.

(e) The permittee shall conduct monthly site inspections of the well site in accordance with Rule .2201 of this Subchapter.

(f) The permittee shall conduct an annual mechanical integrity test of each shut-in oil or gas well in accordance with Rule .2201(j), (k) and (l) of this Subchapter and submit the test results to the Department using Form 16 – Mechanical Integrity Test Results.

(g) Shut-in status is valid for a period of one year with an annual renewal required if the permittee desires to maintain shut-in status beyond one year. The annual renewal application shall demonstrate to the Department's satisfaction one of the following:

- (1) inadequate infrastructure development; or
- (2) sub-economic producing conditions.

(h) The Department shall revoke shut-in status of an oil or gas well if the permittee fails to maintain all of the requirements of this Rule. The Department shall require the permittee to either place the oil or gas well into production or plug and abandon the oil or gas well at the permittee's discretion.

(i) The permittee shall complete and submit Form 17 – Notification of Return of Oil or Gas Well to Active Status, to the Department by mail, email, fax within 14 calendar days of producing from an oil or gas well that has been shut-in. The permittee shall include the following with the completed Form 17 – Notification of Return of Oil or Gas Well to Active Status:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the date of return to active status.

Authority 113-391(a)(2).

15A NCAC 05H .1621 REQUIREMENTS FOR TEMPORARY ABANDONMENT OF OIL OR GAS WELLS

(a) Oil or gas wells that are completed according to Rule .1607 of this Section, but are not equipped with a wellhead according Rule .1614 of this Section and are capable of production may be temporarily abandoned in accordance with this Rule.

(b) The permittee shall complete and submit Form 15 – Oil or Gas Well Status to the Department 30 calendar days prior to the temporary abandonment operations. The permittee shall include the following with the completed Form 15 – Oil or Gas Well Status:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;

- (5) indicate if the request is for initial temporary abandonment or a renewal of temporary abandonment;
- (6) the type of oil and gas well;
- (7) the diameter and length for each casing string;
- (8) the type and amount of cement that will be used for each casing string;
- (9) a description of how the current condition of the oil or gas well is capable of the following:
 - (A) preventing damage to the production zone;
 - (B) preventing surface leakage of fluids;
 - (C) protecting groundwaters; and
 - (D) protecting health and safety of persons, property or the environment.
- (10) a description of the future utilization of the oil or gas well; and
- (11) a description of how the oil or gas well is in compliance with the requirements of Rule .1614 of this Section.

(c) Oil or gas wells shall be temporarily abandoned according to Rule .1618(g)(4)(A) - (D) of this Section for vertical wellbores and Rule .1618(g)(5) of this Section for horizontal wellbores.

(d) The permittee shall maintain bonding requirements in Section .1400 until the oil or gas well is permanently plugged and abandoned.

(e) Temporary abandonment is valid for a period of five years, with a maximum of one 5-year renewal period authorized by the Commission before the oil or gas well shall be placed into production or permanently plugged and abandoned in accordance with Rule .1618 of this Section.

(f) The permittee shall complete and submit Form 17 – Notification of Return of Oil or Gas Well to Active Status, to the Department within 14 calendar days of producing from an oil or gas well that was temporarily abandoned. The permittee shall include the following with the completed Form 17 – Notification of Return of Oil or Gas Well to Active Status:

- (1) the permittee name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the date of return to active status.

Authority G.S. 113-391(a)(5)l.

15A NCAC 05H .1622 DEFECTIVE CASING, DEFECTIVE CEMENTING, AND WELL BLOWOUT NOTIFICATIONS

(a) The permittee shall commence corrective actions upon discovery of defective casing or cementing and report the defect to the Department within 24 hours of discovery via telephone or email.

(b) The permittee shall take actions in the event of an oil or gas well blowout to comply with the emergency scenarios in Rule

.1305 of this Subchapter. Any oil or gas well blowout shall be reported to the Department after the emergency officials and the emergency well control response contractor has been contacted.

Authority G.S. 113-391(a)(5)i.

15A NCAC 05H .1623 WELL DRILLING REPORT

Within 30 calendar days after drilling an oil or gas well, the permittee shall submit Form 12 – Well Drilling Report to the Department that includes the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the type of oil or gas well;
- (6) the date the drilling started and was completed;
- (7) the method of drilling;
- (8) the hole diameter and depth wellbore at each casing setting depth and the total depth, both true vertical and measured of the oil or gas well;
- (9) the size and depth of conductor casing, surface casing, intermediate casing, and production casing, if applicable;
- (10) the type and amount of cement and results of cementing procedures, including copies of all cement tickets and the results of cement evaluations completed pursuant to Rule .1606 and Rule .1607 of this Section;
- (11) the location of casing collars, the location of the top of cement for each casing string, location of centralizers, and the method used to make such determinations;
- (12) the elevation relative to the kelly bushing and total vertical and measured depth of the wellbore;
- (13) a paper and digital copy of all electrical, radioactive, or other standard industry logs:
 - (A) standard electric log with curve data shall be submitted in LAS digital data format and as a pdf, tiff, or pds;
 - (B) specialty logs with array data shall be submitted in LIS or DLIS digital data format and as a pdf, tiff, or pds; and
 - (C) cement bond logs shall be submitted as a pdf, tiff, or pds with the casing collars, centralizers, and top of cement located.
- (14) a drilling log that includes the name, depth, and thickness of formations penetrated from the surface to total depth. The drilling log shall also include the depth of oil or gas producing zone(s), depth of groundwater and

- brines, and the source of the information. Other data recorded about groundwater zones, anomalous pressure zones, zones with corrosive fluids, lost circulation zones, and other zones with fluids capable of annular flow and how the casing and cementing program was modified in response to the information;
- (15) copies of pressure tests and formation integrity tests that were conducted during installation of the surface, intermediate, and production casing strings pursuant to Rule .1605 and .1607 of this Section;
- (16) a statement of whether methane or other hydrocarbons were encountered in other than a target formation and the depths of the intervals, and how the casing and cementing program was modified in response to the information;
- (17) a summary of events reported to the Department in accordance with Rule .1607 and .1616 of this Section;
- (18) a wellbore inclination and directional survey;
- (19) the engines used on-site during exploration and development, including:
- (A) the number of engines with capacities (maximum site-rated horsepower) less than 750 horsepower by engine type such as compression ignition, two stroke lean burn ignition, four stroke lean burn ignition, rich burn spark ignition;
- (B) the number of engines with capacities (maximum site-rated horsepower) greater than or equal to 750 horsepower by engine type such as compression ignition, two stroke lean burn ignition, four stroke lean burn ignition, rich burn spark ignition; and
- (C) the average number of hours of operation for engines in each of the categories above.
- (20) any other information as specified as part of the conditions of the permit, such as drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis, and lithologic log or sample description, or other similar data as compiled. No interpretation of the data is required to be filed unless specifically required elsewhere in this Subchapter; and
- (21) the signature of the permittee verifying that the oil or gas well has been constructed in accordance with this Subchapter and any permit conditions imposed by the Department.

15A NCAC 05H .1624 WELL STIMULATION REPORT
 (a) Within 30 calendar days after stimulating an oil or gas well, the permittee shall submit Form 18 – Well Stimulation Report to the Department that includes the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the type of oil or gas well;
- (6) the total volume of the base fluid;
- (7) the total volume of reused water, alternative water, freshwater, or other base fluid that was used in each hydraulic fracturing stage;
- (8) the maximum pump pressure measured at the surface during each stage of the hydraulic fracturing operations;
- (9) the types and volumes of the well stimulation fluid and proppant used for each stage of the well stimulation operations;
- (10) the well stimulation treatment data collected in accordance Rule .1613 of this Section;
- (11) for hydraulic fracture stimulations, the estimated maximum fracture height and length and estimated true vertical depth to the top of the fracture achieved during well stimulation treatments as determined by a three dimensional model using true treating pressures and other data collected during the hydraulic fracturing treatments;
- (12) the well shooting or perforation record detailing the true vertical and measured depths, and total number of shots in the wellbore;
- (13) the wellbore diagram that includes casing and cement data, perforations and a stimulation summary;
- (14) the initial oil or gas well test information recording daily gas, oil and water rate, and tubing and casing pressure in accordance with Rule .2201 of this Subchapter;
- (15) the initial gas analysis, performed by a laboratory certified by the State in accordance with 15A NCAC 02H .0800; and
- (16) the engines used on-site during exploration and development, including:
 - (A) the number of engines with capacities (maximum site-rated horsepower) less than 750 horsepower by engine type such as compression ignition, two stroke lean burn ignition, four stroke lean burn ignition, rich burn spark ignition;
 - (B) the number of engines with capacities (maximum site-rated horsepower)

Authority G.S. 113-379; 113-391(a)(5); 113-391(a)(7); 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1).

- greater than or equal to 750 horsepower by engine type such as compression ignition, two stroke lean burn ignition, four stroke lean burn ignition, rich burn spark ignition; and
- (C) the average number of hours of operation for engines in each of the categories above.

(b) The permittee may attach to the completed Form 18 – Well Stimulation Report any information received from a service company regarding the well stimulation operations, as used in the normal course of business to satisfy some or all of the requirements in this Paragraph.

Authority G.S. 113-391(a)(5); 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1).

SECTION .1700 – CHEMICAL DISCLOSURE

15A NCAC 05H .1701 CHEMICAL DISCLOSURE REQUIREMENTS

The rules of this Section set forth the requirements of chemical disclosures for permittees, service companies, and vendors involved in oil or gas exploration and production. This Section delineates information to be posted to the Chemical Disclosure Registry – <http://fracfocus.org/>. These Rules also specify the conditions under which trade secret protections apply and the conditions under which trade secret information can be disclosed to health professionals or emergency responders.

Authority G.S. 113-391(a)(5)h.

15A NCAC 05H .1702 REQUIRED DISCLOSURES

(a) The permittee shall notify the local emergency management office of all hazardous chemicals that may be used for any purpose at the well site no later than 30 calendar days prior to the chemicals entering the well site. This notification shall include a Safety Data Sheet for each chemical and the following information:

- (1) the anticipated quantity (mass or volume);
- (2) method of containment; and
- (3) chemical classification.

(b) The permittee, service company, or vender shall submit to the Department, no less than 30 calendar days prior to the commencement of well stimulation activities, a complete list of all base fluids and additives to be used in well stimulation activities, unless claimed as a trade secret under G.S. 66-152(3), 113-391.1, and Rule .0707 of this Subchapter. This notification shall include:

- (1) the trade or common name of each chemical subject to the Safety Data Sheet;
- (2) the CAS registry number;
- (3) the range of anticipated concentrations (by mass or volume) in the mixture for each chemical; and
- (4) the purpose each chemical or mixture will serve in the well stimulation process.

(c) The permittee shall upload all well stimulation data, unless claimed as a trade secret under G.S. 66-152(3), 113-391.1, and

Rule .0707 of this Subchapter and said claim determined as satisfactory by the Commission, to <http://fracfocus.org/> and submit a Form19 – Chemical Disclosure Report to the Department within 15 calendar days following the conclusion of well stimulation. The Form 19 – Chemical Disclosure Report shall include:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the type of oil or gas well;
- (6) the date well stimulation operations began;
- (7) the date well stimulation operations ceased;
- (8) the latitude and longitude of each wellhead reported to five decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);
- (9) a certified directional survey of the horizontal oil or gas well;
- (10) the measured depth of the oil or gas well and the true vertical depth of the oil or gas well;
- (11) the total volume of water used in the well stimulation operations, including surface water, groundwater, produced water, reused water, reclaimed or recycled water, or the type and total volume of the base fluid used in the well stimulation operation, if a base substance other than water is used;
- (12) the amount(s) and percent by volume of surface water or groundwater used in the well stimulation operations and the point(s) of withdrawal of that surface water or groundwater;
- (13) the source amount(s) and location(s) of recycled water, along with percent by volume of recycled water that is used in well stimulation operations;
- (14) the trade or common name and CAS registry number of each chemical used in the well stimulation operation;
- (15) the trade or common name, supplier, and a brief description of the intended use or function of each additive in the well stimulation operation;
- (16) identification of each chemical and additive (and its chemical classification) that is subject to the Safety Data Sheet requirements of 29 CFR 1910.1200, which is incorporated by reference including subsequent amendments and additions;
- (17) the actual or maximum concentration of each chemical and additive listed pursuant to Subparagraphs (13) and (14) of this Paragraph expressed in percent by mass;

- (18) the overall well stimulation mixture; and
- (19) the chemical classification for each chemical and additive.

(d) For disclosures required pursuant to Paragraphs (b) and (c) of this Rule, the permittee is not required to disclose:

- (1) chemical mixtures or compounds that occur as a consequence of drilling or well stimulation operations or that may be the incidental result of a chemical reaction or process; or
- (2) naturally occurring materials that become unintentionally combined with well stimulation substances.

Authority G.S. 113-391(a)(5)h.

15A NCAC 05H .1703 CONFIDENTIAL INFORMATION PROTECTION

(a) If any person asserts any information is entitled to be protected as confidential pursuant to G.S. 113-391.1, the requesting party shall make a showing to the Commission in accordance with Rule .0707 of this Subchapter.

(b) In addition, any person requesting protection for confidential information that concerns hydraulic fracturing fluid shall request certification by the State Geologist, or the Geologist's designee in accordance with G.S. 113-391.1.

Authority G.S. 113-391(a)(5)h; 113-391.1.

15A NCAC 05H .1704 DISCLOSURE OF CONFIDENTIAL INFORMATION

(a) Confidential information may be disclosed to any officer, employee, or authorized representative of a State agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under G.S. 113-391.1.

(b) The Department shall immediately disclose confidential information to a treating healthcare provider upon request in accordance with G.S. 133-391.1.

(c) The Department shall immediately disclose confidential information to a Fire Chief, as defined in G.S. 95-174, upon request in accordance with G.S. 113-391.1.

Authority G.S. 113-391(a)(5)h.

SECTION .1800 – ENVIRONMENTAL TESTING

15A NCAC 05H .1801 SCOPE

The rules in this Section establish requirements for the pre-drilling testing of water supplies, the testing of water supplies after production has commenced, and the reporting of data collected.

Authority G.S. 113-391(a)(5)b.

15A NCAC 05H .1802 WATER SUPPLY TESTING NOTIFICATIONS

(a) The permittee shall provide written notice to all surface owners or owners of a water supply, as defined in G.S.113-389, prior to water supply testing within one-half mile of the

proposed wellhead. In addition to the requirements of G.S.113-420(a) and G.S. 113-421(a) the written notice shall include the following:

- (1) the applicant or permittee's name, address, telephone number, and email address;
- (2) a statement of the permittee's intent to perform testing of water supplies prior to drilling an oil or gas well;
- (3) the date, time, and location of when the water supply testing is expected to occur and the estimated number of entries to the property;
- (4) a statement explaining that if the surface owner or owner of the water supply refuses to contact a certified laboratory from the Wastewater/Groundwater Laboratory Certification program, then such refusal may be used as evidence to rebut the presumption of liability established by G.S. 113-421(a);
- (5) the name, address, and telephone number of the Department, to which the surface owner or owner of the water supply may respond; and
- (6) a list of the Department's Wastewater/Groundwater Laboratory Certification program laboratories.

(b) The permittee shall provide written notice to the Department, in accordance with Rule .1805 of this Section, if a surface owner or water supply owner refuses to contact a certified laboratory from the Wastewater/Groundwater Laboratory Certification program. The written notice shall be submitted to the Department as an attachment to Form 22 – Water Supply Testing Report and include the following:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) a copy of the written notice required in Paragraph (a) of this Rule;
- (3) the name of the person or firm who requested and was refused access to conduct the testing, the date of the request, and a copy of all documentation including that showing the request for access was denied; and
- (4) the name, address, and telephone number of the surface owner or owner of the water supply.

Authority G.S. 113-391(a)(3); 113-423(f).

15A NCAC 05H .1803 WATER SUPPLY TESTING PROCEDURES

(a) All water supplies located within one-half mile of the proposed wellhead shall be tested prior to initial drilling activities and after production has commenced. All water supplies shall be tested according to the following:

- (1) the initial water supply testing shall be conducted no earlier than 12 months but no later than 30 calendar days prior to the commencement of drilling operations to establish a baseline;
- (2) when multiple oil or gas wells are permitted and constructed at a well pad, the analytical

results for the initial sampling shall serve as the baseline for all future wells drilled on the same well pad; and

(3) subsequent water supply testing shall be conducted at all initial sample locations:

- (A) test one: six months after production has commenced;
- (B) test two: 12 months after production has commenced;
- (C) test three: 18 months after production has commenced;
- (D) test four: 24 months after production has commenced; and
- (E) test five: 30 calendar days after completion of production activities at the well site.

(b) Water supply testing required by G.S. 113-423(f), and in accordance with this Rule, shall be conducted pursuant to the U.S. Environmental Protection Agency (EPA) Region IV Science and Ecosystem Support Division (SESD) "Operating Procedure for Groundwater Sampling," document number SESDPROC-301-R3, "Operating Procedure for Surface Water Sampling," document number SESDPROC-201-R3, and the U.S. Geological Survey (USGS) "National Field Manual for the

Collection of Water-Quality Data," Book 9, Handbooks for Water-Resources Investigations, which are incorporated by reference, including subsequent amendments and editions. These documents, published by the U.S. EPA and USGS, may be obtained online at no charge at <http://www.epa.gov/region4/sesd/fbqstp/Groundwater-Sampling.pdf>.

<http://www.epa.gov/region4/sesd/fbqstp/Surfacewater-Sampling.pdf>, and <http://water.usgs.gov/owq/FieldManual/>.

(c) If a permittee drills an oil or gas well but does not install production casing and has abandoned the oil or gas well in accordance with the plugging and abandonment requirements outlined in Rule .1618 of this Subchapter, subsequent testing pursuant to Subparagraph (a)(3) of this Rule is not required.

(d) The Department may require additional testing if the current data collected show an increase in concentration from the previous data for any water supply within one-half mile.

(e) All sample analyses required by this Rule shall be made by a laboratory certified in accordance with 15A NCAC 02H .0800 and pursuant to laboratory analytical procedures that comply with 15A NCAC 02L .0112 and 15A NCAC 02B .0103.

(f) The initial samples, required by Subparagraph (a)(1) of this Rule, collected in accordance with this Rule shall be analyzed for:

pH
specific conductance
total dissolved solids (TDS)
turbidity
alkalinity
Calcium
Chloride
magnesium
potassium
Fluoride
Sodium
Sulfate
Arsenic
Barium
Boron
Bromide
chromium
Iron

manganese
selenium
strontium
lithium
lead
zinc
uranium
isotopic radium (²²⁶Ra and ²²⁸Ra)
isotopic strontium (⁸⁷Sr and ⁸⁶Sr)
trihalomethanes
benzene
toluene
ethyl benzene
xylenes
diesel range organics (DRO)
gasoline range organics (GRO)
total petroleum hydrocarbons (TPH)
polycyclic aromatic hydrocarbons (PAH) (including benzo(a)pyrene)

dissolved methane, propane, and ethane

(g) The test one series of samples collected shall include all parameters listed in Paragraph (f) of this Rule.

(h) If the results from the test one series did not exceed the permissible concentrations outlined in 15A NCAC 02L .0202 and 15A NCAC 02B .0200 for the required analytes, then the permittee, at a minimum, shall sample and analyze for pH, specific conductance, TDS, chloride, sodium, divalent cations, and dissolved methane, propane, and ethane to complete the remaining series of sampling and testing in accordance with this Rule.

(i) If there is an increase in the concentration, or the occurrence of any analytes set forth in Paragraph (h) of this Rule the

permittee shall test for all analytes set forth in Paragraph (f) of this Rule.

(j) If any analysis conducted pursuant to this Rule reveals a concentration of dissolved methane greater than 1.0 milligram per liter (mg/l), then a gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – ¹²C, ¹³C, ¹H and ²H) shall be conducted to determine the gas type. The permittee shall report the results in accordance with Rule .1805 of this Section.

Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f).

15A NCAC 05H .1804 REQUEST FOR INVESTIGATION OF WATER SUPPLY

(a) Any surface owner or owner of a water supply who suspects contamination as a result of the drilling, alteration, or operation of an oil or gas well may submit Form 21 – Water Supply Investigation Request to the Department, requesting that an investigation be conducted. The completed form shall include the following information:

- (1) the name of surface owner or owner of the water supply, address, telephone number, and email address;
- (2) the name of the oil or gas well permittee;
- (3) the API number, the lease name, and the oil or gas well name and number;
- (4) an indication if the permittee was contacted and if so provide contact name;
- (5) the date of incident if known; and
- (6) a description of the incident or problem.

(b) At the request of the Department, the permittee shall conduct a test of the water supply and submit the analytical results to the Department within 30 calendar days of receipt.

(c) The Department shall require the permittee to replace a water supply pursuant to G.S. 113-421(a4) if the investigation and analytical results indicate that the water supply is contaminated due to the activities of the permittee.

Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f).

15A NCAC 05H .1805 REPORTING OF TEST RESULTS

(a) The permittee shall submit Form 22 – Water Supply Testing Report to the Department, Local Health Director, surface owner(s), and owner(s) of the water supply within 30 calendar days of testing. The form shall be signed and sealed by either a Licensed Geologist or Professional Engineer and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the date water supply was sampled;
- (6) an indication of which water supply testing series is being reported on;
- (7) the latitude and longitude of each water supply within one-half mile of the wellhead reported to five decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);
- (8) the name, address, and telephone number of the surface owner or owner of the water supply;
- (9) identification of the certified laboratory at which analyses required by this Section were conducted, the date(s) on which the analyses

were conducted, and identification of the technical personnel who conducted such analyses;

- (10) a description of where and how the sample was collected and the name of the person who collected the sample;
- (11) field observations to include odor, water color, sediment, bubbles, and effervescence;
- (12) a description of the type and age, if known, of the water supply, and water supply treatment, if any;
- (13) the complete results of the required analyses attached to the report in hard copy, as a .pdf, and as an electronic spreadsheet; and
- (14) any exceedance of applicable Maximum Contaminant Levels for public drinking water, as set forth in 15A NCAC 18C shall be indicated in the report.

(b) Applicants or permittees may share analytical results in accordance with G.S. 113-421(f).

Authority G.S. 113-391(a)(1); 113-391(a)(5)k.

15A NCAC 05H .1806 RECORD KEEPING AND REPORTING

(a) The Department shall maintain baseline and subsequent analytical data results required pursuant to this Section, which shall be available to the public through the Department within 30 calendar days of receipt of results.

(b) The permittee shall maintain all records in accordance with Rule .0202 of this Subchapter.

Authority G.S. 113-391(a)(5)b; 113-391(a)(5)k.

15A NCAC 05H .1807 TRACER TECHNOLOGY

(a) The Department shall only approve the use of tracer technology for the purposes described in this Rule if the Department determines that the tracer technology is effective in tracing well stimulation fluids back to the oil or gas well where the fluid was injected and can be used without chemical or radiological impacts to groundwaters or other adverse impacts to public health, welfare, and the environment.

(b) A permittee shall only use approved tracer technology for the following purposes:

- (1) as evidence that well stimulation fluid from a particular oil or gas well caused or contributed to an exceedance of the standards set out in 15A NCAC 02L .0202 or 15A NCAC 02B .0200 that is detected as a result of water supply testing required under Rule .1803 of this Section; and
- (2) to identify well stimulation fluid from a particular oil or gas well as the source of contamination detected as a result of an investigation of water supply conducted under Rule .1804 of this Section.

Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f).

SECTION .1900 – WATER ACQUISITION AND MANAGEMENT

15A NCAC 05H .1901 WATER MANAGEMENT PLAN REQUIREMENTS

(a) An applicant or permittee shall submit a Water Management Plan for proposed oil or gas well(s) to be located at the well pad. This plan shall be submitted to the Department for review and approval in accordance with Rule .1304 of this Subchapter and with the rules of this Section prior to the commencement of activities covered under the Form 2 – Oil or Gas Well Permit Application.

(b) A Form 4 – Water Management Plan shall include the following:

- (1) the applicant or permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the lease name and the oil or gas well name and number;
- (5) identification of the source(s) of water to be used with additional information provided in accordance with Rules .1902 through .1905 of this Section;
- (6) the name, address, phone number, parcel identification, and written consent from the owner of the real property where any surface water intake, groundwater well, or water transport system components or structures have been, or will be, located, installed, or constructed;
- (7) the proposed start date and expected ending date of water withdrawals;
- (8) the proposed average and maximum daily withdrawal in millions of gallons per day and the expected total withdrawal in millions of gallons;
- (9) a description of all potential sources of water, including flowback and produced water, that were evaluated for this application and the reasons for rejecting those sources as required by Rule .1905 of this Section;
- (10) topographic maps and aerial maps showing the latitude and longitude, in decimal degrees, of the following features and locations:
 - (A) the proposed water source(s) and any existing hydrologic features within the area of influence of the proposed water source, including other streams, springs, and wetlands;
 - (B) any existing water supply, as defined in G.S. 113-389(15), within the area of influence;

(C) any areas with known environmental contamination within the area of influence;

(D) any current or proposed utility rights-of-way associated with the project area; and

(E) any current or proposed structure(s) or appurtenance(s) for the transport or storage of water.

(11) a list of alternative water source(s) or practices to be used during times of drought or low flow conditions;

(12) a monitoring plan sufficient to accurately record the amount of water used from each source included in this application on a daily basis, including schedules of maintenance to ensure accurate measuring and recording of the water usage; and

(13) all other information required by Rule .1906 of this Section.

(c) The Department may request additional information necessary to protect public health, welfare, and the environment when reviewing the Form 4 – Water Management Plan.

Authority G.S. 113-391(a)(5)e.

15A NCAC 05H .1902 SURFACE WATER SOURCE DOCUMENTATION

(a) For surface water sources, the applicant or permittee shall consult with the Department to determine and evaluate the limits of the affected reach. The exact delineation of the affected reach shall be determined in consultation with and with the approval of the Department and shall depend on factors including:

- (1) the cumulative amount of water to be withdrawn when the proposed withdrawal is combined with existing withdrawals;
- (2) the hydrologic characteristics of the stream;
- (3) the presence or absence of downstream point source discharges; and
- (4) the potential effects on other users and instream flow.

(b) Following a determination of the limits of the affected reach the following information shall be provided:

- (1) the river basin designation at the point of withdrawal and the river basin designation where the water will be used as defined by G.S. 143-215.22G, which is incorporated by reference including subsequent amendments;
- (2) the classification of the water source at the withdrawal point in accordance with 15A NCAC 02B .0301, which is incorporated by reference including subsequent amendments;
- (3) for free-flowing water sources:
 - (A) list other existing and proposed withdrawals within the affected reach including the maximum withdrawal capacity of each; and
 - (B) provide an estimate of the 7Q10 flow at the proposed intake location and

explain the methodology used to derive the estimate. The cumulative maximum instantaneous withdrawal from the affected reach shall be limited to 20 percent of the 7Q10 flow.

- (4) when flows in the affected reach are at 7Q10 levels, withdrawals conducted under this permit shall cease until flows reach 120 percent of the 7Q10 flow level; and
- (5) the owner, facility name, National Pollution Discharge Elimination System (NPDES) permit number, and permitted volume of any point source discharges within the affected reach or that discharge to a water impoundment that is listed as a water source.

(c) The results of a survey to determine the presence of any state or federally threatened or endangered species or any invasive species that may be affected by the proposed withdrawal shall include:

- (1) the identification of any state or federally threatened or endangered species present;
- (2) a description of how any detrimental impacts to those species and their critical habitats will be avoided;
- (3) a description of how the spread of any identified invasive species will be prevented; and
- (4) the identification of the sources of information used for the determination and contact information for the federal and state agencies consulted.

(d) The permittee shall indicate the presence of any known noxious aquatic weeds listed in 15A NCAC 02G .0602, which is incorporated by reference including any subsequent amendments, or other exotic or invasive species in the source water(s).

(e) If the surface water source is classified as an Outstanding Resource Water under 15A NCAC 02B .0225, which is incorporated by reference including subsequent amendments, shall document that the outstanding resource value will not be adversely affected.

Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k.

15A NCAC 05H .1903 GROUNDWATER SOURCE DOCUMENTATION

(a) For groundwater sources from which water is proposed to be obtained as part of the Water Management Plan, the applicant or permittee shall provide the following information:

- (1) for pre-existing groundwater wells, a copy of the well construction record filed with the Department in accordance with 15A NCAC 02C .0114(b), which is incorporated by reference including subsequent amendments, or from the local health department;
- (2) for groundwater wells constructed specifically for the purposes covered by this application, a copy of the Well Construction Permit issued

by the Department pursuant to 15A NCAC 02C .0105 and the associated groundwater well construction record form submitted to the Department pursuant to 15A NCAC 02C .0114(b);

- (3) the results of an aquifer pump test for each well included in this application. The aquifer pump test shall be conducted in accordance with 15A NCAC 02C .0110(b), which is incorporated by reference including subsequent amendments;
- (4) a map showing the extent of the measureable area of influence determined from the aquifer pump test at the proposed rate of withdrawal indicating the locations of all surface waters and water supply wells within the area of influence;
- (5) a map showing the extrapolated cone of depression based on six months usage; and
- (6) information required by 15A NCAC 02C .0107(j)(2)(E) and (j)(3)(D), which is incorporated by reference including subsequent amendments, for the construction of water supply and other wells.

(b) When the drought indicator well closest to the groundwater source(s) included in this application is designated as D3, indicating that water levels are at or below the 5th percentile of historic water level measurements as reported by the Division of Water Resources, withdrawals from these sources shall cease until the designation is upgraded to D1 or above, indicating water levels above the 10th percentile of historic water level measurements. In consultation with and with the approval of the Department, an applicant or permittee may identify a drought indicator well within the measureable area of influence to be used to monitor the impacts to groundwater and to determine appropriate thresholds on which to base the cessation of groundwater pumping.

Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k; 113-391(b).

15A NCAC 05H .1904 PURCHASED WATER SOURCE DOCUMENTATION

For purchased water sources, the applicant or permittee shall provide the following information:

- (1) identification of the water supplier, including name, contact information, and water supply facility identification, if such identification is required by G.S. 143-355(l) or G.S. 143-215.22H;
- (2) a copy of a letter of commitment or contract authorizing the acquisition of water by the applicant or permittee;
- (3) the type of water to be provided, such as water treated to drinking water standards, treated wastewater, reclaimed water, or raw water;
- (4) the proposed average and maximum amount of water to be provided daily in millions of gallons per day and the expected total maximum amount to be provided; and

- (5) the proposed method of transport of the water from the supplier to the point of use.

Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k.

15A NCAC 05H .1905 ALTERNATIVE WATER SOURCES

(a) The applicant or permittee shall provide a review of the potential alternative sources of water, including the option of using flowback or produced water, evaluated for the Water Management Plan, and indicate the reasons for rejecting those water sources. The applicant or permittee shall include the following in the review:

- (1) current uses of each alternative water source evaluated, including a list of current withdrawers other than the applicant or permittee;
- (2) the name and classification of each alternative water source evaluated; and
- (3) a description of the current or proposed structure or appurtenances for the transport or storage of water from the alternative water source.

(b) For reuse of flowback or produced water, the applicant or permittee shall provide the following information:

- (1) the source of the flowback or produced water;
- (2) the proposed maximum daily use in millions of gallons per day and the amount expected to be used; and
- (3) the estimated amount of additional water needed to provide sufficient quantity for activities covered in this application.

Authority G.S. 113-391(a)(5)e.

15A NCAC 05H .1906 REPORTING

(a) For each Water Management Plan, the permittee shall monitor, record and retain, for a period of five years after reclamation of the last oil or gas well for which the plan was submitted as part of the application, all records related to the daily water pumping schedules, received and purchased water, amounts of stored water, and quantities of flowback and produced water for recycling or reuse. The daily monitoring records shall be retained by the permittee for five years. These records shall be made available to representatives of the Department upon request.

(b) The permittee shall submit Form 23 – Annual Water Use Report to the Department by April 1st of each year for the period of January 1st to December 31st of the prior year. Form 23 – Annual Water Use Report shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;

- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the daily average water withdrawals from each of the surface water and groundwater source(s) included in this application for each month;
- (6) the maximum daily water withdrawals from each of the surface and groundwater source(s) included in this application for each month; and
- (7) the number of days that water was withdrawn in each month from the surface and groundwater source(s) included in this application.

(c) The permittee shall submit Form 23 – Annual Water Use Report electronically to the Department.

(d) The applicant or permittee shall provide notice of any land-disturbing activity associated with the Water Management Plan to any owner of real property identified in the plan required by Rule .1901(b)(6) of this Section. The notice shall be sent at least 30 calendar days before the desired date of entry to the property for activities described in Rules .1902 through .1905 of this Section. Notice shall be given by certified mail with return receipt requested and shall include:

- (1) the dates and duration of activities;
- (2) the location where entry will take place; and
- (3) the identity of person(s) entering the property.

(e) The applicant or permittee shall provide notice identifying the water source to the local municipality and county where the source is located.

(f) The permittee shall notify the Department at least 48 hours via telephone or email prior to first withdrawal from the approved water source(s) identified in the Water Management Plan. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time of day for the first withdrawal from the water source.

Authority G.S. 113-391(a)(5)e.

SECTION .2000 – OIL OR GAS SITE EXPLORATION AND PRODUCTION WASTE MANAGEMENT

15A NCAC 05H .2001 SCOPE

The permittee shall manage, control and dispose of all waste associated with exploration and production (E & P) of oil or gas in accordance with the standards set forth in this Section and all applicable laws and regulations.

Authority 113-391(a)(5)f.

15A NCAC 05H .2002 EXPLORATION AND PRODUCTION WASTE MANAGEMENT PLAN REQUIREMENTS

(a) An E & P Waste Management Plan, approved by the Department in accordance with this Rule, is required prior to the generation of E & P wastes from the drilling, producing, plugging, or any other activity associated with an oil or gas well.

(b) The E & P Waste Management Plan shall identify the management, control, and disposal methods for E & P wastes.

(c) The E & P Waste Management Plan shall address the storage and handling of wastewater, residuals, solid wastes and any other non-hazardous and hazardous wastes related to exploration and production activities from the point of initial generation of E & P wastes onsite to final disposal of the E & P waste.

(d) The E & P Waste Management Plan shall include the following form, documentation, and plan design sheets:

- (1) a completed Form 5 – Waste Management Plan, as provided by the Department that includes the following information:
 - (A) a description of the pit and tank use and locations onsite;
 - (B) the capacity of pits and tanks onsite;
 - (C) the liner material type, thickness, and manufacturer;
 - (D) the disposal methods for liquid and solid wastes;
 - (E) an operation and maintenance plan for all waste management infrastructure;
 - (F) a description of pit closure and site reclamation methods; and
 - (G) the anticipated date of construction or installation of all waste management infrastructure.
- (2) construction, installation, operation, and maintenance specifications and details for all pits, tanks, secondary containment, and other

ancillary equipment, such as piping, pumps, and valve systems. This shall include site design and capacity of all pits and tanks installed or constructed onsite;

(3) an emergency response plan that complies with 40 CFR 112 and Rule .1305 of this Subchapter;

(4) a statement of whether E & P wastes produced onsite will be reused at the permitted oil or gas well or reused at other permitted oil or gas wells;

(5) a statement of whether the E & P wastes will be pretreated onsite for reuse or disposal;

(6) a statement of whether the E & P wastes will be disposed of off-site and the identification of the disposal facility;

(7) a pit and tank closure plan that includes final disposal methods for all pit and tank contents within the Reclamation Plan in accordance with the Rule .2004 of this Section and Rule .2102 of this Subchapter; and

(8) the contact information for the local county emergency management officials and the State Emergency Operations Center (1-800-858-0368) for where the well site is located shall be included in the plan.

(e) A copy of the approved E & P Waste Management Plan shall be available to the Department at the well site during drilling and completion activities upon request.

(f) The contact information for the local county emergency management officials and the State Emergency Operations Center (1-800-858-0368) shall be prominently displayed at the well site during exploration, drilling, and completion activities in accordance with Rule .1305 of this Subchapter.

(g) The permittee shall submit Form 24 – Annual E & P Waste Management Report to the Department in accordance with Rule .2007(d) of this Section.

Authority 113-391(a)(5)e; 113-391(a)(5)f; 113-391(a)(5)k; 113-391(b).

15A NCAC 05H .2003 EXPLORATION AND PRODUCTION WASTE DISPOSAL

(a) The permittee shall test produced water and flowback fluids for the following parameters on a frequency and schedule determined by the Department:

carbonaceous biochemical oxygen demand (CBOD)
dissolved oxygen (DO)
pH
barium
chlorides
sodium
total dissolved solids (TDS)
arsenic, total recoverable
cobalt, total recoverable
cyanide, total recoverable
mercury, total recoverable
tin, total recoverable
benzene
butylbenzyl phthalate

ammonia-nitrogen (NH3-N)
specific conductance
total suspended solids (TSS)
bromide
sulfates
divalent cations
oil and grease
cadmium, total recoverable
copper, total recoverable
lead, total recoverable
nickel, total recoverable
zinc, total recoverable
bis(2-ethylhexyl)phthalate
carbazole

n-Decane
n-Octadecane
strontium-90 (Dissolved)
chronic wet testing

fluoranthene
radium-226 (Dissolved)
beta radiation (gross)

- (1) the water samples shall be collected and analyzed in accordance with Rule .1803 of this Subchapter; and
- (2) the analytical results shall be submitted to Division within 30 calendar days of receiving the analytical results, unless a different schedule is prescribed by the Department.

(b) The Director, in consultation with the Director of the Division of Water Resources, may require additional analysis and scheduling as necessary for the protection of public health, welfare, and the environment.

(c) E & P waste shall be managed as:

- (1) reuse in well stimulation operations;
- (2) on-site pretreatment for reuse or disposal;
- (3) disposal at a plant installed for the purpose of disposing of waste within the state permitted in accordance with G.S. 143-215.1; or
- (4) disposal facility located within another state that is duly permitted to accept flowback fluid and produced water from oil or gas operations.

(d) Any sludge or residual resulting from the reuse process authorized pursuant to Subparagraph (c)(1) of this Rule or from any on-site pretreatment that may be used in conjunction with Subparagraph (c)(2) and (3) of this Rule shall be managed and disposed of pursuant to Subparagraph (c)(3) and (4) of this Rule or with the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto, 42 USC 6901 *et seq.* and 40 CFR Parts 239-282. In addition, prior to disposal of any sludge or residual resulting from the reuse process authorized pursuant to Subparagraph (c)(1) of this Rule, or from any on-site pretreatment that may be used in conjunction with Subparagraph (c)(2) and (3) of this Rule, the permittee shall demonstrate that the sludge or residual meets all applicable radioactivity standards for the disposal facility.

(e) Residuals from onsite pretreatment shall be disposed of in accordance with G.S. 143-215.1, G.S. 130A-294, or transported to another state and disposed of in accordance with the receiving state's rules.

(f) Solid E & P waste, including drill cuttings and solidified muds, shall be characterized in accordance with Toxicity Characteristic Leaching Procedure, on a frequency and schedule determined by the Department. In addition, the Director, in consultation with the Director of the Division of Waste Management, may require additional analysis as necessary for the protection of public health, welfare, and the environment.

(g) Solid E & P waste shall be disposed of by transfer to an appropriate permitted solid waste management facility in accordance with 15A NCAC 13A or 15A NCAC 13B, which is incorporated by reference including subsequent amendments.

(h) E & P waste fluids may be transported to other drilling sites for reuse provided that such fluids are transported and stored in a manner that does not constitute a hazard to water resources, public health, safety or the environment in accordance with 15A NCAC 13B .0105.

(i) E & P waste, when transported off-site for treatment or disposal, shall be transported to treatment facilities authorized by the Department, or to waste disposal facilities permitted to receive E & P waste by the Department in accordance with 15A NCAC 13B. When transported to facilities outside of North Carolina for treatment or disposal, E & P waste shall be transported to facilities authorized and permitted by the appropriate regulatory agency in the receiving state.

(j) When E & P waste is transported off-site, the permittee shall maintain for five years copies of each invoice, bill, or ticket and such other records necessary to document the following requirements:

- (1) the permittee's name, address, and business telephone number;
- (2) the county, city, or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the date and time of the transport;
- (6) the company name and contact information of the E & P waste transporter;
- (7) the location of the E & P waste pickup site if different than a pit or tank located onsite;
- (8) the type and volume of E & P waste;
- (9) the name and location of the treatment or disposal site; and
- (10) a chronological record showing the date and time of waste collection and the transfer of waste from one person to another during the course of final delivery to a disposal facility. These documents shall be signed and dated by all appropriate parties, and shall include the generator, transporter, and receiving facility representative.

(k) All records shall be maintained in accordance with the Rule .0202 of this Subchapter.

Authority G.S. 113-391(a)(3) and (4); 113-391(a)(5)f.

15A NCAC 05H .2004 PIT CLOSURE REQUIREMENTS

(a) The permittee shall notify the Department via telephone or email 48 hours prior to commencing pit closure activities so the Department staff may be onsite to inspect pit closure. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;

- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for the pit(s) closure.

(b) Synthetic liners shall be removed and disposed of in accordance with applicable laws and regulations.

(c) The permittee shall collect a five-point composite sample from the pit sub-base if there are no wet or discolored areas or any other indications of a release of fluids from the pit; or collect individual grab samples from any pit base or sidewall slope areas that are wet, discolored or show other evidence of a release along the pit sidewall slopes or base.

(d) The samples collected from the pit sub-base shall be analyzed for benzene, toluene, ethylbenzene, xylene (BTEX), total petroleum hydrocarbons (TPH) and metals, and if requested by the Department, chlorides, bromides and sulfates, according to approved EPA, USGS, or Department methods in accordance with 15 NCAC 02L .0412.

(e) If concentrations of BTEX, TPH, or metals exceed the soil to groundwater maximum contaminant concentrations, established by the Environmental Management Commission under 15A NCAC 02L .0202 and published by the Division of Waste Management at http://portal.ncdenr.org/c/document_library/get_file?uuid=ad84a424-64a3-423c-a34c-8faeb9ffc27b&groupId=38361, or the background concentration, if established, then the Department may require additional delineation upon review of the results to ensure compliance with other applicable environmental regulations for soil and water contamination.

(f) All soil that exceeds limits established in Paragraph (e) of this Rule shall be removed from the pit and disposed of at a permitted municipal solid waste landfill, hazardous waste facility, or soil reclamation facility.

(g) The location where the pit(s) were constructed shall be returned to grade, reclaimed and seeded in accordance with the approved Reclamation Plan. Pit(s) shall be reclaimed no later than 180 calendar days after the drilling rig is removed from the well site, workover operations are complete, or plugging is complete.

(h) The permittee shall submit a signed copy of Form 25 – Pit Closure Report to the Department within 30 calendar days after the pit closure has been completed with the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the latitude and longitude of the pit reported to five decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);

- (6) the pit type and use;
- (7) the date of pit closure;
- (8) the volume of fluid and solid E & P wastes removed from the pit(s);
- (9) a confirmation that the liner was removed in accordance with Paragraph (b) of this Rule;
- (10) copies of analytical results from the required sampling in Paragraph (c) of this Rule; and
- (11) the name, permit number, and contact information for the receiving facilities.

Authority 113-391(a)(5)c; 113-391(a)(5)d; 113-391(a)(5)f; 113-391(b).

15A NCAC 05H .2005 SPILLS AND RELEASES OF E & P WASTE

(a) Chemical spills and releases shall be reported in accordance with applicable state and federal requirements, including the Emergency Planning and Community Right-to-Know Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, G.S. 143-215.75 through 215.104U, 15A NCAC 02B, and 02L, as applicable.

(b) Spills and releases of E & P waste shall be controlled and contained upon discovery to protect public health, welfare, and the environment.

(c) The permittee shall be responsible for controlling, containing, and remediating any spill or release.

(d) The Department may require any cleanup activities it determines to be necessary to protect public health, welfare, and the environment.

(e) Spills and releases shall be reported as follows:

- (1) spills and releases of any E & P waste that exceed a volume of one barrel per incident, including those contained within lined or unlined berms, including containment systems, shall be reported on Form 26 – Spill and Release Report in accordance with Paragraph (f) of this Rule;
- (2) spills and releases that exceed a volume of five barrels of any E & P waste shall be reported by telephone or email to the Director as soon as practicable, but no more than 24 hours after discovery;
- (3) spills and releases of any size that impact, or threaten to impact, any waters of the State, high occupancy buildings or occupied dwellings, livestock or public roads shall be reported by telephone or email to the Director as soon as practicable, but no more than 24 hours after discovery; and
- (4) spills and releases of any size that impact or threaten to impact any surface water, water supply area, or water supply intake shall be reported to the Director and the appropriate local emergency management coordinator in accordance with Rule .1305 of this Subchapter. These spills and releases shall be reported by phone to the local emergency

management coordinator, Department, and water supply facility within two hours of the discovery. This initial notification to the local emergency management coordinator, Department, and water supply facility shall include a description of actions to be taken to mitigate the spill and release.

(f) For all reportable spills, the permittee shall submit Form 26 – Spill and Release Report, to the Department no more than five days after discovery. The form shall include the following:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) an 8 1/2 by 11 inch topographic map showing the location of the spill;
- (6) color photographs of the affected area;
- (7) a description of the initial mitigation, site investigation, and any additional remediation proposed by the permittee; and
- (8) additional information or remediation based on the type, size, and extent of the spill or release as required by the Department.

(g) The permittee shall determine the cause of all spills and releases, and shall implement measures to prevent spills and releases due to similar causes in the future.

(h) The permittee shall notify the local emergency management coordinator and State Emergency Operations Center in accordance with Rule .1305 of this Subchapter of reportable spills and releases, pursuant to the requirements in this Rule, as soon as practicable, but not more than 24 hours, after discovery.

(i) When a threat of or actual significant impacts on public health, welfare, and the environment from a spill or release exist, or when necessary to ensure compliance with 15A NCAC 02B and 02L under the Environmental Management Commission, the Department may require the permittee to submit a Form 27 – Site Investigation and Remediation Work Plan with the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) a description of the impact to soils, vegetation, groundwater, or surface water;
- (6) a description of initial actions taken to remediate the spill or release;
- (7) a description of how the spill or release and impacts will be removed or remedied;

- (8) a description of proposed groundwater monitoring plan if groundwater was impacted;
- (9) a description of changes to the well site development plan or reclamation plan if needed;
- (10) a map of the area showing sample locations and extent of spill or release;
- (11) a copy of analytical reports for any samples that have been collected and analyzed;
- (12) the final disposal site of the E & P wastes recovered from the spill or release;
- (13) an implementation schedule detailing the date(s) of the initial spill or release, beginning and end of site investigation, date remediation plan was submitted, date remediation plan will be implemented, anticipated completion date of remediation, the actual completion date; and
- (14) the signature of the permittee and date signed.

Authority 113-391(a)(5)i; 113-391(a)(5)k.

15A NCAC 05H .2006 SAFETY AND SECURITY AT PITS AND TANKS

(a) Fencing around any pit or tank shall be constructed and maintained to prevent unauthorized access. Fences are not required if there is an adequate surrounding perimeter fence that prevents unauthorized access to the well site or production facility, including the pit(s) or tank(s). Fencing shall comply with Rule .1615 of this Subchapter.

(b) All pits or open tanks shall be screened, netted or otherwise rendered non-hazardous to wildlife, including migratory birds. Where netting or screening is not used, the permittee shall on a monthly basis inspect for and, within 48 hours of discovery, report any discovery of dead migratory birds or other wildlife to the Department in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring. All netting, screening, or other measures installed shall comply with the Migratory Bird Treaty Act.

Authority 113-391(a)(4).

15A NCAC 05H .2007 MONITORING AND REPORTING

(a) The permittee shall monitor all onsite E & P waste storage and disposal structures and facilities for compliance with the approved E & P Waste Management Plan.

(b) The permittee shall inspect all pits or open tanks after a rain event of one half inch or more in a 24-hour period to ensure structures have not been impaired and have the required freeboard. If impairment of a pit or open tank is noted during the course of inspection, the impairment shall be recorded on a monitoring and maintenance log. The log shall include:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;

- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the date of inspection, name of the inspector;
- (6) the location of impairment of the pit or tank;
- (7) if a spill or release was observed;
- (8) any necessary repair work along with the date(s) all repairs were completed; and
- (9) the signature of person conducting the inspection.

(c) If the impairment of the structure of the pit or open tank results in a spill or release, the permittee shall comply with the requirements for reporting, repair, and remediation in accordance with Rule .2005 of this Section.

(d) The permittee shall submit Form 24 – Annual E & P Waste Management Report to the Department no later than April 1st of each year for the previous calendar year, regardless of whether any oil or gas wells are installed at a well pad during the calendar year covered by the report. Form 24 – Annual E & P Waste Management Report shall include:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the quantity of drill cuttings that have been disposed of at off-site solid waste landfills;
- (6) the permit number, name and location of the solid waste facility;
- (7) the monthly quantity, in barrels, of liquid E & P waste produced in the drilling, stimulation, alteration, and production of an oil or gas well; and
- (8) the records of when pits were serviced due to inadequate freeboard, and the actions that were taken to restore the two feet of required freeboard.

Authority 113-391(a)(5)i; 113-391(a)(5)k.

SECTION .2100 – WELL SITE RECLAMATION

15A NCAC 05H .2101 SCOPE

(a) The permittee shall reclaim all disturbed land associated with the drilling, completion, and production of an oil or gas well by removing any well site structures or equipment from the well site or well pad and establishing permanent vegetative cover, soil stability, water conditions, and safety conditions appropriate to the area.

(b) The disturbed land shall be reclaimed unless otherwise designated by the surface owner in a surface use agreement submitted with a Form 2 – Oil or Gas Well Permit Application.

Authority G.S. 113-391(a)(5)l; 113-421(a3).

15A NCAC 05H .2102 RECLAMATION PLAN REQUIREMENTS

(a) The applicant or permittee for a Form 2 – Oil or Gas Well Permit Application or modification shall submit a Reclamation Plan to the Department for approval. The Reclamation Plan shall be submitted in accordance with Section .1300 of this Subchapter.

(b) The Reclamation Plan shall conform to the SPCA, 15A NCAC 04, and 15A NCAC 02H and include information and details on the reclamation of all disturbed land at the well site including the following information:

- (1) the reclamation activities to be conducted onsite;
- (2) a plan for subsequent land use and the general methods to be used in reclaiming the disturbed land;
- (3) the practices to be taken to protect adjacent surface resources;
- (4) the methods to prevent or eliminate adverse impacts to flora and fauna in, or adjacent to, the disturbed land;
- (5) the methods of reclaiming the disturbed land associated with pits in accordance with Rule .2004 of this Subchapter;
- (6) the measures to stabilize slopes; and
- (7) the plan for re-vegetation and reforestation, or other surface treatment of the disturbed land, which shall be approved in writing by one of the following prior to submission of the application:
 - (A) an authorized representative of the local soil and water conservation district having jurisdiction over lands in question;
 - (B) an authorized representative of the North Carolina Forest Service within the Department of Agriculture and Consumer Services;
 - (C) a county agricultural extension Chair or research and extension personnel headquartered at North Carolina State University in the School of Agricultural and Life Sciences;
 - (D) a North Carolina licensed Landscape Architect pursuant to G.S. 89A; or
 - (E) a private consulting foresters referred by the North Carolina Forest Service within the Department of Agriculture and Consumer Services.

(c) The applicant shall submit financial assurance in accordance with the Section .1400 of this Subchapter prior to commencing activity onsite.

(d) In addition to performing all activities required by the reclamation plan, the permittee shall stabilize and reclaim all lands disturbed associated with drilling, completion, and production in accordance with the Well Site Development Plan required by Rule .1304(c)(2) of this Subchapter.

(e) An approved reclamation plan may be modified, so long as the Department determines that the modified plan fully meets the

standards set forth in G.S. 113-391 and that the modifications would be consistent with the basis for issuance of the original permit.

Authority G.S. 113-391(a)(5)l.

SECTION .2200 – OPERATION AND PRODUCTION

15A NCAC 05H .2201 OPERATION AND PRODUCTION REQUIREMENTS FOR OIL OR GAS WELLS

(a) All oil or gas wells shall comply with API Recommended Practice 74, "Recommended Practice for Occupational Safety for Onshore Oil and Gas Production Operation," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>.

(b) All production equipment shall be maintained to comply with API Recommended Practice 51R "Environmental Protection for Onshore Oil and Gas Production Operations and Leases," and North Carolina Petroleum and Convenience Marketers (NCPCM) "Above-Ground Petroleum Storage Tank Manual and Fire Codes with data on North Carolina Gasoline Vapor Recovery and EPA Spill Plan Information," which are incorporated by reference, including subsequent amendments and editions. Recommended Practice 51R, published by API, may be viewed online at no charge at <http://publications.api.org/default.aspx>. The Above-Ground Petroleum Storage Tank Manual, published by NCPCM, may be viewed online at no charge at <http://www.ncpcm.org/pdf/AST-Manual2014.pdf>.

(c) All natural gas compressor stations shall be contained within a baffled building in accordance with G.S. 113-395.1.

(d) The permittee shall report monthly production data from all producing oil or gas wells, wells capable of producing oil or gas, and all fluids produced during any phase of operation of the oil or gas well to the Department, on Form 28 – Monthly Production Report, within 60 calendar days from the end of each month and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the month and year of production;
- (6) the number of days the oil or gas well was producing for the reporting period;
- (7) the oil or gas well status;
- (8) the quantities of oil and production fluids posted in barrels; and
- (9) the quantities of gas posted in units of thousand cubic feet.

(e) All meters shall be calibrated at least annually and shall comply with Chapters 14, 21, and 22 of the API "Manual of Petroleum Measurement Standards," which is incorporated by

reference, including subsequent amendments and editions. These documents, published by API, may be purchased at a cost of one thousand four hundred and sixty-eight dollars (\$1,468) for Chapter 14, four hundred and sixteen dollars (\$416.00) for Chapter 21, and one hundred and sixty-three dollars (\$163.00) for Chapter 22 at <http://www.techstreet.com/api/products/21408> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.

(f) All meters, valves, and gauges shall be maintained and remain accessible to the Department.

(g) The permittee shall notify the Department at least 72 hours via telephone or email prior to meter calibration. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email or fax within five calendar days and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for the meter testing.

(h) The permittee shall retain calibration records for five years in accordance with Rule .0202 of this Subchapter.

(i) The permittee shall replace any meter that fails an annual meter calibration test. Test results that exceed two percent of the manufacturer's specifications shall constitute a failure of the meter calibration test. The permittee shall notify the Department within 24 hours of replacing a meter via mail or email and shall retain records related to replacement for a period of five years.

(j) The permittee shall inspect daily each producing oil or gas well for the first 30 calendar days following commencement of production and monthly thereafter. The permittee shall report on the daily inspections results within 30 calendar days of the final daily inspection on Form 29 – Well Site Inspection Report.

(k) The permittee shall submit a monthly inspection report to the Department using Form 29 – Well Site Inspection Report within 30 calendar days of the inspection.

(l) The Form 29 – Well Site Inspection Report shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the presence of corrosion or equipment deterioration on any production equipment;
- (6) any indication or observation of a hydrocarbon release;
- (7) the condition of the wellhead, tanks, separators, and all other production equipment;

- (8) the condition of the secondary containment system for all tanks and separators;
- (9) certification that activated charcoal filters, low pressure relief valves, hatch lids, and lightning arrestors are present and functional for all tanks; and
- (10) any pressure measurements taken at the wellhead.

(m) The Department may require the permittee to perform diagnostic testing on the oil or gas well or production equipment to determine whether a potential mechanical deficiency exists and the best method of repair if deficiencies or violations are noted by the permittee on the Form 29 – Well Site Inspection Report.

(n) The permittee shall notify the Department via telephone or email of any annular pressures in excess of 80 percent of the API rated minimum internal yield pressure rating within 24 hours after discovery.

(o) All shut-in oil or gas wells shall pass an annual mechanical integrity test. Oil or gas wells that had surface equipment removed or have become incapable of production shall pass a mechanical integrity test within 30 calendar days. Oil or gas wells that fail a mechanical integrity test shall be repaired or plugged and abandoned within six months of failing the test. Mechanical integrity testing shall be in accordance with the following procedure:

- (1) isolate the wellbore with a bridge plug, set at 100 feet or less above the highest perforations;
- (2) pressure test the casing with inert or nonreactive liquid or gas at a minimum of 300 pounds per square inch (psi) surface pressure; and
- (3) maintain a minimum of 300 psi surface pressure for at least 15 minutes without a pressure differential of more than 10 percent.

(p) The permittee shall notify the Department using Form 11 – Required Notifications to the Department, not less than 10 calendar days prior to initiating a mechanical integrity test by mail, email, or fax. The notification shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for which the test will be performed.

(q) Mechanical integrity test results shall be submitted to the Department using Form 16 – Mechanical Integrity Test Results, within 30 calendar days after completing the test and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;

- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the purpose or reason for testing and identify if tubing or casing is being tested;
- (6) identify depth of producing zone and perforated intervals;
- (7) the tubing and casing diameter and depth;
- (8) description of the pressure test data including pressure charts showing pressure prior to, during, and at the commencement of testing; and
- (9) be signed by the service company or contractor conducting the pressure test to attest that all tests and results comply with the standards set in this Rule.

(r) The permittee shall submit Form 2 – Oil or Gas Well Permit Application, to the Department for the recompletion work required for the oil or gas well to be placed back into production.

Authority G.S. 113-391(a)(5)c, i, and k.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0317, .0318, and .0323.

Agency obtained G.S. 150B-19.1 certification:

- ☐ **OSBM certified on:**
- ☐ **RRC certified on:**
- ☒ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncbon.com

Proposed Effective Date: *January 1, 2015*

Public Hearing:

Date: *September 26, 2014*

Time: *1:00 p.m.*

Location: *NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607*

Reason for Proposed Action:

21 NCAC 36 .0317 Administration: *21 NCAC 36 .0317(c)(1)(2) Nursing program director education requirements are updated to meet national standards, while considering anticipated North Carolina supply of qualified individuals. 21 NCAC 36 .0317(c)(3)(4) Need for maintaining competence is added. 21 NCAC 36 .0317(c)(5)(6)(7) Nurse licensure, experience, preparation in teaching/learning principles, and current*

knowledge requirements for program directors are consolidated in this single rule but remain unchanged.

21 NCAC 36 .0318 Faculty: Nursing faculty education and composition requirements are updated to meet national standards, while considering anticipated North Carolina supply of qualified individuals. 21 NCAC 36 .0318(c)(d)(e)(f)(3) Faculty nurse licensure, experience, preparation in teaching/learning principles, and current knowledge requirements remain unchanged. 21 NCAC 36 .0318(i) Requirement for written evaluations is deleted because this is adequately addressed by school policies and does not require regulation. 21 NCAC 36 .0318(l) Faculty to student ratio is increased for precepted clinical experiences to enhance clinical learning and facilitate best utilization of faculty.

21 NCAC 36 .0323 Records and Reports: 21 NCAC 36 .0323 (f)(4) Requirement for submission of faculty curriculum vitae to the Board is deleted. The program director is responsible for maintaining compliance with faculty qualifications and adequate monitoring mechanisms are in place. Access to faculty curriculum vitae, if needed, is authorized in 21 NCAC 36 .0323(h).

Comments may be submitted to: Angela Ellis, APA Coordinator; P.O. Box 2129, Raleigh, NC 27602-2129; Phone (919) 782-3211 Ext 259; Fax (919) 781-9461; Email angela@ncbon.com

Comment period ends: November 3, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ No fiscal note required by G.S. 150B-21.4

SECTION .0300 – APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0317 ADMINISTRATION

(a) The controlling institution of a nursing program shall provide those human, physical, technical and financial resources and services essential to support program processes, outcomes and maintain compliance with Section .0300 of this Chapter.

(b) A full time registered nurse qualified pursuant to Paragraph (c) of this Rule shall have the authority for the direction of the nursing program. This authority must encompass responsibilities for maintaining compliance with rules and other legal requirements in all areas of the program. The program director shall have non-teaching time sufficient to allow for program organization, administration, continuous review, planning and development.

(c) Program director ~~qualifications~~ in a program preparing for initial nurse licensure ~~shall include:~~ shall:

- (1) ~~faculty qualifications as specified in 21 NCAC 36 .0318; hold a current unrestricted license or multistate licensure privilege to practice as a registered nurse in North Carolina;~~
- (2) ~~have two years of full-time experience as a faculty member in a board approved nursing program. Beginning January 1, 2015 this experience is as a faculty with a master's degree;~~
- (3) ~~for a program preparing individuals for registered nurse practice, a master's degree; and be experientially qualified to lead the program to accomplish the mission, goals, and expected program outcomes;~~
- (4) ~~for a program leading to a baccalaureate, a doctoral degree in nursing; or a master's degree in nursing and a doctoral degree in a health or education field. hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution. If newly employed on or after January 1, 2016, hold a graduate degree from an accredited institution. If newly employed on or after January 1, 2021, hold a graduate degree in nursing from an accredited institution;~~
- (5) ~~prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:~~
 - (A) ~~completion of 45 contact hours of continuing education courses;~~
 - (B) ~~completion of a certificate program in nursing education;~~
 - (C) ~~nine semester hours of graduate course work;~~
 - (D) ~~national certification in nursing education; or~~
 - (E) ~~documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved~~

by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;

- (6) maintain competence in the areas of assigned responsibility; and
- (7) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.

(d) The nursing education program shall implement, for quality improvement, a comprehensive program evaluation which shall include:

- (1) students' achievement of program outcomes;
- (2) evidence of program resources including fiscal, physical, human, clinical and technical learning resources; student support services, and the availability of clinical sites and the viability of those sites adequate to meet the objectives of the program;
- (3) measures of program outcomes for graduates;
- (4) evidence that accurate program information for consumers is readily available;
- (5) evidence that the head of the academic institution and the administration support program outcomes;
- (6) evidence that program director and program faculty meet board qualifications and are sufficient in number to achieve program outcomes;
- (7) evidence that the academic institution assures security of student information;
- (8) evidence that collected evaluative data is utilized in implementing quality improvement activities; and
- (9) evidence of student participation in program planning, implementation, evaluation and continuous improvement.

(e) The controlling institution and the nursing education program shall communicate information describing the nursing education program that is accurate, complete, consistent across mediums and accessible by the public. At least the following must be made known to all applicants and students:

- (1) admission policies and practices;
- (2) policy on advanced placement, transfer of credits;
- (3) number of credits required for completion of the program;
- (4) tuition, fees and other program costs;
- (5) policies and procedures for withdrawal, including refund of tuition/fees;
- (6) grievance procedure;
- (7) criteria for successful progression in the program including graduation requirements; and
- (8) policies for clinical performance.

Authority G.S. 90-171.23(b)(8); 90-171.38.

21 NCAC 36 .0318 FACULTY

(a) Full-time and part-time faculty members are considered nursing program faculty. When part-time faculty members are utilized, they shall participate in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall be consistent with those for other faculty of the institution. Variations in these policies may be necessary due to the nature of the nursing curriculum.

~~(c) Nurse faculty members shall be academically qualified and sufficient in number to accomplish program outcomes. Fifty percent or more of the nursing faculty must hold a graduate degree.~~

~~(d) Fifty percent or more of the nursing faculty must hold a master's degree. As of January 1, 2021, at least eighty percent of the full time faculty must hold a graduate degree in nursing.~~

~~(e) Each nurse faculty member shall hold a current unrestricted license to practice as a registered nurse in North Carolina. The program director shall document current licensure to practice as a registered nurse in North Carolina. As of January 1, 2021, at least fifty percent of the part time faculty must hold a graduate degree in nursing.~~

~~(f) Hold a current unrestricted license or multistate licensure privilege to practice as a registered nurse in North Carolina.~~

~~(f)(g) Nursing Nurse~~ faculty who teach in a program leading to initial licensure as a nurse shall:

- (1) hold either a baccalaureate in nursing or a ~~master's~~ graduate degree in nursing from an accredited institution;
- (2) ~~if employed after December 31, 1983,~~ have two calendar years or the equivalent of full time clinical experience as a registered nurse;
- (3) ~~if newly employed in a full time faculty position on or after January 1, 2016,~~ hold a graduate degree from an accredited institution, or obtain a graduate degree in nursing from an accredited institution within five years of initial full time employment.
- ~~(3)(4)~~ prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of ~~education~~ graduate course work;
 - (D) national certification in nursing education; or
 - (E) documentation of successful completion of structured, individualized development activities

of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;

~~(4) If employed prior to July 1, 2006, faculty shall meet the requirements in Subparagraph (f)(3) of this Rule by December 31, 2010. If employed on or after July 1, 2006 faculty members have three years from date of employment to meet the requirements in Subparagraph (f)(3) of this Rule.~~

(5) maintain competence in the areas of assigned responsibility; and

(6) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.

~~(g)(h)~~ Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

~~(h)(i)~~ Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.

~~(i)(j)~~ Nurse faculty members shall have the authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

~~(j)(k)~~ Nurse faculty members shall be academically qualified and sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment, and shall be sufficient to provide for teaching, supervision and evaluation. The faculty-student clinical ratio shall be 1:10 or less.

~~(k)(l)~~ There shall be a written evaluation of each nurse faculty member by the program director or a designee and a written evaluation of the program director according to the institutional policy. The faculty-student ratio for faculty directed preceptor clinical experiences shall be 1:15 or less. The faculty-student ratio for all other clinical experiences shall be 1:10 or less.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83.

21 NCAC 36 .0323 RECORDS AND REPORTS

(a) The controlling institution's publications describing the nursing program shall be accurate.

(b) There shall be a system for maintaining official records. Current and permanent student records shall be stored in a manner that prevents damage and unauthorized use.

(c) Both permanent and current records shall be available for review by Board staff.

(d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.

(e) The record for each enrolled student shall contain up-to-date and complete information, including:

- (1) documentation of admission criteria met by the student;
- (2) high school graduation, high school equivalent, or earned credits from post-secondary institution approved pursuant to G.S. 90-171.38(a); and
- (3) transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.

(f) The nursing program shall file with the Board records, data, and reports in order to furnish information concerning operation of the program as prescribed in the rules in this Section including:

- (1) an Annual Report received by the Board by November 1 of each year;
- (2) a Program Description Report for non-accredited programs received by the Board at least 30 days prior to a scheduled review; and
- (3) notification by institution administration of any change of the registered nurse responsible for the nursing program. This notification must include a vitae for the new individual and must be submitted within 20 business days of the effective date of the change; and
- ~~(4) a curriculum vitae for new faculty submitted by the program director within 20 business days from the time of employment.~~

(g) All communications relevant to accreditation shall be submitted to the North Carolina Board of Nursing at the same time the communications are submitted to the accrediting body.

(h) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its associated agencies.

(i) The part of the application for licensure by examination to be submitted by the nursing program shall include a statement verifying satisfactory completion of all requirements for graduation and the date of completion. The nursing program director shall submit the verification form to the Board within one month following completion of the program.

Authority G.S. 90-171.23(b)(8); 90-171.38.

CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to amend the rules cited as 21 NCAC 46 .1412 and .2801 and repeal the rules cited as 21 NCAC 46 .1810, .2802-.2808.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
☐ RRC certified on:
☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):

www.ncbop.org/lawandrules.htm

Proposed Effective Date: November 1, 2014

Public Hearing:

Date: September 16, 2014

Time: 9:00 a.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: Revisions required by the federal Drug Quality and Security Act (Public Law No. 113-54), with accompanying revisions to simplify and consolidate the Board of Pharmacy's rules governing compounding of drug preparations.

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; Fax (919) 246-1056; Email jcampbell@ncbop.org

Comment period ends: 9:00 a.m., September 16, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
☐ Environmental permitting of DOT affected
 Analysis submitted to Board of Transportation
☐ Local funds affected
☐ Substantial economic impact (≥\$1,000,000)
☒ No fiscal note required by G.S. 150B-21.4

SECTION .1400 – HOSPITALS: OTHER HEALTH CARE FACILITIES

21 NCAC 46 .1412 PHYSICAL REQUIREMENTS

A health care facility pharmacy shall have sufficient floor space allocated to it to ensure that drugs are prepared in sanitary, well

lighted and enclosed places. It shall have sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations. In addition to the requirements of Section .1600 of this Chapter, the equipment and physical facilities shall include the following:

- (1) ~~Compounding and dispensing areas;~~
Dispensing areas;
- (2) ~~Physically separate parenteral solution additive area when parenteral solutions are compounded as described in Compounding areas that comply with Section .2800 Sterile Parenteral Pharmaceuticals of this Chapter;~~
- (3) Receiving and storage areas;
- (4) Packaging and repackaging areas;
- (5) Office space sufficient to allow for administrative functions without interference with the safe compounding and dispensing of medications and security of the pharmacy;
- (6) Storage. All drugs shall be stored in designated areas within the pharmacy or decentralized pharmacy sufficient to provide sanitation to prevent contamination, moisture control, and security to prevent access from unauthorized personnel. Controlled substances shall be stored in compliance with applicable Federal and State laws and regulations. Alcohol and flammables shall be stored in areas that shall, at a minimum, meet basic local building code requirements for the storage of volatile substances and such other laws, ordinances, or regulations that may apply.
- (7) Security. All areas occupied by the health care facility pharmacy, to include auxiliary drug supplies and unit dose carts, shall remain secured at all times.

Authority G.S. 90-85.6; 90-85.21; 90-85.32.

SECTION .1800 - PRESCRIPTIONS

21 NCAC 46 .1810 COMPOUNDING

~~In accordance with G.S. 90-85.3(e) and (r), and 90-85.6(a), the Board has primary jurisdiction over compounding occurring in locations holding a pharmacy permit, and such compounding shall comply with the following:~~

- (1) ~~based on the existence of a practitioner-pharmacist patient relationship and the presentation of a valid prescription, or in anticipation of prescription orders based on established prescribing patterns, a pharmacist may compound a drug product for an individual patient. A pharmacist also may compound a drug product prior to receiving a valid prescription based on a history of receiving valid prescriptions generated within an established practitioner pharmacist patient relationship. Compounded drug products shall not be offered to other entities for resale; however, practitioners may obtain~~

- compounded drug products to administer to patients within the scope of their professional practice;
- (2) ~~the pharmacist is responsible for all aspects of compounding; however, unlicensed personnel working under the supervision of the pharmacist may assist in compounding;~~
- (3) ~~drug substances used for compounding shall be USP or NF grade, or if unavailable, AR, CP, ACS, or FCC grade substances may be used. If none of the foregoing grades are available, then the pharmacist must establish the purity and safety of the ingredient prior to its use. Manufactured drug products used for ingredients must be labeled with a batch control number and a future expiration date;~~
- (4) ~~equipment and utensils used for compounding shall not be reactive, additive or absorptive so that the safety, identity, strength, quality, and purity of the compounded drug product will not be adversely affected. All compounding equipment and utensils shall be cleaned and sanitized prior to use. A compounding pharmacy shall have written procedures and formulas for the compounding of drug products;~~
- (5) ~~any excess compounded drug product retained by the pharmacy shall be labeled with a complete list of ingredients or reference to such information, the preparation date, and an expiration date based upon the pharmacist's professional judgment. The excess compounded drug product shall be stored under conditions to preserve its strength, quality and purity;~~
- (6) ~~with the exception of the simple reconstitution of drug products, the pharmacy shall maintain a log showing the name or initials of the person who compounded a drug product and the name or initials of the pharmacist who checked the compounded drug product;~~
- (7) ~~with the exception of the simple reconstitution of drug products, the pharmacy shall maintain a recordkeeping system from which the date of purchase, supplier, manufacturer, and lot number or other identifier of each ingredient can be determined for each compounded drug product dispensed; provided however, that health care facility pharmacies may comply with this requirement by maintaining records of lot numbers only. All pharmacy records resulting from compounding, including the compounding log, shall be readily retrievable and maintained in the pharmacy for a period of three years;~~
- (8) ~~in addition to the requirements of this Section, the compounding of radiopharmaceutical drug products shall comply with Section .2700 of this Chapter;~~

- (9) ~~in addition to the requirements of this Section, the compounding of sterile parenteral drug products shall comply with Section .2800 of this Chapter.~~

Authority G.S. 90-85.6; 90-85.32.

SECTION .2800 – COMPOUNDING

21 NCAC 46 .2801 COMPOUNDING

(a) A pharmacy may dispense a compounded drug preparation to a patient only pursuant to a prescription that is valid and complies with all requirements of the law, including Rule .1801 of this Chapter. In advance of dispensing the compounded drug preparation, a pharmacy may prepare the drug preparation only:

- (1) Upon the pharmacy's receipt of a valid prescription order for an individual patient; or
- (2) In anticipation of a prescription order based on an established history of receiving prescription orders for the compounded drug preparation, but the pharmacy may not dispense the compounded drug preparation until the pharmacy receives a valid prescription order for an individual patient.

(b) Compounded drug preparations shall not be offered to other entities for resale.

(c) A pharmacy may supply practitioners authorized by law to prescribe drugs with compounded drug products to administer to patients within the scope of their professional practice. Such compounding for office use shall comply with applicable federal law.

(d) The preparation, labeling, and dispensing of non-sterile compounded drug preparations shall comply with standards established by United States Pharmacopeia chapter <795>, including all United States Pharmacopeia chapters and standards incorporated into chapter <795> by reference, governing both the non-sterile compounded drug preparations and the physical and environmental conditions under which non-sterile compounded drug preparations are prepared, labeled, and dispensed.

(e) The preparation, labeling, and dispensing of sterile compounded preparations shall comply with standards established by United States Pharmacopeia chapter <797>, including all United States Pharmacopeia chapters and standards incorporated into chapter <797> by reference, governing both the sterile compounded products and the physical and environmental conditions under which sterile compounded products are prepared, labeled, and dispensed.

(f) A pharmacy that prepares, labels, or dispenses sterile compounded preparations shall have ready access to current United States Pharmacopeia standards and references on the compatibility, stability, storage, handling and preparation of compounded drugs.

(g) The pharmacist-manager of a pharmacy where compounded drug preparations are prepared, labeled, or dispensed – or the pharmacist-manager's designated pharmacist – shall be knowledgeable in the specialized functions of preparing, labeling, and dispensing compounded drug preparations. If the pharmacist-manager chooses to designate another pharmacist for

this purpose, the pharmacist-manager shall so notify the Board on the pharmacy's permit application (if applicable) and, in writing, within 15 days of any change in the designation. Notwithstanding the pharmacist-manager's designation of another pharmacist as knowledgeable in the specialized functions of preparing, labeling, and dispensing compounded drug preparations, the pharmacist-manager retains responsibility for ensuring the pharmacy's compliance with all statutes, rules, and standards that govern such activities.

(h) In addition to complying with all recordkeeping and labeling requirements specified or referred to by United States Pharmacopeia chapters <795> or <797>, a pharmacy that prepares, labels, or dispenses compounded drug preparations shall create and maintain a record-keeping system that enables the pharmacy immediately to identify every compounded drug preparation prepared, labeled, or dispensed in the past three years. This recordkeeping system may be created and maintained electronically in compliance with Rule .2508 of this Chapter.

(i) The labeling of all compounded drug preparations shall bear a lot number sufficient to identify the preparation, the date the preparation was prepared, and the identity of the pharmacist responsible for compounding the preparation. The pharmacy shall maintain records of all lot numbers assigned to compounded drug preparations. These records may be created and maintained electronically in compliance with Rule .2508 of this Chapter.

(j) The pharmacist-manager of a pharmacy that prepares, labels, or dispenses compounded drug preparations shall comply with all quality assurance requirements and standards of United States Pharmacopeia chapters <795> and <797>.

(k) In addition to the requirements of this Section, the compounding of radiopharmaceutical drug products shall comply with Section .2700 of this Chapter.

The purpose of this Section is to provide standards for the preparation, labeling, and distribution of sterile products by licensed pharmacists, pursuant to an order or prescription. These standards are intended to apply to all sterile products, notwithstanding the location of the patient (e.g., home, hospital, nursing home, hospice, doctor's office).

Authority G.S. 90-85.6; 90-85.32.

21 NCAC 46 .2802 DEFINITIONS

- (a) ~~Anti neoplastic. A pharmaceutical which causes the death of cancer or tumor cells.~~
- (b) ~~Enteral. Within or by way of the intestine.~~
- (c) ~~Parenteral. Sterile preparation of drugs for injection through one or more layers of the skin.~~
- (d) ~~Sterile Pharmaceutical. A dosage form free from living microorganisms (aseptic).~~

Authority G.S. 90-85.6.

21 NCAC 46 .2803 REQ/PHARMACIES DISPENSING STERILE PHARMACEUTICALS

All locations holding a pharmacy permit where sterile pharmaceuticals are routinely compounded for dispensing must meet the following requirements:

- (1) ~~The location shall have a designated area with entry restricted to designated personnel for preparing compounded sterile products. This area shall be structurally isolated from other areas, with restricted entry or access, and must be designed to avoid unnecessary traffic and airflow disturbances from activity within the controlled facility. It shall be used only for the preparation of these specialty products. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.~~
- (2) ~~The permit holder preparing sterile products shall have the following equipment in addition to that required by Board Rule .1601 of this Chapter:~~
 - (a) ~~Environmental control devices capable of maintaining at least Class 100 conditions in the work place where critical objects are exposed and critical activities are performed;~~
 - (b) ~~Sink with hot and cold running water that is convenient to the compounding area for the purpose of hand scrubs prior to compounding;~~
 - (c) ~~Disposal containers for used needles, syringes, etc., and if applicable cytotoxic waste from the preparation of chemotherapy agents and infectious wastes from patients' homes;~~
 - (d) ~~When cytotoxic drug products are prepared, environmental control devices also include biohazard eabinetry;~~
 - (e) ~~Refrigerator freezer with a thermometer;~~
 - (f) ~~Temperature controlled delivery containers; and~~
 - (g) ~~Infusion devices, if appropriate.~~
- (3) ~~The permit holder dispensing sterile pharmaceuticals shall maintain inventories of the following supplies: Disposable needles, syringes, and other supplies needed for aseptic admixture; disinfectant cleaning solution; handwashing agents with bactericidal action; disposable, lint free towels or wipes; appropriate filters and filtration equipment; oncology drug spill kit; and disposable masks, eaps, gowns, and gloves.~~
- (4) ~~In addition to the requirements of Rule .1601(a)(3) of this Chapter, a permit holder dispensing sterile pharmaceuticals shall have in its reference library the following reference materials: Handbook on Injectable Drugs (ASHP); King's Guide to Parenteral Admixtures; American Hospital Formulary~~

Service; and Procedure for Handling Cytotoxic Drugs (ASHP).

Authority G.S. 90-85.6.

21 NCAC 46 .2804 RESPONSIBILITIES OF PHARMACIST-MANAGER

The pharmacist-manager of a permit holder where sterile pharmaceuticals are prepared or dispensed must be knowledgeable in the specialized functions of preparing and dispensing compounded, sterile pharmaceuticals, including the principles of aseptic technique and quality assurance. The pharmacist manager shall be responsible for the development and continuing review of all policies and procedures, training manuals, and quality assurance programs. Additionally, the pharmacist manager is responsible for assuring that there is a system for disposal of infectious waste within the pharmacy in a manner so as not to endanger the public health.

Authority G.S. 90-85.6.

21 NCAC 46 .2805 LABELING

In addition to any other labeling requirements, containers of sterile pharmaceuticals dispensed to patients shall be labeled with instructions for storage to maintain sterility and, for anti-neoplastic drugs, appropriate warning labels.

Authority G.S. 90-85.6.

21 NCAC 46 .2806 RECORDS AND REPORTS

The pharmacist manager shall maintain access to and submit as appropriate such records and reports as are required to insure the patient's health, safety, and welfare. Such reports shall be readily available, maintained for three years, and subject to inspections by the Board or its agents.

Authority G.S. 90-85.6.

21 NCAC 46 .2807 ANTI-NEOPLASTIC AGENTS

In addition to the requirements otherwise provided by applicable law and regulations, the following requirements are necessary for those permit holders who prepare anti-neoplastic drugs:

- (1) All anti-neoplastic drugs shall be compounded in a vertical flow, Class II, biological safety cabinet, or similar preparation area. There must be adherence to the pharmacy's hood cleaning procedures before preparing in the hood a product not classified as an anti-neoplastic agent.
- (2) Protective apparel shall be worn by personnel compounding anti-neoplastic drugs.
- (3) Safety and containment techniques appropriate for compounding anti-neoplastic drugs shall be used in conjunction with the aseptic techniques required for preparing sterile parenteral products.
- (4) Disposal of anti-neoplastic waste shall comply with all applicable local, state, and federal requirements.

- (5) Written procedures for handling spills of anti-neoplastic agents must be developed and must be included in the policy and procedural manual for the permit holder.
- (6) Prepared doses of anti-neoplastic drugs must be dispensed, labeled with precautions inside and outside, and shipped in a manner to minimize the risk of accidental rupture of the primary container.

Authority G.S. 90-85.6.

21 NCAC 46 .2808 QUALITY ASSURANCE

There shall be a documented, ongoing quality assurance control program that monitors personnel performance, equipment and facilities. Appropriate samples of finished products shall be examined with such frequency as will assure that the pharmacy is capable of consistently preparing sterile products meeting specifications. Such examination shall include testing for microbial contamination. Quality assurance procedures shall include: recall procedures; storage and dating of products; maintenance of a log of the temperature of the refrigerator and/or freezer; routine maintenance and report of laminar flow hood certification; replacement on a regular basis of the pre filters for the clean air source with documentation of the replacement dates; testing, with written documentation, of the end product for microbial contamination; maintenance of written justification, or reference to published standards, for the chosen expiration date for compounded products; and regular quality assurance audits, including infection control and sterile technique audits.

Authority G.S. 90-85.6.

CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Physical Therapy Examiners intends to adopt the rules cited as 21 NCAC 48B .0104; 48C .0104; 48E .0111-.0113, and 48G .0701-.0706 and amend the rules cited as 21 NCAC 48A .0103; 48C .0102; 48D .0109; 48E .0110; 48G .0109-.0110, .0504, .0512, and .0601.

Agency obtained G.S. 150B-19.1 certification:

- ☒ OSBM certified on: April 4, 2014
☐ RRC certified on:
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncptboard.org>

Proposed Effective Date: February 1, 2015

Public Hearing:

Date: September 11, 2014

Time: 2:30-3:30 p.m.

Location: Siena Hotel, 1505 E. Franklin St., Chapel Hill, NC 27514

Reason for Proposed Action: In response to legislative changes in the North Carolina Physical Therapy Practice Act and recommendations from the general public and licensees, the Board of Physical Therapy Examiners is proposing the following adoptions and amendments for the following rules in Title 21 NCAC 48:

21 NCAC 48A .0103 - Paragraph (b) requires nominees for the physical therapist and physical therapist assistant positions to attest that they meet the qualifications specified in G.S. 90-270.25 and Paragraph (c) clarifies that each physical therapist and physical therapist assistant shall be employed in a physical therapy related position for at least 1,000 hours annually.

21 NCAC 48B .0104 - This rule requires physical therapists or physical therapist assistants who would like to practice in NC due to a disaster or emergency in NC or would like to obtain a license in NC secondary to a disaster or emergency in their home state complete an application for exemption that has been approved by the Board.

21 NCAC 48C .0102 - The amendment in Paragraph (k) clarifies that the current rule only applies to patients who are being treated by a physical therapist assistant or physical therapy aide. Paragraph (n) clarifies that a physical therapist must provide copies of a patient's treatment records upon request by the patient or the patient's designee. Other amendments in the rule are technical and grammatical.

21 NCAC 48C .0104 - Paragraph (a) identifies terms that are used interchangeably with dry needling and defines the technique of dry needling; Paragraph (b) states educational requirements for a physical therapist to practice dry needling in NC; Paragraph (c) clarifies that dry needling cannot be performed by a physical therapist assistant or physical therapy aide; Paragraph(d) requires the Board to maintain a list of programs that have been approved to provide dry needling education.

21 NCAC 48D .0109 - Paragraph (c) clarifies that there is a limit of the number of times an applicant is allowed to take the exam and that number will be determined by the administrator of the exam (Federation of State Boards of Physical Therapy). Other amendments are technical and provide clarification of the rule.

21 NCAC 48E .0110 - Paragraph (c) clarifies the requirements that a Foreign Trained Physical Therapist (FTPT) applicant by examination must meet the standards of the Federation's current Coursework Tool (CWT). Paragraph (e) clarifies that the FTPT applicant must meet the English language proficiency requirements as demonstrated by a passing score on the Test of English as a Foreign Language (TOEFL) as defined by the Federation. Other amendments are technical for clarification and/or grammatical.

21 NCAC 48E .0111 - This rule clarifies the requirements for a FTPT applicant by endorsement of licensure in another state. The requirements are essentially the same requirements that were previously adopted in 1985 for the Foreign Trained Physical Therapist.

21 NCAC 48E .0112 - Paragraph (a) defines a physical therapist assistant program located outside of the United States.

Paragraph (b) will clarify that all documents must be provided in English or accompanied by an English translation. Paragraph (c) clarifies the education requirements of a Foreign Trained Physical Therapist Assistant must be substantially equivalent to the education of a Physical Therapy Assistant graduate from an accredited program in the United States. Paragraph (d) requires the applicant's education to be evaluated by a credentialing agency approved by the Board and Paragraph (e) clarifies the English language requirements.

21 NCAC 48E .0113 - Paragraph (a) clarifies that an applicant shall be required to consent to a criminal history record check and will be responsible for paying for it and Paragraph (b) authorizes an appeals process if an applicant is denied licensure for failing to consent to a criminal history check.

21 NCAC 48G .0109 - Amendments to sub-paragraph (a)(2) clarifies that, for a graduate course, one-semester hour earns fifteen (15) points and that a transcript from the academic institution is required as proof; sub-paragraph (a)(5) allows for study groups to meet electronically; (g)(1) defines full-time clinical practice as 1,750 hours, (g)(2) defines part-time clinical practice at least 1,000 hours, but less than 1,750 hours and (g)(3) clarifies that a licensee is awarded 1 point for clinical practice of at least 200 hours, but less than 1,000 hours. Other amendments are technical for clarification and/or grammatical.

21 NCAC 48G .0110 - Paragraph (f) clarifies that the Board may also notify the licensee by electronic communication and that certified mail is not required. Other amendments are technical for clarification and/or grammatical.

21 NCAC 48G .0504 - Paragraph (e) clarifies that materials obtained by the Board during the course of an investigation are considered confidential; however, copies may be provided to the licensee's attorney with conditions.

21 NCAC 48G .0512 - Paragraph (f) clarifies that the Board may also notify the licensee by electronic communication and that certified mail is not required. Other amendments are technical for clarification and/or grammatical.

21 NCAC 48G .0601 - Amendments to sub-paragraph (a)(26) clarifies that it also includes the episode of care. Other amendments are technical and provide clarification of the rule.

21 NCAC 48G .0701 - The adoption of this rule defines the following: Paragraph (a) defines "impairment"; Paragraph (b) defines "participant"; and Paragraph (c) defines "program".

21 NCAC 48G .0702 - Paragraph (a) clarifies that a licensee must be referred by the Board before he/she may participate in a Program; Paragraph (b) provides authority for the Board to contract with other health care licensing Boards to provide Programs; and Paragraph (c) clarifies that a licensee who is enrolled in the Program must comply with its requirements and may be subject to disciplinary for failing to do so.

21 NCAC 48G .0703 - This rule sets the standards when information is received by the Board suspecting the impairment of a licensee.

21 NCAC 48G .0704 - This rule sets the standards for confidentiality.

21 NCAC 48G .0705 - The rule sets the standards for when reports are to be given to the Board when a licensee is investigated.

21 NCAC 48G .0706 - This rule sets the program standards for when referrals of licensees are received from the Board.

Comments may be submitted to: Ben Massey, Jr, 18 West Colony Place, Suite 140, Durham, NC 27705; phone (919) 490-6393/(800) 800-8982; fax (919) 490-5106; email benmassey@ncptboard.org

Comment period ends: September 15, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 48A - ORGANIZATION

21 NCAC 48A .0103 MEMBERSHIP OF BOARD

- (a) Selection of Board Members. Nominations for members of the Board shall be sought from licensees residing in North Carolina. The ballots ~~that are~~ distributed to ~~each licensee~~ licensees in North Carolina shall list each nominee's place and location of employment and practice setting. The completed ballots shall be forwarded to the President of the North Carolina Physical Therapy Association. ~~Association within the 30-day deadline indicated on the ballot.~~
- (b) Qualification of Nominees. Each nominee for a physical therapist or physical therapist assistant position on the Board shall, on a form provided by the Board, attest to meeting the qualifications specified in G.S. 90-270.25.
- (c) Actively Engaged in Practice. Each physical therapist and physical therapist assistant member of the Board shall, during incumbency, be employed in a position that includes at least 1000 hours annually devoted to review, oversight, supervision, administration, teaching, or providing physical therapy services for patients, clients, or the public.
- ~~(b)(d)~~ (d) Decisions. Decisions shall be reached by a majority of the Board Members present and eligible to participate provided that a quorum consists of five Board Members.

Authority G.S. 90-270.25; 90-270.26.

SUBCHAPTER 48B – TYPES OF LICENSES

21 NCAC 48B .0104 EXEMPTIONS

A person seeking an exemption from licensure requirements pursuant to G.S. 90-270.34(a)(8) or (9) shall submit an application on a form approved by the Board (www.ncptboard.org), or a written request that includes license number and contact information. An exemption issued pursuant to G.S. 90-270.34(a)(8) or (9) expires on the next annual renewal date, or one year after it is granted, whichever occurs later.

Authority G.S. 90-270.34.

SUBCHAPTER 48C – SCOPE OF PHYSICAL THERAPY PRACTICE

SECTION .0100 – PHYSICAL THERAPISTS

21 NCAC 48C .0102 RESPONSIBILITIES

- (a) A physical therapist ~~must~~ shall determine the patient care plan and the elements of that plan appropriate for delegation.
- (b) A physical therapist ~~must~~ shall determine that those persons acting under his or her supervision possess the competence to perform the delegated activities.
- (c) A physical therapist may delegate responsibilities to physical therapist assistants, including supervising PT or PTA students.
- (d) A physical therapist ~~must~~ shall enter and review chart documentation, reexamine and reassess the ~~patient~~ patient, and revise the patient care plan if necessary, based on the needs of the patient.
- (e) A physical therapist ~~must~~ shall establish a discharge plan that includes a discharge summary or episode of care for each patient.
- (f) The physical therapist ~~must~~ shall provide all therapeutic interventions that will require the physical therapist's expertise, and may delegate to a physical therapist assistant or physical therapy aide the delivery of service to the patient when it is safe and effective for the patient.
- (g) A physical therapist's responsibility for patient care management includes first-hand knowledge of the health status of each patient and oversight of all documentation for services rendered to each patient, including awareness of fees and reimbursement structures.
- (h) A physical therapist ~~must~~ shall be immediately available ~~directly in person~~ or by telecommunication to a physical therapist assistant supervising a physical therapy aide or student engaging in patient care.
- (i) A physical therapist who is supervising a physical therapy aide or student ~~must~~ shall be present in the same facility when patient care is provided.
- (j) A physical therapist shall clinically supervise only that number of assistive personnel, including physical therapists assistants, physical therapy aides, and students completing clinical requirements, as the physical therapist determines is appropriate for providing safe and effective patient interventions at all times.
- (k) ~~A~~ If a physical therapist assistant or physical therapy aide is involved in the patient care plan, a physical therapist ~~must~~ shall

reassess a patient every 60 days or 13 visits, whichever occurs first.

(l) A physical therapist ~~must~~ shall document every evaluation and intervention or treatment including the following elements:

- (1) ~~Authentication~~ authentication (signature and designation) by the physical therapist who performed the service;
- (2) ~~Date~~ date of the evaluation or treatment;
- (3) ~~Length~~ length of time of total treatment session or evaluation;
- (4) ~~Patient~~ patient status report;
- (5) ~~Changes~~ changes in clinical status;
- (6) ~~Identification~~ identification of specific elements of each intervention or modality provided. Frequency, intensity, or other details may be included in the plan of care and if so, do not need to be repeated in the daily note;
- (7) ~~Equipment~~ equipment provided to the patient; and
- (8) ~~Interpretation~~ interpretation and analysis of clinical signs and symptoms and response to treatment based on subjective and objective findings, including any adverse reactions to an intervention.

(m) At the time of reassessment the physical therapist ~~must~~ shall document:

- (1) ~~The~~ the patient's response to therapy intervention;
- (2) ~~The~~ the patient's progress toward achieving goals; and
- (3) ~~Justifications~~ justifications for continued treatment.

(n) A physical therapist shall, upon request by the patient of record, provide original or copies of the patient's treatment record to the patient, or to the patient's designee. As permitted by G.S. 90-411, a fee may be charged for the cost of reproducing copies. The documents requested shall be provided within 30 days of the request and shall not be contingent upon current, past, or future physical therapy treatment, or payment of services.

Authority G.S. 90-270.24; 90-270.26; 90-270.31; 90-270.34; 90-411.

21 NCAC 48C .0104 DRY NEEDLING

(a) "Dry Needling," "Intramuscular Manual Therapy," "Trigger Point Dry Needling" and "Intramuscular Needling" are used interchangeably to describe a technique using the insertion of a solid filament needle, without medication, into or through the skin to treat various impairments.

(b) Prior to a physical therapist performing dry needling in North Carolina, the physical therapist shall submit an application to the Board containing proof of completion of a course of study approved by the Board. The course of study shall include:

- (1) a minimum of 54 hours of in person classroom education;
- (2) instruction in clinical techniques of dry needling;

(3) instruction in indications and contraindications of dry needling; and

(4) certification of completion of all program requirements.

(c) Dry needling cannot be delegated to physical therapist assistants or physical therapy aides.

(d) The Board shall maintain a list of programs approved to provide the required dry needling training for physical therapists. This information shall be available on the Board's website (www.ncptboard.org).

Authority G.S. 90-270.24; 90-270.26.

SUBCHAPTER 48D - EXAMINATIONS

21 NCAC 48D .0109 RETAKING EXAMINATION

(a) Arrangements for Retake. To retake the examination, the applicant shall notify the ~~Board in writing, executive director~~ and pay the retake fee as specified in Rule 48F .0102 of this Chapter, and the examination cost at that time, as set forth by the Federation (www.fsbpt.org) is hereby incorporated by reference and includes subsequent amendments and editions. A copy of the retake application may be obtained from the Board's website at no charge.

(b) Retake Examination. The Board shall administer a particular form of the examination to an applicant only one time.

(c) Limitations. An applicant is limited to taking the examination the number of times allowed by the Federation as indicated on the Federation's website (www.fsbpt.org).

Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.33.

SUBCHAPTER 48E – APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

21 NCAC 48E .0110 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANT BY EXAMINATION

(a) This Rule applies to a physical therapist who has graduated from a program located outside the United States ~~which that~~ has not been accredited in accordance with ~~G.S. 90-270.29~~ G.S. 90-270.29(2), ~~currently,~~ currently, the Commission on Accreditation of Physical Therapy Education (~~CAPTE~~), (CAPTE), and does not hold an active license in another State or Territory of the United States.

(b) ~~English Translations.~~ All application forms and supporting documents ~~must~~ shall be in English or accompanied by an English translation.

(c) ~~If the applicant does not meet the requirements of G.S. 90-270.29(2), the Board shall examine~~ For the applicant's educational background to be determined determine if the general and professional education is substantially equivalent to that obtained by an applicant for licensure under G.S. 90-270.29 90-270.29(2), as follows: the applicant shall meet the standards of the Federation's most recent Coursework Tool (CWT) (www.fsbpt.org).

- (1) ~~For candidates graduating prior to December 31, 2002, a minimum of 120 semester hours of college education at the freshman through~~

senior level is required, which includes a minimum of 60 semester hours of professional curriculum, including basic health sciences, clinical sciences and clinical education, and a minimum of 42 semester hours of general education. Up to 21 hours may be substituted for actual course work by obtaining a passing score on College Level Examination Program (CLEP) examinations.

- (2) For candidates graduating after December 31, 2002, the applicant's educational background must be substantially equivalent to a Post-Baccalaureate degree from a CAPTE-approved physical therapy educational program. In order for a foreign-trained applicant's educational background to be determined substantially equivalent to a post baccalaureate degree from a CAPTE-approved program, the general and professional education must satisfy the requirements for the first professional degree as determined by the course work evaluation tool developed by the Federation of State Boards of Physical Therapy (FSBPT), or its successor organization. Up to one half (1/2) of the general education credit hours may be substituted for actual course work by obtaining a passing score on CLEP examinations.

(d) The applicant ~~must~~ shall make arrangements to have the credentials evaluated by FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or a service with a physical therapist consultant on its staff that is determined by the Board to be equivalent, ~~equivalent, and which must have a physical therapist consultant on its staff.~~ The Board shall ~~may~~ make its own review of an applicant's educational program and is not bound by the findings of the credentialing service.

(e) The applicant ~~must shall~~ provide the following ~~information:~~ information to the Board:

- (1) proof that the applicant has demonstrated English language proficiency by meeting the most recent Test of English as a Foreign Language (TOEFL) score requirement as defined by the Federation; ~~For examinations administered prior to August 1, 1998, proof that a score of 210 on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination was obtained;~~
- (2) ~~For examinations administered on or after August 1, 1998, and prior to January 1, 2007, proof that a minimum score of 50 on the TSE examination or the SPEAK examination was obtained, a minimum score on the Test of Written English (TWE) of 4.5 was obtained, and a minimum score of 560 on the Test of English as a Foreign Language (TOEFL) was obtained;~~
- (3) ~~For examinations administered on or after September 25, 2005, proof that the applicant obtained the following minimum standard~~

~~scale scores in each of the four scoring domains (Listening, Reading, Writing, and Speaking), and the total score of the iBT/Next Generation TOEFL: Writing: 24, Speaking: 26, Reading Comprehension: 21, Listening Comprehension: 18, Total Score: 89; or~~

- (4)(2) Proof proof that coursework was taught in the English language; or English is the applicant's primary language.
- (3) documentation for exemption as per USCIS CFR 212.15 (<http://www.uscis.gov/>).

Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.

21 NCAC 48E .0111 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANT BY ENDORSEMENT

(a) This Rule applies to a physical therapist who has graduated from a program located outside the United States that has not been accredited in accordance with G.S. 90-270.29(2), currently, the Commission on Accreditation of Physical Therapy Education (CAPTE), and holds an active physical therapist license in another State or Territory of the United States.

(b) All application forms and supporting documents shall be in English or accompanied by an English translation.

(c) For the applicant's educational background to be determined substantially equivalent to that obtained by an applicant for licensure under G.S. 90-270.29(2) the applicant shall meet the standards of the Federation's Coursework Tool (CWT) (www.fsbpt.org) for the applicant's year of graduation.

(d) The applicant shall make arrangements to have the credentials evaluated by FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or a service with a physical therapist consultant on its staff that is determined by the Board to be equivalent. The Board may make its own review of an applicant's educational program and is not bound by the findings of the credentialing service.

(e) The applicant shall provide the following information to the Board:

- (1) for examinations administered prior to August 1, 1998, proof that a score of 210 on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination was obtained (www.ets.org/toefl/ibt/);
- (2) for examinations administered on or after August 1, 1998, and prior to January 1, 2007, the following proof shall be provided:
 - (A) minimum score of 50 on the TSE examination or the SPEAK examination;
 - (B) minimum score on the Test of Written English (TWE) of 4.5; and
 - (C) minimum score of 560 on the Test of English as a Foreign Language (TOEFL).
- (3) for examinations administered on or after January 1, 2007, proof shall be provided that the applicant obtained the following minimum standard scale scores in each of the four

scoring domains (Listening, Reading, Writing, and Speaking), and the total score of the iBT/Next Generation TOEFL:

- (A) Writing: 24;
- (B) Speaking: 26;
- (C) Reading Comprehension: 21;
- (D) Listening Comprehension: 18; and
- (E) Total Score: 89.

- (4) proof that coursework was taught in the English language; or
- (5) documentation for exemption as per USCIS CFR 212.15 (<http://www.uscis.gov/>).

Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.

21 NCAC 48E .0112 FOREIGN-TRAINED PHYSICAL THERAPIST ASSISTANT APPLICANT

(a) This Rule applies to a physical therapist assistant who has graduated from a program located outside the United States which has not been accredited in accordance with G.S. 90-270.29(2), currently, the Commission on Accreditation of Physical Therapy Education (CAPTE).

(b) All application forms and supporting documents shall be in English or accompanied by an English translation.

(c) If the applicant does not meet the requirements of G.S. 90-270.29(3), the Board shall examine the applicant's educational background to determine if the general and professional education is substantially equivalent to that obtained by an applicant for licensure under G.S. 90-270.29(2) who shall satisfy the requirements as determined by the Coursework Tool (CWT) developed by the Federation.

(d) The applicant shall make arrangements to have the credentials evaluated by FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or a service with a physical therapist consultant on its staff that is determined by the Board to be equivalent. The Board shall make its own review of an applicant's educational program and is not bound by the findings of the credentialing service.

(e) The applicant shall provide the following information to the Board:

- (1) proof that the applicant has demonstrated English language proficiency by meeting the most recent Test of English as a Foreign Language (TEOFL) score requirement as defined by the Federation;
- (2) proof that coursework was taught in the English language; or
- (3) documentation for exemption as per USCIS CFR 212.15 (<http://www.uscis.gov/>).

Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.

21 NCAC 48E .0113 CRIMINAL HISTORY

(a) At the applicant's expense, an Applicant for licensure shall be required to consent to a criminal history record check, and furnish fingerprints to the Board in a manner approved by the North Carolina Department of Justice.

(b) If an applicant is denied licensure based on the refusal to consent to a criminal history record check or the contents of the

criminal history record check, upon written notice delivered to the Board within 15 business days of the Board's denial, applicant shall have the right to appear before the Board at its next regularly scheduled meeting to appeal the Board's decision.

Authority G.S. 90-270.29A; 93B-8.1; 114-19.33.

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0100 – LICENSURE RENEWAL

21 NCAC 48G .0109 CONTINUING COMPETENCE ACTIVITIES

(a) Continuing Education activities are eligible for points as follows:

- (1) A registered attendee at courses or conferences offered live, in real time by approved providers earns one point for each contact hour. The maximum number of points allowed during any reporting period is 29. The maximum number of points allowed during any reporting period for an interactive course offered through electronic media is 15. Credit shall not be given for the same course or conference more than once during any reporting period. The licensee shall submit the Certificate of Attendance issued by the approved provider.
- (2) For registered participation in an academic course related to physical therapy offered for credit in a post-baccalaureate program unless the course is required for licensure, ~~one class hour earns one point, one semester hour earns 15 points,~~ and the maximum number of points allowed during any reporting period is 29. The licensee ~~must~~ shall obtain a letter grade of "C" or better or "P" if offered on a Pass/Fail basis. Credit shall not be given for the same course more than one time. The licensee shall submit ~~a transcript the course description~~ published by the approved ~~provider, provider or~~ furnished by the academic institution.
- (3) For attendance or participation in an activity related to physical therapy for which no assessment is received, two contact hours earns one point. The maximum number of points allowed during any reporting period is five. Credit shall not be given for the same activity more than one time. The licensee shall submit a certificate of completion, or if that is not available, a summary of the objectives of the activity and the time spent in the activity.
- (4) For registered participation in a non-interactive course offered by an approved provider by videotape, satellite transmission, webcast, ~~DVD~~ DVD, or other electronic media, one hour of participation earns one point. The maximum number of points allowed during any reporting period is 10.

- Credit shall not be given for the same course more than once during a reporting period. The licensee shall submit a certificate of completion provided by the course provider.
- (5) For participation in a study group consisting of at least three licensees conducted either live or in real time through electronic media, whose purpose is to advance the knowledge and skills of the participants related to the practice of physical therapy, two hours of participation in the study group earns one point. The maximum number of points allowed during any reporting period is 10. The licensee shall submit a biography of each participant, a statement of the goals of the study group, attendance records for each participant, assignments for each participant and an analysis by each participant specifying the knowledge and skills enhanced by participating in the study group.
 - (6) For participation in a self-designed home study program designed to advance the knowledge and skill of the participant related to the practice of physical therapy, three hours of home study earns one point. The maximum number of points allowed for home study during any reporting period is five. The licensee shall submit a description of the plans and objectives of the home study, an analysis of the manner in which the plans and objectives were met, and a certification of the time spent on the project.
 - (7) For participation in continuing education required by credentialed residencies and fellowships, one point is granted for each contact hour. The maximum number of points for each reporting period is 29. The licensee shall submit the certificate of attendance issued by the American Physical Therapy Association ("APTA") credentialed residency or fellowship.
 - (8) For completion of a home study physical therapy program furnished by an approved provider, one hour of home study earns one point. The maximum number of points during any one reporting period allowed is 10. The licensee shall submit a certificate of completion issued by the approved provider.
- (b) Points are awarded for advanced training as follows:
- (1) For fellowships conferred by organizations credentialed by the APTA in a specialty area of the practice of physical therapy, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. The licensee shall submit the certificate conferred on the ~~licensee~~, licensee or evidence that all requirements of the fellowship program have been met.
 - (2) For completion of a residency program in physical therapy offered by an APTA credentialed organization, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. ~~The licensee shall submit evidence that all requirements of the residency program have been met.~~ The licensee shall submit the certificate conferred on the licensee or evidence that all requirements of the residency program have been met.
 - (3) For specialty certification or specialty recertification by the American Board of Physical Therapy Specialization ("ABPTS"), ~~or its successor organization~~, 20 points are awarded upon receipt of such certification or recertification during any reporting period. The licensee shall submit evidence from ABPTS that the certification or recertification has been granted.
 - (4) For a physical therapist assistant, Advanced Proficiency designation by the APTA for the PTA earns 19 points. The licensee shall submit evidence from APTA that the designation has been awarded.
- (c) Achieving a passing score on the ~~FBPT's~~ Federation's Practice Review Tool ("PRT") earns 10 points. Taking the PRT without achieving a passing score earns five points. The licensee shall submit the certificate of completion and performance report. Points shall be awarded only one time for any specific practice area.
- (d) Clinical Education activities are eligible for points as follows:
- (1) For completion of a course offered by an approved provider for a licensee to become a Credentialed Clinical Instructor recognized by APTA, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a credential certificate issued by the approved provider. Credit for completing the same course shall be given only once.
 - (2) For enrollment in a course offered by APTA for a licensee to become a Credentialed Clinical Instructor Trainer, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a Trainer certificate issued by APTA. Credit for completing the same course shall be given only once.
 - (3) For serving as a Clinical Instructor for a physical therapist or physical therapist assistant student, ~~resident~~ resident, or fellow for a period of at least 80 hours, 40 hours of direct on-site supervision earns one point, and the maximum number of points awarded during any reporting period is eight. ~~a maximum credit of eight points is allowed~~

~~during any reporting period.~~ The licensee shall submit verification of the clinical affiliation agreement with the accredited educational program for the student supervised and a log showing the number of hours spent supervising the student.

(e) Presenting or teaching for an accredited physical therapy educational ~~program, program;~~ a transitional Doctor of Physical Therapy ("DPT") ~~program, program;~~ an accredited program for health care practitioners licensed under the provisions of Chapter 90 of the North Carolina General ~~Statutes, Statutes;~~ or a state, ~~national, national,~~ or international workshop, seminar or professional health care conference earns two points for each hour of presentation or teaching. The licensee shall submit written materials advertising the presentation or teaching, or other evidence of the date, ~~subject, subject,~~ and goals and objectives of the ~~presentation—presentation,~~ and any written materials prepared by the licensee. A maximum of six points is allowed during any reporting period, and credit shall not be given for teaching or presenting the same subject matter more than one time during any reporting period.

(f) Research and published books or articles are eligible to accumulate up to a maximum of 15 points as follows:

- (1) Submission of a request to a funding agency for a research grant as a Principal or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant that ~~must shall~~ include the title, an abstract, the funding ~~agency, agency,~~ and the grant period. Points shall be awarded only one time during any reporting period.
- (2) Having a research grant funded as a Principal Investigator or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant that ~~must shall~~ include the title, an abstract, the funding agency, the grant period and documentation of the funding received ~~and for what in a given~~ period. Points shall be awarded only one time during a reporting period.
- (3) Service as a Grants Reviewer earns one point for each two hours of grant review and a maximum of five points may be earned. The licensee shall submit a description of all grants reviewed and any reports generated in connection with the reviews, including the dates of service, the agency for whom the review was ~~performed—performed,~~ and the hours spent on the grant review. Points are awarded only once for each grant reviewed during the reporting period.
- (4) The author or editor of a book published by a third party entity dealing with a subject related to the practice of physical therapy earns 10 points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.

(5) The author or editor of a chapter in a book published by a third party entity dealing with a subject related to the practice of physical therapy earns five points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.

(6) The author of a published peer-reviewed article relating to the practice of physical therapy earns 10 points. The licensee shall submit the article, names and employers of the reviewers and a list of consulted resources. Points shall be awarded only one time during any reporting period.

(7) The author of a published non peer-reviewed article or book-review or abstract relating to the practice of physical therapy earns four points. The licensee shall submit the article and a list of consulted resources. Each article, review, or abstract earns four points one time only. A maximum of four points shall be awarded during any reporting period.

(8) The author of a published peer-reviewed abstract, book review, or peer-reviewed abstract for a earns five points for a presentation, up to a maximum of 15 points during any reporting period, and credit for the same poster or presentation shall not be awarded more than one time. The licensee shall submit a copy of the poster or presentation and a list of consulted resources.

(g) Clinical practice is eligible for points as follows:

(1) For each year during the reporting period that a licensee is engaged in ~~full-time~~ clinical ~~practice, practice~~ for 1,750 hours or more, three points shall be awarded. The licensee shall submit certification from the licensee's employer(s) including year and hours worked or documentation of practice hours as owner of a practice that clinical practice during the ~~year; year reached or exceeded 1750 hours.~~

(2) For each year during the reporting period that a licensee is engaged in ~~part-time~~ clinical ~~practice, practice~~ for at least 1,000 hours but less than 1,750 hours, two points shall be awarded. The licensee shall submit a certification from the licensee's employer(s) including year and hours worked or documentation of practice hours as owner of a practice that clinical practice during the ~~year; and year reached or exceeded 1000 hours.~~

(3) For each year during the reporting period that a licensee is engaged in clinical practice for at least ~~200 hours,~~ 200 hours but less than 1,000 hours, one point shall be awarded. The licensee shall submit a certification from the employer(s) including year and hours worked for whom the services were performed or

documentation of practice hours as owner of a practice.

(h) Professional Self-Assessment earns five points for completion of an approved Reflective Practice Exercise. This exercise shall be approved if it is a process for a licensee to evaluate current professional practice abilities, to establish goals to improve those abilities, to develop a plan to meet those ~~goals~~ goals, and to document that the objectives are being accomplished. The licensee shall submit evidence of completion of all elements of the Reflective Practice Exercise. Points shall be awarded only one time during any reporting period.

(i) Workplace Education is eligible for points as follows:

- (1) Presentation or attendance at an in-service session related to the practice of physical therapy, including health care issues related to the practice of physical therapy, is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two hours of attendance earns one point. One hour of presentation earns one point. A maximum of five points may be earned during any one reporting period. Credit for the same in-service shall not be granted more than one time.
- (2) Presentation or attendance at an in-service session devoted to general patient safety, emergency procedures, or governmental regulatory requirements is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two contact hours of in-service are equivalent to one point, which is the maximum credit that shall be granted during any reporting period. Credit for the same in-service shall not be granted more than one time during any reporting period.

(j) Professional Service is eligible for points as follows:

- (1) Participation in a national physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee or physical therapy services task force member or delegate to a national assembly earns five points for each full year of participation, up to a maximum of 10 points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the ~~position~~ position, and a summary of the activities of the licensee.
- (2) Participation in a state physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee earns four points for each full year of participation, up to a maximum of eight points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the

responsibilities of the ~~position~~ position, and a summary of the activities of the licensee.

- (3) Participation in a local or regional physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy service committee earns two points for each full year of participation, up to a maximum of four points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the ~~position~~ position, and a summary of the activities of the licensee.
- (4) Participation as a member of a physical therapy professional organization committee involved with physical therapy services earns one point for each full year of participation, up to a maximum of two points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the ~~committee~~ committee, and a summary of the work of the committee.
- (5) Participation in unpaid volunteer service to the general public and healthcare professionals related to physical therapy earns one point for at least 20 hours spent on service activities during each year, up to a maximum of two points during any reporting period. The licensee shall submit published materials describing the service activity.
- (6) Membership in the APTA for one year earns one point. A point may be earned for each year of ~~membership~~ membership during the reporting period. The licensee shall submit proof of membership in the APTA.
- (7) Membership in an APTA Section for one year earns one-half point. The licensee shall submit proof of membership in the APTA Section. Points shall not be awarded for membership in more than one Section.
- (8) Selection by the Federation of State Boards of Physical Therapy (FSBPT) for participation as an item writer of exam questions for the National Physical Therapy Examination (NPTE) or by the American Board of Physical Therapy Specialties (ABPTS) earns five points for each year of participation. The licensee shall submit documentation of participation by the ~~FSBPT Federation~~ FSBPT Federation or ABPTS.
- (9) Participation in clinical research, clinical ~~trials~~ trials, or research projects related to the practice of physical therapy earns 1 point for each hour of participation up to a maximum of 10 hours per reporting period. The licensee shall submit a log of hours of participation including date, activity performed, location of the ~~research~~ research, and primary investigator.

(k) During each reporting period, every licensee ~~must~~ shall complete a jurisprudence exercise provided by the Board. The jurisprudence exercise shall be available online at the Board's website, at <http://www.ncptboard.org> and a certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee. The maximum number of points allowed during a reporting period is three.

Authority G.S. 90-270.26.

21 NCAC 48G .0110 EVIDENCE OF COMPLIANCE

(a) Each licensee shall submit a completed Continuing Competence Reporting Form with an application for license renewal. The form ~~can~~ may be found on the Board's website at <http://www.ncptboard.org>.

(b) Licensees shall retain evidence of compliance with continuing competence requirements for a period of four years following the end of the reporting period for which credit is sought for an activity.

(c) Documentary evidence for ~~Continuing Education~~ continuing education activities shall include the following for each activity:

- (1) ~~Name~~ name of approved provider;
- (2) ~~Name~~ name of accrediting organization;
- (3) ~~Title;~~ title;
- (4) ~~Date;~~ date;
- (5) ~~Hours~~ hours for presentation; and
- (6) ~~Record~~ record of attendance or participation by provider.

(d) The Board shall conduct random audits to ensure continuing competence compliance. Within 30 days from receipt of an Audit Notice from the Board, the licensee ~~must~~ shall furnish the Board with the documentary evidence required by Rule 48G .0109 of this Subchapter ~~the rules in this Subchapter~~ showing completion of the points required for the audited reporting period.

(e) Requests for extensions of time for up to an additional 30 days to respond to the Audit Notice shall be submitted to and granted by the Board's Executive Director. For circumstances beyond the control of the licensee related to physical or medical hardship sustained by the applicant or his or her immediate family, the Board shall grant an additional period of time to respond to the Audit Notice.

(f) If the results of the audit show a licensee has not completed the required points, and the number of additional points needed by the licensee is 10 or fewer, the licensee shall complete the remaining points within 90 days from the date the Board notifies the licensee by ~~certified~~ electronic communication or U.S. Postal Service mail of the deficiency. For circumstances beyond the control of the licensee or for personal hardship, the Board shall grant an additional period of time to respond to the Audit Notice.

(g) Failure to respond to the Board's Audit Notice in a timely fashion, or failure to provide the necessary documentary evidence of compliance pursuant to this Rule shall subject the licensee to disciplinary action pursuant to 21 NCAC 48G .0601(a)(10).

Authority G.S. 90-270.26(3a).

SECTION .0500 – CONTESTED CASE HEARINGS

21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS

(a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing:

- (1) ~~The~~ the name and address of person alleged to have violated the Physical Therapy Practice Act;
- (2) ~~A~~ a statement of conduct giving rise to complaint; and
- (3) ~~The~~ the name, address and telephone number of complainant.

(b) Upon receipt of a written complaint alleging misconduct that might subject a licensee to disciplinary action, or upon the receipt of the information that a violation of the Physical Therapy Practice Act has occurred, the Board shall investigate the matter to determine whether probable cause exists to institute disciplinary proceedings.

(c) The ~~executive director~~ Executive Director of the Board and a member appointed by the Chair shall serve as an investigative committee. This committee may be assisted by:

- (1) ~~The~~ the Board's attorney;
- (2) ~~An~~ an investigator;
- (3) ~~A~~ a former member of the Board; or
- (4) ~~A~~ a consultant retained by the committee who possesses expertise that will assist the committee in its investigation.

(d) The investigative committee shall investigate the complaint or information set forth in Paragraph (b) of this Rule. In conducting its investigation, the Board Chair (or ~~executive director~~ Executive Director, if designated by the Chair) may issue subpoenas in the committee's name for the production of documents pursuant to the provisions of Rule .0512 of this Section. The committee shall determine whether there is probable cause to believe that the licensee has violated any statute or Board rule that would justify a disciplinary hearing. If the committee determines probable cause does not exist, the complaint shall be dismissed, and the complainant shall be notified of the committee's action and its reasons. If the committee determines that probable cause exists, the committee shall offer to confer with the licensee in an attempt to settle the matter through informal means. If the committee and the licensee reach an agreement on the disposition of the matter under investigation, the committee shall cause to be drafted a proposed settlement agreement that shall include findings of fact, conclusions of law, and consent order, for presentation to and consideration by the Board. The settlement agreement shall be presented to and approved by the licensee before it is presented to the Board for consideration and approval.

(e) Prior to a decision rendered by the Board, any materials generated or obtained by the Board in conducting an investigation shall be considered confidential investigation records not subject to the Public Records Act (Chapter 132 of the General Statutes); however, copies of such materials may be provided to a licensee subject to disciplinary action, or to the licensee's attorney, so long as identifying information concerning the treatment or delivery of professional services to a

patient who has not consented to its public disclosure is deleted or redacted.

~~(e)(f)~~ If the investigative committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board shall give notice of a disciplinary or contested case hearing.

~~(f)(g)~~ If probable cause is found, but it is determined that license suspension or revocation is not warranted, the committee shall recommend that the Board place the licensee on probation, or issue a warning to the licensee. In making this determination, the investigative committee shall consider factors as harm to the public, nature of the conduct, and prior record of discipline. The committee shall mail a copy of its recommendation to the licensee.

~~(g)(h)~~ Within 20 days after receipt of the recommendation, the licensee may refuse the probation or warning and request a contested case hearing pursuant to this Section. The refusal and request shall be filed with the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing.

~~(h)(i)~~ In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the committee's recommendation and present reasons why the Board should not follow the committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.

~~(i)(j)~~ If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall still determine whether to accept the committee's recommendation.

~~(j)(k)~~ Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

~~(k)(l)~~ Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning such contested case with the members of the investigative committee who investigated such matter, with persons not parties to the contested case who may be called as witnesses including the person who filed the complaint, and with the Board members about other matters.

Authority G.S. 90-270.26; 90-270.26(10); 150B-38; 150B-39; 150B-40.

21 NCAC 48G .0512 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either pursuant to an investigation, a Board proceeding, at a hearing, or for the purposes of ~~discovery~~, discovery shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full ~~name~~ name, and home or business

address of all persons to be ~~subpoenaed~~ subpoenaed, and, if ~~known~~, the date, time, and place for responding to the subpoena. The Board may deny the issuance of any subpoena that is determined by the Board to have the intent of harassing or intimidating a witness. The Board Chair ~~(or Executive Director, if designated by the Chair)~~ or Executive Director of the Board shall issue the requested subpoenas within three business days of receipt of the request.

(b) Subpoenas shall contain: ~~the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.~~

- (1) the caption of the case or the name of the licensee or matter being investigated;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour and location of the hearing in which the witness is commanded to appear;
- (4) a particularized description of the books, papers, records, or objects the witness is directed to bring to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued;
- (6) the date of issue; the signature of the presiding officer or his designee; and
- (7) a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas for the production of documents for copying or inspection, the subpoena shall contain a particularized description of the books, papers, records or objects to be produced.

~~(e)(d)~~ Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or any documents subpoenaed shall be paid by the party requesting the subpoena. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy to the Board with the attached "return of service" form completed.

~~(d)(e)~~ Any person receiving a subpoena from the Board may object ~~thereto~~ by filing a written objection within 10 business

days of receipt of to the subpoena with the Board's office. Such objection shall include a concise ~~concise, but complete~~, statement of reasons why the subpoena should be quashed or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be unduly burdensome as determined by the Board ~~so disruptive as to be unreasonable~~ in light of the significance of the evidence sought, or other undue hardship.

~~(e)~~(f) Any objection to a subpoena ~~must~~ shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

~~(f)~~(g) The party who requested the subpoena may file a written response to the objection within ~~such time period~~ 10 business days after receipt of the objection allowed by the Board. The written response shall be filed with the Board and served by the requesting party on the objecting witness.

~~(g)~~(h) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party ~~challenging~~ objecting to the subpoena, and may notify any other party or parties of an open hearing before the presiding officer, to be scheduled as soon as practicable. At the hearing, evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

~~(h)~~(i) Promptly ~~Within 30 days~~ after the close of such hearing, the presiding officer ~~will~~ shall rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Authority G.S. 90-270.26; 90-270.26(10); 150B-39; 150B-40.

SECTION .0600 – DISCIPLINARY ACTION

21 NCAC 48G .0601 PROHIBITED ACTIONS

(a) Behaviors and activities ~~which that~~ may result in disciplinary action by the Board pursuant to G.S. 90-270.36(1), (6), (7), (8) and (9) and G.S. 90-270.35(4) include the following:

- (1) recording false or misleading data, ~~measurements—measurements~~, or notes regarding a patient;
- (2) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (3) practicing or offering to practice beyond the scope permitted by law;
- (4) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (5) performing, without adequate supervision as described in the rules in this Chapter, professional services that the licensee is authorized to perform only under the supervision of a licensed professional, except

- in an emergency situation where a person's life or health is in danger;
- (6) harassing, abusing, inappropriately touching, as defined in Rule 48A .0105(7) of this Chapter or intimidating a patient either physically or verbally;
- (7) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (8) promoting an unnecessary device, treatment intervention, nutritional supplement, ~~product~~ product, or service for the financial gain of the practitioner or of a third party as determined by the investigative committee;
- (9) offering, giving, soliciting, ~~or receiving~~ receiving, or agreeing to ~~receive~~, receive any fee or other consideration to or from a third party for the referral of a client;
- (10) failure to file a report, filing a false ~~report~~ report, or failure to respond to an inquiry from the Board within 30 days from the date of issuance, required by ~~law~~ or the rules in this Subchapter, or impeding or obstructing such filing or inducing another person to do so;
- (11) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the patient, except as authorized or required by law;
- (12) guaranteeing that a patient will benefit from the performance of professional services;
- (13) altering a license or renewal card by changing any information appearing thereon;
- (14) using a license or renewal card which has been altered;
- (15) permitting or allowing another person to use his or her license or renewal card for the practice of physical therapy;
- (16) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure to perform such responsibilities;
- (17) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- (18) soliciting or engaging in any activities of a sexual nature, including kissing, ~~fondling~~ fondling, or touching any person while the person is under the care of a physical therapist or physical therapist assistant;
- (19) billing or charging for services or treatment not performed;
- (20) making treatment recommendations or basing a patient's continued treatment on the extent of third party benefits instead of the patient's condition;
- (21) willfully or intentionally communicating false or misleading information regarding a patient;

- (22) harassing, abusing, or intimidating any person, either physically or verbally, while engaged in the practice of physical therapy;
- (23) using a form of a license or renewal card that was not issued by the Board or is not current;
- (24) failing to record patient data within a reasonable period of time following evaluation, ~~assessment~~ assessment, or intervention;
- (25) failing to pay the costs of investigation or otherwise to comply with an order of discipline;
- (26) failing to maintain legible patient records that contain an evaluation of objective findings, a diagnosis, a plan of care including desired outcomes, the treatment record including all elements of 21 NCAC 48C .0102(l) or 21 NCAC 48C .0201(f), a discharge summary or episode of care including the results of the intervention, and sufficient information to identify the patient and the printed name and title of each person making an entry in the patient record;
- (27) charging fees not supported by documentation in the patient record;
- (28) furnishing false or misleading information on an application for licensure and licensure renewal; and
- (29) engaging in misrepresentation or ~~deceit~~ deceit, or exercising undue influence over a patient or former patient for the financial gain of the licensee.

(b) When a person licensed to practice physical therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Physical Therapy Examiners ~~will~~ shall determine whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Practice Act. The Board may impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(c) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the Board determines the public health, safety, or welfare requires emergency action.

(d) When the Board receives a notice from a Clerk of Superior Court that the license of a physical therapist or a physical therapist assistant has been forfeited pursuant to G.S. 15A-1331A, the licensee shall surrender the license to the Board within 24 hours and shall not engage in the practice of physical therapy during the period of forfeiture. Forfeiture under this

Section shall not limit the Board's authority to take further disciplinary action against the licensee in accordance with the Board's rules.

Authority G.S. 15A-1331A; 90-270.24; 90-270.26; 90-270.35(4); 90-270.36; 150B-3.

SECTION .0700 – IMPAIRED LICENSEE

21 NCAC 48G .0701 DEFINITIONS

(a) "Impairment" is a condition caused by substance abuse or mental illness that impacts a licensee's ability to provide physical therapy services.

(b) "Participant" is a licensee enrolled in a Program designed to treat substance abuse or mental illness.

(c) "Program" is a specific course of action for health care practitioners who suffer from substance abuse or mental illness to the extent it impairs professional competence.

Authority G.S. 90-270.26(11).

21 NCAC 48G .0702 PROGRAMS

(a) Before participating in a Program, a licensee shall be referred to the Program by the Board.

(b) If the Board does not offer a Program, it may make arrangements for licensees with impairments to participate in Programs administered by other North Carolina health care licensing boards or by other physical therapy licensing boards that are members of the Federation. Such Programs shall provide for:

- (1) investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practice and practice patterns of licensed physical therapists and physical therapist assistants as may relate to impaired physical therapists and physical therapist assistants;
- (2) identification, intervention, treatment, referral, and follow up care of impaired physical therapists and physical therapist assistants; and
- (3) due process rights for any subject physical therapist or physical therapist assistant.

(c) Any licensee enrolled in a Program shall comply with its requirements. Any licensee terminated by a Program before successfully completing the Program may be subject to disciplinary action.

Authority G.S. 90-270.26(11).

21 NCAC 48G .0703 INFORMATION OF IMPAIRMENT

(a) When information of suspected impairment of a licensee is received by the Board, the Board shall conduct an investigation and routine inquiries to determine the validity of the report prior to referring the licensee to a Program.

(b) Licensees suspected of impairment may be required to submit to personal interviews if the investigation and inquiries indicate the report of impairment may be valid.

Authority G.S. 90-270.26(11).

21 NCAC 48G .0704 CONFIDENTIALITY

Information received by the Program shall remain confidential in accordance with the Program's policies and procedures. However, information received as a result of a Board referral shall be freely exchanged with the Board or its authorized agents.

Authority G.S. 90-270.26(11).

21 NCAC 48G .0705 REPORTS

Following an investigation, intervention, treatment, or upon receipt of a complaint or other information, a program participating with the Board pursuant to Rule .0702(b) of this Section shall report to the Board detailed information about any physical therapist or physical therapist assistant licensed by the Board, if it is determined that:

- (a) The physical therapist or physical therapist assistant constitutes an imminent danger to the public or himself or herself; or

- (b) The physical therapist or physical therapist assistant refuses to cooperate with the Program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; or
- (c) It reasonably appears that there are other grounds for disciplinary action.

Authority G.S. 90-270.26(11).

21 NCAC 48G .0706 PROGRAM STANDARDS

Any Program receiving referrals of licensees from the Board shall be regularly monitored to determine its ability to provide:

- (1) Adequate staffing to supervise participants in the Program;
- (2) Appropriate referrals for treatment to professionals, group counseling and facilities; and
- (3) Appropriate post-treatment support.

Authority G.S. 90-270.26(11).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

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

Rule-making Agency: NC Wildlife Resources Commission

Rule Citation: 15A NCAC 10D .0102

Effective Date: July 1, 2014

Date Approved by the Rules Review Commission: June 18, 2014

Reason for Action: *G.S. 150B-21.1.(a)(7)d. On November 7, 2013 Wildlife Resources staff presented to its Board a proposed regulation change for permanent rule-making to prohibit the use of dogs for taking deer and bear on a portion of Bladen Lakes State Forest Game Land in Bladen County, the intent of which was to address trespass and safety concerns associated with multiple adjoining landowners and one adjoining primary school. The original proposal impacted approximately 5,500 acres. Based on the scope of impact, the proposal was tabled. No notice of text was filed.*

The original proposal was revisited and significantly reduced in scope from 5,500 acres to approximately 1,600. The Commission voted to pursue temporary rule-making to create a special zone on game lands which could apply to game lands in addition to Bladen Lakes State Forest. This zone would be called a Restricted Deer Hunting Zone and would prohibit the use of dogs to hunt deer.

**CHAPTER 10 – WILDLIFE RESOURCES AND WATER
SAFETY**

SUBCHAPTER 10D – GAME LANDS REGULATIONS

SECTION .0100 – GAME LANDS REGULATIONS

The text changes in italics were approved by the Rules Review Commission on April 17, 2014, and will be effective August 1, 2014.

**15A NCAC 10D .0102 GENERAL REGULATIONS
REGARDING USE**

(a) Trespass. Entry on game lands for purposes other than hunting, ~~trapping, trapping~~ or fishing shall be as authorized by the landowner. The Wildlife Resources Commission has identified the following areas on game lands that have additional restrictions on entry or usage:

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only.

- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.
- (6) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.
- (7) Restricted Deer Hunting Zone. On portions of game lands posted as "Restricted Deer Hunting Zones" the use of dogs for taking deer is prohibited.

The Commission shall conduct a public input meeting in the area where the game land is located before establishing ~~an any~~ archery, ~~a~~ restricted firearms, ~~or a~~ restricted zone, ~~or a restricted deer hunting zone~~. After the input ~~meeting~~, ~~meeting~~ the public comments shall be presented ~~at a to an official~~ an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Use of weapons. No person shall discharge:

- (1) any weapon within 150 yards of any game land building or designated game land camping area, except where posted otherwise;
- (2) any weapon within 150 yards of any residence located on or adjacent to game lands, except on Butner-Falls of Neuse and Jordan game lands; and
- (3) any firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Buckhorn, Butner-Falls of Neuse, Chatham, Harris, Hyco, Jordan, Kerr Scott, Lee, Mayo, Sutton Lake, and Vance game lands and Pee Dee River Game Land north of U.S. 74, and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

- (1) the firearm is a .22 caliber pistol with a barrel not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition carried as a side arm;
- (2) the firearm is cased or not immediately available for use;
- (3) the firearm is used by persons participating in field trials on field trial areas; or
- (4) the firearm is possessed in designated camping areas for defense of persons and property.

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses. A field trial participant is defined as a judge, handler, scout or owner.

(2) Exceptions: ~~Exceptions~~

- (A) a ~~A~~ person under 16 years of age may hunt on game lands on the license of his parent or legal guardian; ~~guardian~~.
- (B) the ~~The~~ resident and nonresident sportsman's licenses include game lands use privileges; ~~privileges~~.
- (C) judges ~~Judges~~ and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license; ~~or license~~.
- (D) on ~~On~~ the game lands described in Rule .0103(e)(1) of this Section, the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial that, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident handler, scout, ~~scout~~ or owner participating therein may participate without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial area grounds or the Laurinburg Fox Trial facility shall file with the Commission ~~Commissions agent~~ an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars (\$200.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of seventy-five dollars (\$75.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Sandhills Field Trial area or the Laurinburg Fox Trial facility ~~or the Sandhills Field Trial grounds~~ without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approved use, ~~approval so obtained~~. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina

Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays, ~~Wednesdays~~ and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95 except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95 except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) in posted "safety zones" located on any game land;
- (3) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (4) on the John's River Waterfowl Refuge in Burke County; and
- (5) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (j) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (m) of this Rule and is abiding by the rules described in Paragraph (m).

(h) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(i) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(j) Disabled Sportsman Program. In order to qualify for permit hunts for disabled sportsmen offered by the Commission and use of designated blinds during those hunts, an individual shall possess a Disabled Veteran Sportsman license, a Totally Disabled Sportsman license or a disabled sportsman hunt certification issued by the Commission. In order to qualify for the certification, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) deafness.

On game lands where the privileges described in Paragraph (m) of this Rule apply, participants in the program may operate electric wheel chairs, all terrain vehicles or other passenger vehicles:

- (1) on ungated or open-gated roads normally closed to vehicular traffic; and
- (2) on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel.

Each program participant may be accompanied by one companion provided such companion has in his possession the companion card issued by the Commission. Hunters who qualify under the Disabled Sportsman Program and their companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except for those blinds located on the Restricted Area of Caswell Game Land.

(k) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, domesticated animals, except hunting dogs and raptors where otherwise permitted for hunting or training purposes, or feral animals, or hatchery-raised fish on game lands without prior written authorization. It is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall be given when release of such animals is determined by a ~~North Carolina~~ Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(l) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (j) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but must comply with the terms of

their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act, may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(m) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One companion, who is identified by a companion card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle where it can easily be seen by Commission staff outside the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (j) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(n) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(o) Definitions: For the purpose of this Subchapter "Permanent Hunting Blind" is defined as any structure that is used for hunter concealment, constructed from man made or natural materials, and that is not disassembled and removed at the end of each day's hunt.

(p) Shooting Ranges. On ~~state-owned game lands~~, public shooting ranges managed by the Commission, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except that activities that have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting

range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, ~~post~~, ~~post~~ or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Open days and hours of operation shall be designated on signs and at least one of such signs will be posted at the entrance to each shooting range. Shooting ranges are open from sunrise to sunset on Monday through Saturday. Firearms shall be unloaded and eased when being transported to the shooting range while on Game Lands. No person, when using any shooting range, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

(q) Limited-access Roads. During the months of June, July and August, roads posted as "Limited-access Roads" are open to motorized vehicles from 5:00 a.m. to 10:00 p.m. only. These roads shall be posted with the opening and closing times.

History Note: Authority G.S. 113-129; 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 143-318.10;

Eff. February 1, 1976;

Amended Eff. July 1, 1993; April 1, 1992;

Temporary Amendment Eff. October 11, 1993;

Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. August 31, 2001;

Amended Eff. August 1, 2002;

Amended Eff. June 1, 2004; (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. January 1, 2013; January 1, 2012; June 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; November 1, 2005;

Temporary Amendment Eff. July 1, 2014.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on June 18, 2014 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 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Margaret Currin (Chair)
Jeff Hyde
Jay Hemphill
Faylene Whitaker

Appointed by House

Garth Dunklin (1st Vice Chair)
Stefanie Simpson (2nd Vice Chair)
Jeanette Doran
Ralph A. Walker
Anna Baird Choi

COMMISSION COUNSEL

Amanda Reeder (919)431-3079
Abigail Hammond (919)431-3076
Amber Cronk May (919)431-3074

RULES REVIEW COMMISSION MEETING DATES

July 17, 2014 August 21, 2014
September 18, 2014 October 16, 2014

RULES REVIEW COMMISSION MEETING

MINUTES

June 18, 2014

The Rules Review Commission met on Wednesday, June 18, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, and Stephanie Simpson.

Staff members present were: Commission counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Tammara Chalmers, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Vice-Chairman Dunklin presiding.

Vice-Chairman Dunklin introduced OAH Extern Elizabeth Larner.

Vice-Chairman Dunklin read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

APPROVAL OF MINUTES

Vice-Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the May 15, 2014 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

Home Inspectors Licensure Board

11 NCAC 08 .1103 - The agency has not responded in accordance with G.S. 150B-21.12. There was no action for the Commission to take at the meeting.

Department of Justice, Division of Criminal Information

12 NCAC 04H .0101, .0102, .0103, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0401, .0402, .0403; 04I .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0501, .0601, .0602, .0603, .0701, .0801; 04J .0101, .0102, .0103, .0201, .0301 - All rules were approved unanimously.

State Human Resources Commission

25 NCAC 01J .1321 was withdrawn at the request of the agency.

LOG OF FILINGS

Medical Care Commission

All rules were unanimously approved with the following exception:

The period of review was extended for 10A NCAC 13D .3201 at the request of the agency.

Commission for Public Health

All rules were unanimously approved.

Rule 10A NCAC 41A .0104 was approved pending receipt of technical corrections from the agency, specifically changing “does” to “dose” in (a)(2)(B) and changing “rubella” to “measles” in (a)(3)C). Those changes were subsequently received.

Prior to the review of Rule 10A NCAC 41A .0401 2nd Vice-Chairman Simpson recused herself and did not participate in any discussion or vote concerning these rules because of a possible perception of conflict with her husband’s law firm.

Private Protective Services Board

12 NCAC 07D .0901 was unanimously approved.

Department of Public Safety

14B NCAC 07A .0116

The Commission received ten letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review for 14B NCAC 07A .0116.

Misty Scarlett with Garrett’s Towing and Recovery addressed the Commission.

Terry Scarlett with Garrett’s Towing and Recovery addressed the Commission.

Freddie Johnson with the State Highway Patrol addressed the Commission.

Jeff Babb with the State Highway Patrol addressed the Commission.

Joe Dugdale with the agency addressed the Commission.

Kerry O’Neal with Fred’s Towing addressed the Commission.

Gary Wheeler, President NC Towing and Recovery Specialists addressed the Commission.

The Commission objected to the Rule based upon ambiguity and lack of statutory authority. The Rule contained references to forms in Subparagraphs (a)(1), (5) and (10) and did not tell what was contained in the forms or how to obtain them. In addition, there were several ambiguous terms in the Rule that made the language unclear. The Rule’s organization also made the rule unclear. Finally, there were areas in the Rule where the agency’s statutory authority to require wrecker services to not charge storage fees until the next day or to require criminal background checks was unclear.

The Commission also voted pursuant to G.S. 150B-21.9 to ask OSBM to determine whether the Rule creates a substantial economic impact and is therefore required to have a fiscal note.

Commissioner Choi was not present during the vote.

The Commission recessed from 12:00 to 12:10.

Board of Architecture

All rules were unanimously approved.

Prior to the review of the rules from the Board of Architecture, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides legal representation to the board.

Board of Chiropractic Examiners

All rules were unanimously approved.

Board of Examiners for Nursing Home Administrators

All rules were unanimously approved.

Prior to the review of the rules from the Board of Examiners for Nursing Home Administrators, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides legal representation to the board.

Board of Licensed Professional Counselors

All rules were unanimously approved.

Board of Examiners for Engineers and Surveyors

The Commission extended the period of review for the all the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the Board to make technical changes and submit the rewritten rules at a later meeting.

Appraisal Board

All rules unanimously approved.

Real Estate Commission

Vice-Chairman Dunklin stepped away and 2nd Vice Chairman Simpson presided over the discussion and vote on the Real Estate Commission.

All rules were unanimously approved with the following exceptions:

21 NCAC 58A .0110 – The Commission objected to the Rule, finding it was ambiguous and outside of the agency's statutory authority. As initially submitted, the Rule did not state what topics would be required for the training. This made the Rule ambiguous and allowed the rule to change outside of rulemaking.

21 NCAC 58A .1709 - The Commission objected to the Rule, finding it was ambiguous. Specifically, in the language on lines 17 through 20 of the Rule, it stated that the length of any extension granted and the requirements for education would be "wholly discretionary" on the behalf of the agency. The language gives no guidance to the regulated public regarding the possible lengths of time or requirements.

21 NCAC 58E .0102 - The Commission objected to the Rule, finding it was ambiguous and outside of the agency's statutory authority. As initially submitted, the rule did not state what topics would be required for the training. This made the rule ambiguous and allowed the rule to change outside of rulemaking.

Following the objections by the Commission, the Real Estate Commission asked the Commission to waive Rule 26 NCAC 05 .0108(a) and review rewritten versions of Rules 58A .0110 and 58E .0102 at the June meeting, in order for them to become effective July 1, 2014. The Commission granted the request, with Commissioner Doran opposed. The Commission unanimously approved Rules 58A .0110 and 58E .0102 as rewritten.

Prior to the review of these rules, Vice-Chairman Dunklin recused himself and did not participate in the discussion or vote for these rules because he practices in front of the Commission and been actively involved in the discussion of these rules.

Prior to the review of these rules, Chairman Currin recused herself and did not participate in the discussion or vote for these rules because she holds an inactive Real Estate Broker's license.

Charlene Moody with the agency addressed the Commission.

TEMPORARY RULES

Commission for Public Health

The Commission reviewed three temporary rules filed by the North Carolina Commission for Public Health. The Findings of Need forms filed indicated that the reason for the temporary rulemaking action was pursuant to a recent act of the General Assembly. The Commission declined to approve the above-captioned temporary rules based on the failure to comply with the Administrative Procedure Act (APA) in accordance with G.S. 150B-21.1(a) and 150B-21.9. Dr. Gerri Mattson with the agency addressed the Commission.

Chris Hoke with the agency addressed the Commission.

Bob Martin with the agency addressed the Commission.

Betsy Vetter with the American Heart Association addressed the Commission.

Wildlife Resources Commission

15A NCAC 10D .0102 was unanimously approved.

G.S. 150B-19.1(h) RRC CERTIFICATION

Board of Agriculture

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules_02 NCAC 09O .0103; 20B .0413.

Private Protective Services Board

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules_12 NCAC 07D .0105, .0116, .0809, .1408, .1508.

Criminal Justice Education and Training Standards Commission

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09A .0103; 09B .0203, .0228, .0401; 09C .0303; 09G .0101, .0102, .0202, .0203, .0204, .0205, .0206, .0301, .0302, .0303, .0304, .0306, .0413, .0504, .0602.

COMMISSION BUSINESS

Staff gave the Commission a brief legislative update.

Staff reminded the Commission that reports for the periodic review and expiration of existing rules will start in July of .2014. Staff identified an agency that had not complied with the Rule 26 NCAC 05 .0211 and G.S. 150B-21.3A. A form letter was prepared by staff for submission to the identified agency and future agencies that fail to comply.

The meeting adjourned at 1:42 p.m.

The next regularly scheduled meeting of the Commission is Thursday, July 17th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Julie Brincefield
Administrative Assistant

Minutes approved by the Rules Review Commission:

Garth Dunklin, Vice-Chair

Rules Review Commission
Meeting
Please **Print** Legibly

| Name | Agency |
|-----------------|--------------------------|
| Jane Baker | NCBENHA |
| Martha Bell | NCBENHA |
| Gerr. Mattson | NC DPH |
| FREDDY JOHNSON | NCSHP |
| JOE DUGDALE | NCSHP |
| JEFF BABB | NCSHP |
| Wendy Holmes | NC DPH |
| Beth Mercedes | NC DPH |
| Trevor All | CJETS |
| Sandra Panico | MLDOJ |
| Janice Davidson | NC DOR |
| Tommy Sprer | NOVARTIS |
| Joseph Vireh | Allen, Pinnick & Nichols |
| Betsy Vetter | AHA |
| Kim Chidester | AHA |
| Chris Tonnek | CU |
| Julia Mark | PPSR & ASLR |
| Shari Howard | OSHR |
| Kristy Craig | DHHS |
| Harrie O'Neal | Fred's Towing |
| CHARLENE MOODY | NCREC |

Rules Review Commission

Meeting

Please **Print** Legibly

JUNE 18, 2014

| Name | Agency |
|-----------------|------------------------------|
| Nathan Sink | Clark's Towing and TMC |
| Brandon Clubb | Buck's Wrecker |
| Vicki Martin | Martin Towing |
| Don Williams | Coastal Wrecker Serv |
| VANCE KINLAW | NC BOARD OF CHIROPRACTIC EX. |
| Chris Greene | NC Board of LTC |
| Becley Witz | DHSR |
| City of Raleigh | DKS |
| Gregory Bulitz | DHSR |
| Buck Gardner | DHSR |
| Misty Scalet | Garrett's Towing |
| Jay Scalet | Garrett's Towing |
| Tyler Barrick | NCRBA |
| Julie Piatek | NCRBA |
| Nadine Pfeiffer | DHHS |
| Corbis Alden | NC REC |
| Melissa Vuotto | NC REC |
| Bob Martin | NC DPH |
| Roberta Oultate | NC Appraisal Bd |
| Gary Wheeler | TRPNC GTS Road Service |
| Jay Lee | TRPNC Wayne Lee Towing |

**LIST OF APPROVED PERMANENT RULES
June 18, 2014 Meeting**

MEDICAL CARE COMMISSION

| | |
|---|--------------------|
| <u>Administrative Penalty Determination Process</u> | 10A NCAC 13D .2111 |
| <u>Reporting and Investigating Abuse, Neglect or Misappropri...</u> | 10A NCAC 13D .2210 |
| <u>General Rules</u> | 10A NCAC 13D .3101 |
| <u>Site</u> | 10A NCAC 13D .3103 |
| <u>Plans and Specifications</u> | 10A NCAC 13D .3104 |
| <u>Furnishings</u> | 10A NCAC 13D .3202 |
| <u>New Facility Requirements</u> | 10A NCAC 13D .3301 |
| <u>Additions</u> | 10A NCAC 13D .3302 |
| <u>Heating and Air Conditioning</u> | 10A NCAC 13D .3401 |
| <u>Emergency Electrical Service</u> | 10A NCAC 13D .3402 |
| <u>General Electric</u> | 10A NCAC 13D .3403 |
| <u>Other</u> | 10A NCAC 13D .3404 |

PUBLIC HEALTH, COMMISSION FOR

| | |
|--|--------------------|
| <u>General</u> | 10A NCAC 39A .0201 |
| <u>Definitions</u> | 10A NCAC 39A .0202 |
| <u>Reimbursement Funds</u> | 10A NCAC 39A .0203 |
| <u>Patient Financial Eligibility</u> | 10A NCAC 39A .0204 |
| <u>Covered Services</u> | 10A NCAC 39A .0205 |
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OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May

A. B. Elkins II
Selina Brooks
Craig Croom

J. Randolph Ward

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>DATE</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
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| AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare | 13 DHR 08874 | 01/06/14 | 29:02 NCR 202 |
| J. Mark Oliver DDS, PLLC v. DHHS, Division of Medical Assistance | 13 DHR 14369 | 02/19/14 | 29:02 NCR 206 |
| Genesis Project 1 Inc. v. DHHS, Division of Medical Assistance and its agent, Mecklink Behavioral Healthcare | 13 DHR 17094 | 12/16/13 | 29:01 NCR 70 |
| Estate of Earlene W. Alston, Lewis E. Alston v. DHHS, DMA | 13 DHR 17909 | 04/08/14 | 29:02 NCR 211 |
| <u>DEPARTMENT OF JUSTICE</u> | | | |
| Jose Monserrate Acosta v. NC Private Protective Services | 13 DOJ 15271 | 12/11/13 | 29:02 NCR 213 |
| Kent Patrick Locklear v. NC Sheriffs' Education and Training Standards Commission | 13 DOJ 15368 | 01/03/14 | 29:01 NCR 74 |
| Michael Tyler Nixon v. NC Alarm Systems Licensing Board | 13 DOJ 16246 | 11/25/13 | 29:01 NCR 79 |
| <u>OFFICE OF STATE PERSONNEL</u> | | | |
| Kenneth Shields v. Department of Public Safety | 13 OSP 15762 | 02/26/14 | 29:01 NCR 84 |
| Rena Pearl Bridges v. Department of Commerce | 13 OSP 15896 | 02/19/14 | 29:01 NCR 95 |
| Joseph Vincoli v. Department of Public Safety | 14 OSP 00389 | 04/10/14 | 29:02 NCR 218 |

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STATE OF NORTH CAROLINA JAN -6 PM 12:57 IN THE OFFICE OF
COUNTY OF WAKE Office of ADMINISTRATIVE HEARINGS
Administrative Hearing 13DHR00115 / 08874

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|---|---------------------------------|
| AHB PSYCHOLOGICAL SERVICES Petitioner v. NC DEPARTMENT OF HEALTH AND HUMAN SERVICES and ALLIANCE BEHAVIORAL HEALTHCARE Respondent | PARTIAL SUMMARY JUDGMENT |
|---|---------------------------------|

Upon consideration of Petitioner's Motion for Summary Judgment pursuant to Rule 56 of the NC Rules of Civil Procedure, Respondent's response thereto, Petitioner's response, the official record, and for good cause shown, the undersigned **GRANTS** Summary Judgment for Petitioner as to Issue 1, and **DENIES** Petitioner's Motion for Summary Judgment as to Issue 2. Uncontroverted findings are set forth in this Decision to aid further Tribunals in the review of this Decision.

APPEARANCES

| | |
|-----------------|--|
| For Petitioner: | Knicole C Emanuel Williams Mullen PO Box 1000 Raleigh NC 27602 |
| For Respondent: | Thomas J Campbell Assistant Attorney General NC Department of Justice 9001 Mail Service Center Raleigh NC 27699-9001 |

ISSUES

1. Whether Respondent violated N.C. Gen. Stat. § 108C-7(b) by failing to give Petitioner 20 calendar days notice before instituting a prepayment claims review?
2. Whether Respondent could terminate Petitioner's participation in the NC Medicaid program, under N.C. Gen. Stat. § 108C-7(e), based on four months of results of a prepayment review?

FINDINGS OF FACT

1. On July 13, 2012, Respondent's agent, Carolinas Center for Medical Excellence ("CCME"), mailed a Prepayment Review Initial Notice to Petitioner at the address of 1415 W NC Hwy 54, Suite 113, Durham, North Carolina 27707-5597. The US Postal Service's records showed that US Postal Service Carrier Allan Baldwin left notice of this letter at Petitioner's address on July 14, 2012. The return receipt card for that letter was returned to CCME as "Unclaimed" by Petitioner.

2. On August 6, 2012, CCME mailed the first set of Medical Record Request Forms to Petitioner at the address 1415 W NC Hwy 54, Suite 113, Durham, NC 27707-5597. On August 7, 2012, Petitioner received those record request forms. On August 7, 2012, Dr. April Harris-Britt, Petitioner's owner, was aware that Petitioner was on prepayment review.

3. On September 5, 2012, Petitioner's employee, Heather Graham contacted CCME, and requested a copy of the Prepayment Review Initial Notice for their records. That same day, Petitioner received a fax of CCME's Prepayment Review Initial Notice from CCME.

4. From August 2012 through February 2013, Petitioner complied with CCME's record request, and submitted records to CCME for prepayment review. CCME received Petitioner's records for every month from August 2012 to February 1, 2013.

5. CCME reviewed Petitioner's submitted records, calculated monthly accuracy rates of claims, and either approved or disapproved Petitioner's compliance with clinical policy based on such records.

6. On February 4, 2013, Respondent issued a letter to Petitioner advising it that Respondent was terminating Petitioner as a provider in the NC Medicaid Program.

7. There is no genuine issue of material fact that Respondent's agent CCME failed to give Petitioner notice of the prepayment review at least 20 calendar days before Respondent instituted its prepayment claims review of Petitioner's records in August of 2012. There is no genuine issue of material fact that Petitioner did not receive notice from CCME that it was being placed on prepayment claims review until September 5, 2012.

CONCLUSIONS OF LAW

1. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. § 105A-1, N.C. Gen. Stat. § 150B-35, and 26 NCAC 3 .0115, the undersigned has authority to grant Summary Judgment.

2. Summary Judgment is a device whereby judgment is rendered if the pleadings, depositions, interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact, and that a party is entitled to judgment as a matter of law. *Johnson v. Phoenix Mut. Life Ins. Co.*, 300 N.C. 247, 266 S.E.2d 610 (1980).

ISSUE 1

3. N.C. Gen. Stat. § 108C-7(b) provides in pertinent part:

The Department shall notify the provider in writing of the decision and the process for submitting claims for prepayment claims review no less than 20 calendar days prior to instituting prepayment claims review. The notice shall contain the following:

- (1) An explanation of the Department's decision to place the provider on prepayment claims review.
- (2) A description of the review process and claims processing times.
- (3) A description of the claims subject to prepayment claims review.
- (4) A specific list of all supporting documentation that the provider will need to submit contemporaneously with the claims that will be subject to the prepayment claims review.
- (5) The process for submitting claims and supporting documentation.
- (6) The standard of evaluation used by the Department to determine when a provider's claims will no longer be subject to prepayment claims review.

4. In this case, there is no genuine issue of material fact that Respondent's agent, CCME, violated N.C. Gen. Stat. § 108C-7(b) when it failed to notify Petitioner that it was placing Petitioner on prepayment review at least 20 calendar days before CCME instituted its prepayment claims review of Petitioner's records in August of 2012. Since Petitioner did not receive CCME's Prepayment Review Initial Notice until September 5, 2012, Respondent was neither entitled to begin prepayment claims review nor was Petitioner required to submit claims to CCME for prepayment review until September 25, 2012.

5. Based upon CCME's violation of N.C. Gen. Stat. § 108C-7(b), Petitioner is entitled to summary judgment as a matter of law on that issue. Based on the violation by CCME, the undersigned sets aside Petitioner's claims submitted to Respondent for prepayment review before September 25, 2012.

6. There is no genuine issue of material fact that Petitioner had the required 20 calendar days notice of CCME's prepayment review on September 5, 2012, submitted records in support of its claims, and was paid for any claims that passed prepayment review. Based on the foregoing, Respondent is entitled to summary judgment as a matter of law as to Issue 1.

ISSUE 2

7. N.C. Gen. Stat. § 108C-7(e) states:

The provider shall remain subject to the prepayment claims review process until the provider achieves three consecutive months with a minimum seventy percent (70%) clean claims rate. If the provider does not meet this standard within six months of being placed on prepayment claims review, the Department may implement sanctions, including termination of the applicable Medicaid

Administrative Participation Agreement, or continuation of prepayment review for an additional six-month period. The Department shall give adequate advance notice of any modification, suspension, or termination of the Medicaid Administrative Participation Agreement. In no instance shall prepayment claims review continue longer than 12 months.

8. The plain language of N.C. Gen. Stat. § 108C-7(e) does not require Respondent or CCME, as Respondent's agent, place a Medicaid provider on prepayment review for minimum of six months before Respondent can terminate Petitioner as a Medicaid provider. Accordingly, Respondent acted appropriately when it based its termination of Petitioner as a Medicaid provider on the results of four months of prepayment claims review. For that reason, Petitioner's motion for summary judgment as to Issue 2 is denied.

FINAL DECISION


Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **GRANTS** Summary Judgment for Petitioner as to Issue 1, and **DENIES** Petitioner's Motion for Summary Judgment on Issue 2. The remaining issue for trial is whether Respondent acted appropriately or erred in terminating Petitioner as a provider in the NC Medicaid program.

NOTICE

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. Gen. Stat. § 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of the Superior Court within 30 days of receipt of the Petitioner for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 6th day of January, 2014.


Melissa Owens Lassiter
Administrative Law Judge

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OFFICE OF ADMINISTRATIVE HEARINGS
2/19/2014 8:20 AM

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DHR14369

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| <p>J MARK OLIVER DDS, PLLC Petitioner</p> <p>v.</p> <p>N C DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE Respondent</p> | <p>ORDER GRANTING SUMMARY JUDGMENT IN PART</p> |
|---|---|

THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding for consideration of Petitioner's Motion for Summary Judgment filed with the Office of Administrative Hearings (OAH) on November 19, 2013, and Respondent's response thereto filed with OAH on December 2, 2013.

Upon consideration of Petitioner's Motion for Summary Judgment pursuant to Rule 56 of the NC Rules of Civil Procedure and Respondent's response thereto, the undersigned **GRANTS** Summary Judgment for Respondent as to Issue 1, and **GRANTS** Petitioner's Summary Judgment in part as to Issue 2.

APPEARANCES

For Petitioner: Knicole Carson Emanuel
Williams Mullen
P.O. Box 1000
Raleigh, N.C. 27602

For Respondent: Rajeev K. Premakumar
Asst. Attorney General
NC Department of Justice
P. O. Box 629
Raleigh NC 27602-0629

ISSUES

1. Whether Respondent DMA violated N.C. Gen. Stat. § 108C-5(j) by failing to credential PCG's auditor prior to extrapolation?

2. Whether Respondent DMA violated N.C. Gen. Stat. § 108C-5(i) by failing to provide Petitioner proper notice prior to extrapolation?

FINDINGS OF FACT

ISSUE 1

1. There is no genuine issue of material fact that the clinical reviewer, Cassie Minor, who performed the audit in this case, has the appropriate credentials to perform this audit. In addition to its statutory duty, Respondent's agent Public Consulting Group ("PCG") has a contractual obligation to confirm all certifications, licenses, good standing status, and continuing education credits for all its employees before such employees are allowed to participate in Respondent's post-payment review audits. Additionally, all PCG employees are required to be educated (1) in the relevant service type, and (2) complete the appropriate service type training from DMA. PCG has complied with its statutory and contractual duties.

ISSUE 2

2. There is no genuine issue of material fact that on October 26, 2012, Respondent's agent PCG as a Medicaid review contractor issued a Notice of Tentative Overpayment ("TNO") to Petitioner. In the TNO, PCG advised Petitioner that the results of its post-payment review of Medicaid claims submitted by Petitioner revealed that Petitioner "failed to substantially comply with the requirements of State and federal law or regulation." The TNO stated that "DMA has tentatively identified the total amount of improperly paid claims in the [reviewed] sample [was] \$7,721.59," and that PCG "utilized random sampling and extrapolation in order to determine that your agency received a total Medicaid overpayment in the amount of \$56,456.00."

3. The October 5, 2012 TNO was the first notice Petitioner received that it had "failed to substantially comply with the requirements of State and federal law or regulation."

4. After a reconsideration review, Respondent's Hearing Officer Dorlene McDuffie notified Petitioner by certified mail dated May 20, 2013 that Respondent was upholding PCG's recoupment for the claims in dispute in its entirety in the amount of \$98,333.00.

CONCLUSIONS OF LAW

1. Respondent's Program Integrity Unit and its authorized agents, PCG, conduct post-payment reviews of Medicaid paid claims to identify program abuse and overpayments in accordance with 42 USC § 1396a, 42 CFR 455 & 456, and 10A NCAC 22F.

ISSUE 1

2. N.C. Gen. Stat. § 108C-5 sets forth the process and procedures whereby Respondent and its agents conduct post-payment reviews. N.C. Gen. Stat. § 108C-5(q) states:

Except as required by federal agency, law, or regulation, or instances of credible allegation of fraud, the provider shall be subject to audits which result in the extrapolation of results for a time of up to 36 months from date of payment of a provider's claim.

3. N.C. Gen. Stat. § 108C-5(j) states:

Audits that result in the extrapolation of results must be performed and reviewed by individuals who shall be credentialed by the Department, as applicable, in the matters to be audited, including, but not limited to, coding or specific clinical issues.

4. In this case, there is no genuine issue of material fact that Respondent's agent PCG complied with the requirements of N.C. Gen. Stat. § 108C-5(j) by having its individual reviewer credentialed in the matters audited in this case. As there is no genuine issue of material fact, Respondent is entitled to summary judgment as a matter of law regarding this issue.

ISSUE 2

5. N.C. Gen. Stat. § 108C-5 describes the process Respondent or its agent must follow in seeking recoupment of any overpaid Medicaid funds from a Medicaid provider. N.C. Gen. Stat. § 108C-5(k) states:

The Department, prior to conducting audits that result in the extrapolation of results, shall identify to the provider the matters to be reviewed and specifically list the clinical, including, but not limited to, assessment of medical necessity, coding, authorization, or other matters reviewed and the time periods reviewed.

6. N.C. Gen. Stat. § 108C-5(i) provides:

Prior to extrapolating the results of any audits, the Department shall demonstrate and inform the provider that (i) the provider failed to substantially comply with the requirements of State or federal law or regulation or (ii) the Department has credible allegation of fraud concerning the provider.

7. N.C. Gen. Stat. § 108C-5(p) provides:

The provider shall have no less than 30 days from the date of the receipt of the Department's notice of tentative audit results to provide additional documentation not provided to the Department during any audit.

8. Reading N.C. Gen. Stat. § 108C-5 in its entirety, and in context with the applicable provisions of 42 CFR 455 & 456, and 10A NCAC 22F, N.C. Gen. Stat. § 108C-5 requires Respondent to demonstrate and to inform Petitioner that Petitioner "failed to substantially comply" with the applicable State and Federal law or regulation before Respondent extrapolates the results of any audits. The purpose of N.C. Gen. Stat. § 108C-5(i) is to allow the

provider time to submit additional documentation to Respondent/PCG before PCG performs an extrapolation of any overpayment.

a. In this case, there are no allegations that Petitioner committed any fraud.

b. In this case, there is no genuine issue of material fact that Respondent through its agent PCG violated N.C. Gen. Stat. § 108C-5(i) when it simultaneously notified Petitioner, in the October 5, 2012 TNO, that

(1) Petitioner failed to substantially comply with the State and federal requirements, and
(2) Petitioner owed an extrapolated overpayment amount based on such audit findings.

c. By violating the procedural requirements of N.C. Gen. Stat. § 108C-5(i), Respondent's extrapolated recoupment amount of \$56,456.00 is invalid and void. Petitioner is entitled to summary judgment as matter of law as to that issue, and Respondent may not recoup the extrapolated recoupment/overpayment amount from Petitioner.

9. Nevertheless, there remains a genuine issue of material fact concerning what effect, if any, did PCG's violation of the procedural requirement of N.C. Gen. Stat. § 108C-5 have on the claims in dispute that Respondent actually reviewed, which Respondent's agent PCG seeks to recoup from Petitioner. As such, this case is ripe for a contested case hearing on that issue.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned **GRANTS** Summary Judgment for Respondent as to Issue 1, and **GRANTS** Summary Judgment for Petitioner on Issue 2 regarding the extrapolated overpayment amount. The remaining issue for trial is whether Respondent, through its agent PCG, erred in determining that Respondent overpaid Petitioner for the Medicaid claims that were actually reviewed and identified as overpayments.

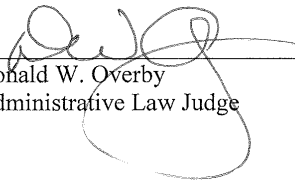
NOTICE

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. Gen. Stat. § 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative

Hearings is required to file the official record in the contested case with the Clerk of the Superior Court within 30 days of receipt of the Petitioner for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 19th day of February, 2014.



Donald W. Overby
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
4/8/2014 12:08 PM

STATE OF NORTH CAROLINA

COUNTY OF LEE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DHR17909

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| Estate Of Earlene W Alston, Lewis E Alston Petitioner v. NCDHHS DMA Respondent | FINAL DECISION DISMISSING RESPONDENT'S CLAIM FOR ESTATE RECOVERY |
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This matter is before the undersigned on Respondent's Motion, served on Petitioner on March 26, 2014, for Summary Judgment, per N.C. Gen. Stat. §§1A-1, Rule 56 and 150B-33(b)(3A), and Rules .0101 and .0115 of the Rules the Office of Administrative Hearings, on the grounds that Petitioner failed to timely request a hardship waiver of Respondent's claim for \$205,688.10 against Petitioner Estate pursuant to the "Medicaid Estate Recovery Plan" statute, N.C. Gen. Stat. 108A-70.5, and the regulations promulgated pursuant to Subsection (d) of that statute, 10A NCAC 21D.0100, *et seq.* The Administrator values the primary asset of the Estate -- a house -- at something less than \$22,500.00 (*see* Respondent's Motion, Ex. H); and references debts of \$1,000.00 to an attorney and \$6,514.00 for his Decedent's funeral expenses (R. Mtn, Ex. E).

The Motion describes the criteria, set out in 10A NCAC 21D.0502, for a survivor to obtain a hardship waiver of the Medicaid recovery claim, and the efforts of Mr. Lewis E. Alston, the Decedent's son and sole heir, to apply for it. It is not entirely clear whether he meets the hardship criteria, and it appears that he has struggled to organize information pertinent to the particular requirements of the regulations. In response to this Motion, Mr. Alston submitted a copy of a Social Security decision, dated March 18, 2014, finding him disabled and entitled to Social Security disability insurance payments. Regardless, the grounds cited for denying Petitioner relief -- by Medicaid, and in support of this Motion -- is the failure to make a "claim of undue hardship... within 60 days from the date of notice of the Medicaid estate recovery claim by the Department of Health and Human Services, Division of Medical Assistance (Medicaid)." (*See* R. Mtn, Ex. B)

However, for Respondent to have a valid claim on the subject Estate in the first instance, the procedure for seeking a Medicaid estate recovery is likewise mandatory. 10A NCAC 21D.0401(a) provides:

Within 60 days after the date of a recipient's death, the Division of Medical Assistance or its fiscal agent shall produce a claim document summarizing all Medicaid payments subject to recovery as stated in Rules .0301 and .0302 of this

Subchapter.

It is clear that the agency created its "statement of charges" on February 4, 2007, some three months (89 days) after death of the Medicaid recipient, Mrs. Alston, on November 7, 2006. (*See* R. Mtn, Ex. A, p. 2) It was mailed to Mr. Alston on March 13, 2007. Thus, it is established that Respondent has no right to the assets of Petitioner estate pursuant to the "Medicaid Estate Recovery Plan" statute, N.C. Gen. Stat. 108A-70.5.

N.C. Gen. Stat. §§1A-1, Rule 56 provides that, "Summary judgment, when appropriate, may be rendered against the moving party." There being no genuine issue as to any material fact, and Petitioner is entitled to judgment as a matter of law.

WHEREFORE, the Respondent's claim on assets of Petitioner Estate must be, and hereby is, DISMISSED.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 8th day of April, 2014.



J. Randolph Ward
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Filed

SEP 11 PM 5:57

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 15271**

JOSE MONSERRATE ACOSTA,

Petitioner,

v.

N.C. PRIVATE PROTECTIVE
SERVICES BOARD,

Respondent.

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The Respondent submitted proposals and argument on September 25, 2013 which was received by the Undersigned on October 7, 2013. The record was held open for submission by Petitioner, and receiving no further proposal or other materials the record was closed on October 25, 2013.

APPEARANCES

Petitioner: Jose Monserrate Acosta, Jr.
5228 Sunriver Road
Gastonia, North Carolina 28054

Respondent: Jeffrey P. Gray, Esq.
Bailey & Dixon, LLP
P.O. Box 1351
Raleigh, North Carolina 27602

ISSUE

Whether Petitioner should be denied an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by convictions of misdemeanor and felony possession of controlled substances.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 12 NCAC 7D § .0700.

EXHIBITS

Respondent's Exhibits 1 and 2 were introduced and admitted.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in this case.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. §74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed security guard and patrol business.
2. Petitioner applied to Respondent Board for an unarmed guard registration.
3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following:
 - A conviction in New York, State of New York, on March 6, 2007 for felony Possession of a Controlled Substance (Heroin), 3rd Degree.
 - A conviction in New York, State of New York, on April 13, 2007 for felony Possession of Controlled Substance (Cocaine), 7th Degree.
 - A conviction in New York, State of New York, on March 28, 2007 for Possession of Controlled Substance (Cocaine), 7th Degree.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.

5. By Notice of Hearing dated July 16, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on August 27, 2013. Petitioner appeared at the hearing.
6. Petitioner testified that in regards to the March 6, 2007 conviction, that in March 2007 he lived in New York City. One day he got high on heroin at a friend's house. He left his friend's house to walk to the store. He was staggering down the street and drew the attention of the police. The police stopped him and saw that he was high on drugs. They searched him and found two (2) bags of heroin on his person. He was arrested and placed in jail. He retained an attorney who recommend that he plead guilty and pay a fine.
7. The March 28, 2007 incident happened in a park called "75th Park." He and five (5) friends were hanging out at the park around 10:30 p.m. They were laughing and having fun. The police heard the commotion and advanced towards them to investigate. The police conducted a search of him and his friends and located cocaine on his person or near him. He was arrested and placed in jail. He retained an attorney who recommended that he plead guilty and pay a fine.
8. The April 13, 2007 incident happened at a train station. He and about ten (10) friends were in the train station enroute to a movie. Someone evaded payment by jumping over the turnstile and the person fit his description. The police initiated a manhunt and approached him on the platform and conducted a search. While going through his clothing a bag of heroin fell out of his pocket. He was immediately arrested and transported to jail. He retained an attorney who recommended that he plead guilty and pay a fine.
9. Petitioner was in drug rehabilitation for one and a half years at J-CAP in Queens, New York. He then served as a counselor in the same facility. He ceased using drugs after receiving help for his addiction.
10. Petitioner worked as a bail bondsman in New York and also obtained his pest control license. He obtained a college degree from St. Thomas Aquinas College in New York.
11. Petitioner later lived in Youngstown, OH where he worked as an unarmed security guard.
12. Petitioner has lived in North Carolina for four (4) years. His wife works for the Gaston County Department of Social Services. They have two daughters.
13. Petitioner has worked for Landmark Security, Inc., starting in July 2012 and was assigned to downtown Charlotte and a bowling alley in Gastonia, as well as a chemical plant in Kings Mountain. He patrolled the areas and completed reports on site security.

BASED UPON the foregoing FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. §74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. §74C-8(d)(2), conviction of any crime involving possession or use of an illegal controlled substance is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in New York, New York for two (2) felony and one (1) misdemeanor convictions involving possession of an illegal controlled substance.
5. Petitioner presented evidence sufficient to explain the factual basis for the charges and has rebutted the presumption. The Undersigned is particularly impressed with Petitioner's decision to enter drug rehabilitation and cease the use of illegal drugs, becoming a counselor at the facility and later obtaining a college degree.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes that Petitioner be issued an unarmed guard registration.

NOTICE

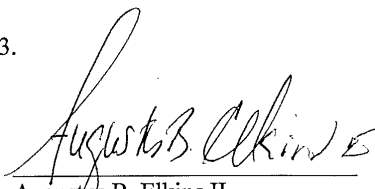
The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact,

and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This the 10th day of December, 2013.


Augustus B. Elkins II
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
4/10/2014 11:52 AM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14OSP00389

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| JOSEPH VINCOLI PETITIONER, V. N C DEPARTMENT OF PUBLIC SAFETY RESPONDENT. | FINAL DECISION ORDER OF DISMISSAL |
|---|--|

THIS CAUSE came on to be heard on March 14, 2014 in the Office of Administrative Hearings ("OAH") in Raleigh, North Carolina before the undersigned on Respondent's Motion to Dismiss for lack of subject matter jurisdiction. After reviewing the pleadings and the entire file and hearing the arguments of Counsel, the undersigned hereby enters the following:

STATEMENT OF FACTS

1. Petitioner Joseph Vincoli [hereinafter "Petitioner" or "Vincoli"] alleges that he was improperly designated as managerial exempt as a "sham" or pretext for a disciplinary dismissal.

2. Prior to the substantial revision of Chapter 126 in August 2013, a state employee could appeal the designation of his or her position as exempt to the OAH under G.S. 126-34, which was repealed. G.S. 126-34.02(b) removed the ability to make such as appeal.

3. Session Law 3012-382 changed the types of cases which can be heard as contested cases in the OAH. G.S. 126-34.02(b), effective on August 21, 2013, provides that only a limited number of specific issues may be heard as contested cases after being considered by the agency. The specific issues are listed in the statute:

- (1) Discrimination or harassment
- (1) Retaliation
- (3) Just cause for dismissal, demotion, suspension . . .
- (4) Veteran's preference . . .
- (5) Failure to post or give priority consideration.
- (6) Whistleblower.

4. Petitioner received a letter from Department of Public Safety Secretary Frank L. Perry, dated October 1, 2013, informing him of his designation as a managerial exempt employee.

5. By letter dated December 9, 2013, Secretary Frank L. Perry determined that a change in agency staff was appropriate and informed Petitioner that he was dismissed on that day.

6. Because Petitioner was a career state employee with more than two but less than ten cumulative years of service, and was being removed for reasons other than just cause, he was entitled to a one-time priority placement for rehire for twelve months to any available non-exempt position for which he applied and was qualified at or below his current salary grade.

7. Petitioner filed his Petition for a Contested Case Hearing in the OAH on January 16, 2014.

CONCLUSIONS OF LAW

1. Effective August 21, 2013, the law changed controlling the matters over which the OAH has original jurisdiction, and the General Assembly repealed the right to appeal an exempt designation. This statutory change removes the rights of a state employee to challenge an exempt designation; therefore, the merits of this contested case will not be addressed.

2. As a managerial exempt employee, Petitioner is not subject to the provisions of Chapter 126. Therefore, G.S. 126-5(h) does not grant Petitioner the right to appeal his exempt designation or ultimate dismissal under G.S. 126-5(h) and Chapter 150B.

3. Only those grievances listed in G.S. 126-34.02 may be heard as contested cases in the OAH and only after review by the Office of State Human Resources. Petitioner's exempt designation is no longer among the grievances listed; therefore, the OAH has no subject matter jurisdiction, which is the predicate authority for a contested case to proceed. The lack of subject matter jurisdiction requires that Petitioner's contested case be dismissed.

FINAL DECISION

IT IS HEREBY ORDERED, for the foregoing reasons that the Office of Administrative Hearings lacks subject matter jurisdiction over the Petition because it fails to allege an enumerated ground for a contested case under G.S. § 126-34.02, that this matter is DISMISSED.

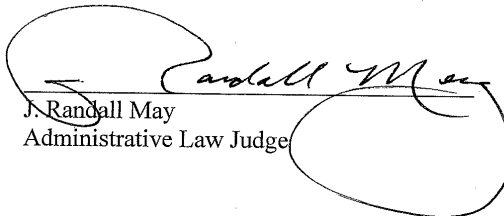
NOTICE

This **Final Decision** is issued under the authority of N.C.G.S. § 150B-34.

Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29 (a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed

with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 10th day of April, 2014.


J. Randall May
Administrative Law Judge

On this date mailed to:


MICHAEL C BYRNE, ESQ.
LAW OFFICES OF MICHAEL C BYRNE PC
150 FAYETTEVILLE STREET, SUITE 1130
RALEIGH NC 27601

ATTORNEY FOR PETITIONER

TAMIKA L HENDERSON
ASSISTANT ATTORNEY GENERAL
NC DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH NC 27699-9001

ATTORNEY FOR RESPONDENT

This the 10th day of April, 2014.


Office of Administrative Hearings
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Fax: 919/431-3100